

1 AMENDMENT TO SENATE BILL 717

2 AMENDMENT NO. _____. Amend Senate Bill 717, AS AMENDED,
3 by replacing the title with the following:

4 "AN Act concerning insurer insolvency."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Illinois Insurance Code is amended by
8 changing Sections 107a.13, 107a.14, 107a.15, and 205 as
9 follows:

10 (215 ILCS 5/107a.13)

11 Sec. 107a.13. Group Workers' Compensation Pool
12 Insolvency Fund.

13 (a) All qualified group workers' compensation pools
14 shall pay a sum equal to 0.5% of all compensation and medical
15 service payments made under either the Workers' Compensation
16 Act or the Workers' Occupational Diseases Act during the 6
17 months immediately preceding the date of payment, into the
18 Group Workers' Compensation Pool Insolvency Fund, the
19 successor fund to the Group Self-Insurers' Insolvency Fund.
20 On the effective date of this amendatory Act of the 91st
21 General Assembly, all moneys in the Group Self-Insurers'

1 Insolvency Fund shall be transferred into the Group Workers'
2 Compensation Pool Insolvency Fund.

3 (b) The State Treasurer is ex-officio custodian of the
4 Group Workers' Compensation Pool Insolvency Fund. Moneys in
5 the Fund shall be deposited the same as are State funds and
6 any interest accruing on moneys in the Fund shall be added to
7 the Fund every 6 months. The Fund shall be subject to audit
8 the same as State funds and accounts and shall be protected
9 by the general bond given by the State Treasurer. The Fund
10 shall be considered always appropriated for the purposes of
11 compensating employees who are eligible to receive benefits
12 from their employers pursuant to the provisions of the
13 Workers' Compensation Act or Workers' Occupational Diseases
14 Act when their employer is a member of a qualified group
15 workers' compensation pool and the qualified group workers'
16 compensation pool has become unable to pay compensation and
17 medical service payments due to financial insolvency either
18 prior to or following the date of award. Moneys in the Fund
19 may be used to compensate any type of injury or occupational
20 disease that is compensable under either the Workers'
21 Compensation Act or the Workers' Occupational Diseases Act,
22 to pay for or reimburse medical claims covered under either
23 of those Acts, and to pay the expenses incurred in the
24 administration and adjudication of claims on behalf of the
25 Fund. The Director of Insurance State--Treasurer shall be
26 joined with the qualified group workers' compensation pool as
27 party respondent in any claim or application for adjustment
28 of claim filed against a qualified group workers'
29 compensation pool whenever the compensation and medical
30 services provided pursuant to this Article may be unpaid by
31 reason of default of an insolvent qualified group workers'
32 compensation pool. As of the effective date of this
33 amendatory Act of the 92nd General Assembly, the Director is
34 substituted for the State Treasurer as party respondent in

1 any workers' compensation proceeding to which the Treasurer
2 has been previously added as a party under this Section.

3 (c) Payment shall be made out of the Group Workers'
4 Compensation Pool Insolvency Fund only upon order of the
5 Director and only after the penal sum of the fidelity bond
6 and securities, if any, has been exhausted. It shall be the
7 obligation of a qualified group workers' compensation pool or
8 its successor, excluding any purchaser under a loss portfolio
9 transfer of business negotiated and approved by the Director,
10 to make arrangements to repay the Group Workers' Compensation
11 Pool Insolvency Fund for all moneys paid out in its behalf.
12 The Director is authorized to make arrangements with the
13 qualified group workers' compensation pool as to terms of
14 repayment. The obligations of qualified group workers'
15 compensation pools to make contributions to the Group
16 Workers' Compensation Pool Insolvency Fund shall be waived on
17 any January 1 or July 1, if the Fund has a positive balance
18 of at least \$2,000,000 on the date one month prior to the
19 date of payment.

20 (Source: P.A. 91-757, eff. 1-1-01.)

21 (215 ILCS 5/107a.14)

22 Sec. 107a.14. Group workers' compensation pools
23 assessment provisions; management of the Fund.

24 (a) When the Director determines by means of audit,
25 annual certified statement, actuarial opinion, or otherwise
26 that the assets possessed by a pool are less than the
27 reserves required together with any other unpaid liabilities,
28 he or she shall order the pool trustees to assess the
29 individual pool participants in an amount not less than
30 necessary to correct the deficiency. This Section is not
31 intended to restrict or preclude the trustees from time to
32 time levying assessments or increasing premium deposits in
33 accordance with the pooling agreement.

1 (b) When the Director determines that the compensation
2 and medical services provided pursuant to this Article may be
3 unpaid by reason of the default of an insolvent qualified
4 group workers' compensation pool and the penal sum of the
5 fidelity bond and the securities provided by the qualified
6 group workers' compensation pool are about to become
7 exhausted, the Director shall declare the qualified group
8 workers' compensation pool to be in default and first levy
9 upon and collect from the individual employer members of the
10 qualified group workers' compensation pool in default an
11 assessment to assure prompt payment of compensation and
12 medical services. No assessment of any individual employer
13 member of the qualified group workers' compensation pool made
14 pursuant to this subsection shall exceed 25% of the average
15 annual contribution paid by that employer over the previous
16 3-year period; however, if the Group Workers' Compensation
17 Pool Insolvency Fund is then for any reason financially
18 unable to assure prompt payment of compensation and medical
19 services, the employer member may be assessed without
20 limitation. If and only if (i) the Group Workers'
21 Compensation Pool Insolvency Fund has a positive balance of
22 less than \$1,000,000 exclusive of any amounts received
23 directly or indirectly from the General Revenue Fund or any
24 dedicated fund of the State of Illinois, (ii) the Director
25 has declared a qualified group workers' compensation pool to
26 be in default, and (iii) the Group Workers' Compensation Pool
27 Insolvency Fund is financially unable to pay all employees
28 whose compensation and medical services remain unpaid have
29 been-approved, the Director shall levy upon and collect from
30 all qualified group workers' compensation pools an assessment
31 to provide the balance necessary to assure prompt payment of
32 approved compensation and medical services. The assessment
33 shall be allocated among the qualified group workers'
34 compensation pools based upon the ratio of (1) the average

1 annual premium written by each qualified group workers'
2 compensation pool over the 3-year period prior to the year in
3 which the liquidation order, obtained pursuant to Article
4 XIII of this Code, was issued regarding the qualified group
5 workers' compensation pool in default or any group self
6 insurer in default that existed under the repealed Section 4a
7 of the Workers' Compensation Act or the repealed Section 4a
8 of the Workers' Occupational Disease Act to (2) the aggregate
9 average annual premium written by all qualified group
10 workers' compensation pools over the 3-year period prior to
11 the year in which the liquidation order was issued. A
12 qualified workers' compensation pool in runoff or that has
13 transferred or is transferring its liabilities shall not be
14 exempt from this assessment. The assessment shall apply for
15 any qualified workers' compensation pool in default or any
16 workers' compensation pool in default that existed under the
17 repealed law previously cited in this subsection and for
18 which an order of liquidation has been obtained after July 1,
19 2000. If an insurance carrier becomes liable for workers'
20 compensation and occupational diseases payments under the
21 terms of the policy covering the qualified group workers'
22 compensation pool, the carrier shall make appropriate
23 payments and payments from the Fund shall cease. Payments
24 from the Fund shall resume only when the insurance carrier's
25 liability is exhausted.

26 (c) Any appropriation or loan from the General Revenue
27 Fund or a transfer of moneys from dedicated funds to the
28 Group Workers' Compensation Pool Insolvency Fund shall be a
29 liability to the General Revenue Fund or the dedicated funds
30 from which moneys were received.

31 (d) The liquidator of an insolvent group workers'
32 compensation pool shall permit access by the Fund or its
33 authorized representatives to the insolvent group workers'
34 compensation pool's records that are necessary for the Fund

1 in carrying out its functions under this Article with regard
2 to covered claims. In addition, the liquidator shall provide
3 the Fund or its representative with copies of those records
4 upon the request and at the expense of the Fund.

5 (e) The Fund shall be deemed the insolvent group
6 workers' compensation pool to the extent of the Fund's
7 obligation for covered claims and, to that extent, shall have
8 all rights, duties, and obligations of the insolvent group
9 workers' compensation pool, subject to the limitations
10 provided in this Article, as if the group workers'
11 compensation pool had not become insolvent, with the
12 exception that the liquidator shall retain the sole right to
13 pursue any contractual assessments, reinsurance proceeds,
14 salvage or subrogation obligations, or other obligations owed
15 to the insolvent group workers' compensation pool.

16 (f) An insured or claimant seeking the protection of
17 this Article shall cooperate with the Fund to the same extent
18 as that person would have been required to cooperate with the
19 insolvent group workers' compensation pool.

20 (g) The Fund shall be recognized as a claimant in the
21 liquidation of an insolvent group workers' compensation pool
22 for any amounts paid by the Fund on covered claims
23 obligations as determined under this Article and shall
24 receive dividends at the priority set forth in paragraph (d)
25 of subsection (1) of Section 205 of this Code. The liquidator
26 of an insolvent group workers' compensation pool shall be
27 bound by determinations of covered claim eligibility under
28 this Article and by settlements of claims made by the Fund on
29 the receipt of certification of such payments, to the extent
30 those determinations or settlements satisfy obligations of
31 the Fund, but the receiver shall not be bound in any way by
32 those determinations or settlements to the extent that there
33 remains a claim in the estate for amounts in excess of the
34 payments by the Fund. In submitting its claim for covered

1 claim payments, the Fund shall not be subject to the
 2 requirements of Sections 208 and 209 of this Code and shall
 3 not be affected by the failure of the person receiving a
 4 covered claim payment to file a proof of claim.

5 (h) The Fund shall have early access to the assets of an
 6 insolvent group workers' compensation pool for carrying out
 7 its functions under this Article in accordance with the
 8 provisions of subsection (2) of Section 205 of this Code. The
 9 costs and expenses of administration of the Fund shall be
 10 accorded the same priority as the liquidator's expenses in
 11 accordance with the provisions of paragraph (a) of subsection
 12 (1) of Section 205 of this Code.

13 (i) All amounts received by the Fund from the liquidator
 14 and all amounts received by the Fund from the collection of
 15 assessments from members of insolvent qualified group
 16 workers' compensation pools shall be accounted for by the
 17 maintenance of segregated sub-accounts for each insolvent
 18 group workers' compensation pool. Any distributions from the
 19 Fund shall be made first from the segregated account value
 20 then existing at the time of the distribution to which the
 21 expense item relates and then from any unsegregated or
 22 commingled account of the Fund as the Director deems proper.

23 (Source: P.A. 91-757, eff. 1-1-01.)

24 (215 ILCS 5/107a.15)

25 Sec. 107a.15. Authority of Director.

26 (a) If the Director determines that a group workers'
 27 compensation pool is not in compliance with this Article, the
 28 Director shall require the pool to eliminate the condition
 29 causing the noncompliance within a specified time from the
 30 date the notice of the Director's requirement is mailed or
 31 delivered to the pool.

32 (b) If a pool fails to comply with the Director's
 33 requirement, the pool shall be deemed to be in a hazardous

1 financial condition, and the Director may take one or more of
2 the actions authorized by law as to pools in hazardous
3 financial condition.

4 (c) The Director is authorized to negotiate and enter
5 into loss portfolio transfers, agreements for the
6 administration of claims adjustment services for claims
7 covered by the Group Workers' Compensation Pool Insolvency
8 Fund, claims settlement agreements, and such other agreements
9 or contracts as he may find necessary or appropriate to
10 effectuate the purposes of this Article as administrator of
11 the Fund.

12 (d) The Director is authorized to make bulk transfers of
13 funds from the Group Workers' Compensation Pool Insolvency
14 Fund for deposit to claim payment trust accounts for the
15 payment of medical and compensation claims due under this
16 Article, provided that those accounts may be drawn upon for
17 no other purpose and only when the claim payment account is
18 the subject of a third party claims administration agreement
19 providing for the trust account to be managed as a fiduciary
20 claims administration service account in conformity with this
21 Article.

22 (e) All costs of administration or adjustment of claims
23 under agreements or contracts entered into under subsection
24 (c) of this Section may be paid from the Group Workers'
25 Compensation Pool Insolvency Fund.

26 (f) Whenever it appears to the Director's satisfaction
27 that there remain no existing liabilities of the Group
28 Workers' Compensation Pool Insolvency Fund for (i) incurred
29 medical or compensation claims under this Article, (ii)
30 administrative expense liabilities under this Article, and
31 (iii) reimbursements due to any liquidation estate, any
32 amount remaining in the Fund in excess of \$1,500,000 shall be
33 distributed by the Director first to the State's General
34 Revenue Fund and any dedicated State fund and then to the

1 then existing and qualified group workers' compensation pools
2 in proportion to the assessments paid by each such pool.

3 (Source: P.A. 91-757, eff. 1-1-01.)

4 (215 ILCS 5/205) (from Ch. 73, par. 817)

5 Sec. 205. Priority of distribution of general assets.

6 (1) The priorities of distribution of general assets
7 from the company's estate is to be as follows:

8 (a) The costs and expenses of administration,
9 including the expenses of the Illinois Insurance Guaranty
10 Fund, the Illinois Life and Health Insurance Guaranty
11 Association, the Illinois Health Maintenance Organization
12 Guaranty Association and of any similar organization in
13 any other state as prescribed in subsection (c) of
14 Section 545, and the Group Workers' Compensation Pool
15 Insolvency Fund.

16 (b) Secured claims, including claims for taxes and
17 debts due the federal or any state or local government,
18 that are secured by liens perfected prior to the filing
19 of the complaint.

20 (c) Claims for wages actually owing to employees
21 for services rendered within 3 months prior to the date
22 of the filing of the complaint, not exceeding \$1,000 to
23 each employee unless there are claims due the federal
24 government under paragraph (f), then the claims for wages
25 shall have a priority of distribution immediately
26 following that of federal claims under paragraph (f) and
27 immediately preceding claims of general creditors under
28 paragraph (g).

29 (d) Claims by policyholders, beneficiaries,
30 insureds and liability claims against insureds covered
31 under insurance policies and insurance contracts issued
32 by the company, and claims of the Illinois Insurance
33 Guaranty Fund, the Illinois Life and Health Insurance

1 Guaranty Association, the Illinois Health Maintenance
2 Organization Guaranty Association and any similar
3 organization in another state as prescribed in Section
4 545, and the Group Workers' Compensation Pool Insolvency
5 Fund.

6 (e) Claims by policyholders, beneficiaries, and
7 insureds, the allowed values of which were determined by
8 estimation under paragraph (b) of subsection (4) of
9 Section 209.

10 (f) Any other claims due the federal government.

11 (g) All other claims of general creditors not
12 falling within any other priority under this Section
13 including claims for taxes and debts due any state or
14 local government which are not secured claims and claims
15 for attorneys' fees incurred by the company in contesting
16 its conservation, rehabilitation, or liquidation.

17 (h) Claims of guaranty fund certificate holders,
18 guaranty capital shareholders, capital note holders, and
19 surplus note holders.

20 (i) Proprietary claims of shareholders, members, or
21 other owners.

22 (2) Within 120 days after the issuance of an Order of
23 Liquidation with a finding of insolvency against a domestic
24 company, the Director shall make application to the court
25 requesting authority to disburse funds to the Illinois
26 Insurance Guaranty Fund, the Illinois Life and Health
27 Insurance Guaranty Association, the Illinois Health
28 Maintenance Organization Guaranty Association and similar
29 organizations in other states, and the Group Workers'
30 Compensation Pool Insolvency Fund from time to time out of
31 the company's marshaled assets as funds become available in
32 amounts equal to disbursements made by the Illinois Insurance
33 Guaranty Fund, the Illinois Life and Health Insurance
34 Guaranty Association, the Illinois Health Maintenance

1 Organization Guaranty Association and similar organizations
2 in other states, or to be made by the Group Workers'
3 Compensation Pool Insolvency Fund for covered claims
4 obligations on the presentation of evidence that such
5 disbursements have been made by the Illinois Insurance
6 Guaranty Fund, the Illinois Life and Health Insurance
7 Guaranty Association, the Illinois Health Maintenance
8 Organization Guaranty Association and similar organizations
9 in other states, or will be made by the Group Workers'
10 Compensation Pool Insolvency Fund.

11 The Director shall establish procedures for the ratable
12 allocation and distribution of disbursements to the Illinois
13 Insurance Guaranty Fund, the Illinois Life and Health
14 Insurance Guaranty Association, the Illinois Health
15 Maintenance Organization Guaranty Association and similar
16 organizations in other states, and the Group Workers'
17 Compensation Pool Insolvency Fund. In determining the
18 amounts available for disbursement, the Director shall
19 reserve sufficient assets for the payment of the expenses of
20 administration described in paragraph (1) (a) of this
21 Section. All funds available for disbursement after the
22 establishment of the prescribed reserve shall be promptly
23 distributed. As a condition to receipt of funds in
24 reimbursement of covered claims obligations, the Director
25 shall secure from the Illinois Insurance Guaranty Fund, the
26 Illinois Life and Health Insurance Guaranty Association, the
27 Illinois Health Maintenance Organization Guaranty Association
28 and each similar organization in other states, and the Group
29 Workers' Compensation Pool Insolvency Fund, an agreement to
30 return to the Director on demand funds previously received as
31 may be required to pay claims of secured creditors and claims
32 falling within the priorities established in paragraphs (a),
33 (b), (c), and (d) of subsection (1) of this Section in
34 accordance with such priorities.

1 (3) The provisions of this Section are severable under
2 Section 1.31 of the Statute on Statutes.

3 (Source: P.A. 89-206, eff. 7-21-95; 90-381, eff. 8-14-97.)

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