1   AN ACT concerning insurance.

2   Be it enacted by the People of the State of Illinois,
3   represented in the General Assembly:

4   Section 5. The Illinois Insurance Code is amended by
5   changing Sections 537.2, 537.6, 537.7, and 551 as follows:

6   (215 ILCS 5/537.2) (from Ch. 73, par. 1065.87-2)
7   Sec. 537.2. Obligation of Fund. The Fund shall be
8   obligated to the extent of the covered claims existing prior
9   to the entry of an Order of Liquidation against an insolvent
10   company and arising within 30 days after the entry of such
11   Order, or before the policy expiration date if less than 30
12   days after the entry of such Order, or before the insured
13   replaces the policy or on request effects cancellation, if he
14   does so within 30 days after the entry of such Order. If the
15   entry of an Order of Liquidation occurs on or after October
16   1, 1975 and before October 1, 1977, such obligations shall
17   not: (i) exceed $100,000, or (ii) include any obligation to
18   refund the first $100 of any unearned premium claim; and if
19   the entry of an Order of Liquidation occurs on or after
20   October 1, 1977 and before January 1, 1988, such obligations
21   shall not: (i) exceed $150,000, except that this limitation
22   shall not apply to any workers compensation claims, or (ii)
23   include any obligation to refund the first $100 of any
24   unearned premium claim; and if the entry of an Order of
25   Liquidation occurs on or after January 1, 1988, such
26   obligations shall not: (i) exceed $300,000, except that this
27   limitation shall not apply to any workers compensation
28   claims, or (ii) include any obligation to refund the first
29   $100 of any unearned premium claim or to refund any unearned
30   premium over $10,000 under any one policy. In no event shall
31   the Fund be obligated to a policyholder or claimant in an

1   amount in excess of the face amount of the policy from which

2   the claim arises.

3   In no event shall the Fund be liable for any interest on

4   any judgment entered against the insured or the insolvent

5   company, or for any other interest claim against the insured

6   or the insolvent company, regardless of whether the insolvent

7   company would have been obligated to pay such interest under

8   the terms of its policy. The Fund shall be liable for

9   interest at the statutory rate on money judgments entered

10 against the Fund until the judgment is satisfied.

11   Any obligation of the Fund to defend an insured shall

12 cease upon the Fund's payment or tender of an amount equal to

13 the lesser of the Fund's covered claim obligation limit or

14 the applicable policy limit.

15 (Source: P.A. 85-576; 86-1155; 86-1156; 86-1475.)

16   (215 ILCS 5/537.6) (from Ch. 73, par. 1065.87-6)

17   Sec. 537.6. Allocation of claims; assessments. The Fund

18 shall allocate covered claims paid and expenses incurred

19 between the accounts established by Section 535 separately,

20 and assess member companies separately for each account

21 amounts necessary to pay the obligations of the Fund under

22 Section 537.2 subsequent to the entry of an Order of

23 Liquidation against an insolvent company, the expenses of

24 handling covered claims subsequent to such Order   of

25 Liquidation and other expenses authorized by this Article.

26 The assessments of each member company shall be in the

27 proportion that the net direct written premiums of the member

28 company for the calendar year immediately preceding the year

29 in which the assessment is levied on the kinds of insurance

30 in the account bears to the net direct written premiums of

31 all member companies for such preceding calendar year on the

32 kinds of insurance in the account. Each member company shall

33 be notified of the assessment not later than 30 days before

1   it is due. <u>Before January 1, 2002,</u> no member company may be

2   assessed in any year on any account an amount greater than 1%

3   of that member company's net direct written premiums on the

4   kinds of insurance in the account for the calendar year

5   preceding the assessment. <u>Beginning January 1, 2002, the</u>

6   <u>amount a member company may be assessed in any year on any</u>

7   <u>account shall be a maximum of 2% of that member company's net</u>

8   <u>direct written premium on the kinds of insurance in the</u>

9   <u>account for the calendar year preceding the assessment. This</u>

10   <u>2% maximum shall apply regardless of the date of any</u>

11   <u>insolvency that gives rise to the need for the assessment.</u>

12   If the maximum assessment, together with the other assets of

13   the Fund in any account, does not provide, in any one year,

14   in any account, an amount sufficient to make all necessary

15   payments from that account, the funds available shall be paid

16   in the manner determined by the Fund and approved by the

17   Director and the unpaid portion shall be paid as soon

18   thereafter as funds become available. If requested by a

19   member company, the Director may exempt or defer the

20   assessment of any member company, if the assessment would

21   cause the member company's financial impairment.

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

23   (215 ILCS 5/537.7) (from Ch. 73, par. 1065.87-7)

24   Sec. 537.7. <u>Investigation of claims; disposition.</u>

25   (a) The Fund shall investigate claims brought against

26   the Fund and adjust, compromise, settle, and pay covered

27   claims to the extent of the Fund's obligation and deny all

28   other claims and--may--review--settlements,--releases---and

29   judgments-to-which-the-insolvent-company-or-its-insureds-were

30   parties--to--determine--the-extent-to-which-such-settlements,

31   releases-and-judgments-may-be-properly-contested.

32   <u>(b) The Fund shall not be bound by a settlement,</u>

33   <u>release, compromise, waiver, or final judgment executed or</u>

1   entered within 12 months prior to an order of liquidation and

2   shall have the right to assert all defenses available to the

3   Fund including, but not limited to, defenses applicable to

4   determining   and   enforcing   its   statutory   rights   and

5   obligations to any claim. The Fund shall be bound by a

6   settlement, release, compromise, waiver, or final judgment

7   executed or entered more than 12 months prior to an order of

8   liquidation, however, if the claim is a covered claim and the

9   settlement or judgment was not a result of fraud, collusion,

10 default, or failure to defend. In addition, with respect to

11 covered claims arising from a judgment under a decision,

12 verdict, or finding based on the default of the insolvent

13 insurer or its failure to defend, upon application by the

14 Fund, either on its own behalf or on behalf of an insured,

15 the court shall set aside the judgment, order, decision,

16 verdict, or finding, and the Fund shall be permitted to

17 defend against the claim on the merits.

18   (c)(b) The Fund shall have the right to appoint or

19 approve and to direct legal counsel retained under liability

20 insurance policies for the defense of covered claims.

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

22   (215 ILCS 5/551) (from Ch. 73, par. 1065.101)

23   Sec. 551.   Stay of proceedings. All proceedings arising

24 out of a claim under a policy of insurance written by an

25 insolvent company shall be stayed for 120 days from the date

26 of the entry of the Order of Liquidation to permit proper

27 defense by the Fund of all such pending causes of action. As

28 to--any--covered--claims--arising--from--a-judgment-under-any

29 decision,-verdict-or-finding-based--on--the--default--of--the

30 insolvent--company--or-its-failure-to-defend-an-insured,-upon

31 application-of-the-Fund,-either--on--its--own--behalf--or--on

32 behalf--of-such-insured,-the-court-or-administrator-that-made

33 such-judgment,-order,-decision,-verdict-or-finding-shall--set

1   aside--such-judgment,-order,-decision,-verdict-or-finding-and

2   the-Fund-shall-be-permitted-to-defend-against-such--claim--on

3   the-merits.

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

5   Section 99. Effective date. This Act takes effect upon

6   becoming law.