

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.8142 Priority of distribution of claims from insurer's estate; class of claims; subclasses prohibited; order of distribution; assets in separate account; definitions.

Sec. 8142.

(1) Except as provided in subsection (2), the priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment.

Subclasses shall not be established within a class. The order of distribution of claims is as follows:

(a) Class 1. The costs and expenses of administration, including, but not limited to, the following:

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

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

(iii) Any necessary filing fees.

(iv) The fees and mileage payable to witnesses.

(v) Reasonable attorney's fees.

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

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

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

(b) Class 2. Except as otherwise provided in this section, all claims under policies for losses incurred, including third party claims, and all claims of a guaranty association or foreign guaranty association. However, obligations of an insolvent insurer arising out of reinsurance contracts shall not be included in this class. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. For purposes of this section, life insurance and annuity policies include, but are not limited to, individual annuities, group annuities, guaranteed investment contracts, and funding agreement contracts, issued by an insurer. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to his or her employee shall not be treated as a gratuity.

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

(d) Class 4. All claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies and, to the extent not included in class 1, debts due to employees for services performed to the extent that they do not exceed \$1,000.00 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of the priority for debts due to employees for services performed. The priority for debts due to employees for services performed is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

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

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

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

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

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

(2) If it is provided by written agreement, statute, or rule that the assets in a separate account are not chargeable with liabilities arising out of any other business of the insurer, that part of a claim that includes a separate account shall be satisfied out of the assets in the separate account equal to the reserves maintained in the separate account under the separate account agreement. The remainder of the claim shall be treated as a Class 2 claim against the

insurer's estate to the extent that reserves have been established in the insurer's general account pursuant to statute, rule, or the separate account agreement.

(3) As used in this section:

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

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

- (i) Assets that represent money provided by the insurer initially to fund the separate account.
- (ii) Assets that represent policy reserves that are properly allocable to the general account.
- (iii) General account investments held in the separate account.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990 ;-- Am. 1991, Act 79, Imd. Eff. July 18, 1991 ;-- Am. 1996, Act 429, Imd. Eff. Nov. 26, 1996 ;-- Am. 1998, Act 279, Imd. Eff. July 27, 1998 ;-- Am. 2002, Act 359, Imd. Eff. May 23, 2002

Compiler's Notes: Section 2 of 429 of 1996 provides: "Section 2. (1) Sections 8142 and 8159 of Act No. 218 of the Public Acts of 1956, being sections 500.8142 and 500.8159 of the Michigan Compiled Laws, as amended by this amendatory act, apply to all pending and future cases brought under chapter 81 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.8101 to 500.8159 of the Michigan Compiled Laws, on and after the effective date of this amendatory act. These sections, as amended by this amendatory act, are intended to correct existing law in light of the United States Supreme Court decision in *US Dept of Treasury v Fabe*, 508 US 491; 113 S Ct 2202; 124 L Ed 2d 449 (1993), and to introduce regulations conducive to the public good." (2) If any portion of this amendatory act or the application of this amendatory act to any person or circumstance is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of the amendatory act that can be given effect without the invalid portion or application provided the remaining portion is not determined by the court to be inoperable. The court may alter the composition and order of classes listed in section 8142 of Act No. 218 of the Public Acts of 1956, being section 500.8142 of the Michigan Compiled Laws, as amended by this amendatory act, to the minimum extent necessary to render that section valid."

Popular Name: Act 218