

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1634

Chapter 40, Laws of 2001

57th Legislature
2001 Regular Session

INSURANCE--CLAIM DISTRIBUTION

EFFECTIVE DATE: 7/22/01

Passed by the House March 9, 2001
Yeas 98 Nays 0

CLYDE BALLARD

Speaker of the House of Representatives

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 4, 2001
Yeas 49 Nays 0

ROSA FRANKLIN

President of the Senate

Approved April 17, 2001.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1634** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

TIMOTHY A. MARTIN

Chief Clerk

FILED

April 17, 2001 - 9:04 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 1634

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Representatives Santos, DeBolt, Hatfield and Benson; by request of Insurance Commissioner

Read first time 01/31/2001. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to prioritizing and ordering the distribution of
2 claims of an insurer's estate; amending RCW 48.31.280 and 48.31.260;
3 and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.31.280 and 1993 c 462 s 83 are each amended to read
6 as follows:

7 The priority of distribution of claims from the insurer's estate is
8 as follows: Every claim in a class must be paid in full or adequate
9 funds retained for payment before the members of the next class receive
10 any payment; no subclasses may be established within a class; and no
11 claim by a shareholder, policyholder, or other creditor may circumvent
12 the priority classes through the use of equitable remedies. The order
13 of distribution of claims is:

14 (1) Class 1. The costs and expenses of administration during
15 rehabilitation and liquidation, including but not limited to the
16 following:

17 (a) The actual and necessary costs of preserving or recovering the
18 assets of the insurer;

1 (b) Compensation for all authorized services rendered in the
2 rehabilitation and liquidation;

3 (c) Necessary filing fees;

4 (d) The fees and mileage payable to witnesses;

5 (e) Authorized reasonable attorneys' fees and other professional
6 services rendered in the rehabilitation and liquidation;

7 (f) The reasonable expenses of a guaranty association or foreign
8 guaranty association for unallocated loss adjustment expenses.

9 (2) Class 2. (~~Reasonable compensation to employees for services~~
10 ~~performed to the extent that they do not exceed two months of monetary~~
11 ~~compensation and represent payment for services performed within one~~
12 ~~year before the filing of the petition for liquidation or, if~~
13 ~~rehabilitation preceded liquidation, within one year before the filing~~
14 ~~of the petition for rehabilitation. Principal officers and directors~~
15 ~~are not entitled to the benefit of this priority except as otherwise~~
16 ~~approved by the liquidator and the court. The priority is in lieu of~~
17 ~~any other similar priority that may be authorized by law as to wages or~~
18 ~~compensation of employees.~~

19 (3) Class 3. Loss claims. For purposes of this section, "loss
20 claims" are all claims under policies, including claims of the federal
21 or a state or local government, for losses incurred, including third-
22 party claims and all claims of a guaranty association or foreign
23 guaranty association. All claims under life insurance and annuity
24 policies, whether for death proceeds, annuity proceeds, or investment
25 values, are loss claims. That portion of any loss indemnification that
26 is provided for by other benefits or advantages recovered by the
27 claimant, is not included in this class, other than benefits or
28 advantages recovered or recoverable in discharge of familial obligation
29 of support or by way of succession at death or a proceeds of life
30 insurance, or as gratuities. No payment by an employer to his or her
31 employee may be treated as a gratuity.

32 (4) Class 4. Claims under nonassessable policies for unearned
33 premium or other premium refunds and claims of general creditors
34 including claims of ceding and assuming companies in their capacity as
35 such.

36 (5) Class 5. Claims of the federal or any state or local
37 government except those under subsection (3) of this section. Claims,
38 including those of any governmental body for a penalty or forfeiture,
39 are allowed in this class only to the extent of the pecuniary loss

1 sustained from the act, transaction, or proceeding out of which the
2 penalty or forfeiture arose, with reasonable and actual costs
3 occasioned thereby. The remainder of such claims are postponed to the
4 class of claims under subsection (8) of this section.

5 (6) Class 6. Claims filed late or any other claims other than
6 claims under subsections (7) and (8) of this section.

7 (7) Class 7. Surplus or contribution notes, or similar
8 obligations, and premium refunds on assessable policies. Payments to
9 members of domestic mutual insurance companies are limited in
10 accordance with law.

11 (8) Class 8. The claims of shareholders or other owners in their
12 capacity as shareholders.) Loss claims. For purposes of this section,
13 loss claims are all claims under policies, including claims of the
14 federal or a state or local government, for losses incurred, including
15 third-party claims, and all claims of a guaranty association or foreign
16 guaranty association. All claims under life insurance and annuity
17 policies, whether for death proceeds, annuity proceeds, or investment
18 values, are loss claims. That portion of any loss indemnification that
19 is provided for by other benefits or advantages recovered by the
20 claimant, is not included in this class, other than benefits or
21 advantages recovered or recoverable in discharge of familial
22 obligations of support or by way of succession at death or as proceeds
23 of life insurance, or as gratuities. No payment by an employer to an
24 employee may be treated as a gratuity. Loss claims also include claims
25 under nonassessable policies for unearned premium or other premium
26 refunds.

27 (3) Class 3. Claims of the federal government, other than claims
28 which are included as loss claims under subsection (2) of this section.

29 (4) Class 4. Reasonable compensation to employees for services
30 performed to the extent that they do not exceed two months of monetary
31 compensation and represent payment for services performed within one
32 year before the filing of the petition for liquidation or, if
33 rehabilitation preceded liquidation, within one year before the filing
34 of the petition for rehabilitation; except, where there are no claims
35 and no potential claims of the federal government in the estate, in
36 which case claims in this class shall have priority over claims in
37 class 2 and below. Principal officers and directors are not entitled
38 to the benefit of this priority except as otherwise approved by the
39 liquidator and the court. This priority is in lieu of any other

1 similar priority that may be authorized by law as to wages or
2 compensation of employees.

3 (5) Class 5. Claims of general creditors including claims of
4 ceding and assuming companies in their capacity as such.

5 (6) Class 6. Claims of any state or local government, except those
6 under subsection (2) of this section. Claims, including those of any
7 governmental body for a penalty or forfeiture, are allowed in this
8 class only to the extent of the pecuniary loss sustained from the act,
9 transaction, or proceeding out of which the penalty or forfeiture
10 arose, with reasonable and actual costs occasioned thereby. The
11 remainder of such claims are postponed to the class of claims under
12 subsection (9) of this section.

13 (7) Class 7. Claims filed late or any other claims other than
14 claims under subsections (8) and (9) of this section.

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

19 (9) Class 9. The claims of shareholders or other owners in their
20 capacity as shareholders.

21 **Sec. 2.** RCW 48.31.260 and 1947 c 79 s .31.26 are each amended to
22 read as follows:

23 The rights and liabilities of the insurer and of its creditors,
24 policyholders, stockholders, members, subscribers, and all other
25 persons interested in its estate shall, unless otherwise directed by
26 the court, be fixed as of the date on which the order directing the
27 liquidation of the insurer is filed in the office of the clerk of the
28 court which made the order, subject to the provisions of RCW 48.31.300
29 with respect to the rights of claimants holding contingent claims and
30 RCW 48.31.280 with respect to the priority and order of distributions
31 of claims.

32 NEW SECTION. **Sec. 3.** This act applies to and governs all claims
33 filed in any proceeding to liquidate an insurer that is initiated on or
34 after January 1, 2001.

35 NEW SECTION. **Sec. 4.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

Passed the House March 9, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor April 17, 2001.

Filed in Office of Secretary of State April 17, 2001.