

No. 1996-72

AN ACT

SB 577

Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as amended, "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," further providing for order of distribution of claims from insurer's estate, for brokers' licenses, for temporary certificate or license and for continuing education.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 544 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, added December 14, 1977 (P.L.280, No.92), is amended to read:

Section 544. Order of Distribution.—The order of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class.

(a) [Debts due to employes for services performed to the extent that they do not exceed one thousand dollars (\$1,000) and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority.

Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employes.

(b)] The costs and expenses of administration, including but not limited to the following; the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; reasonable attorney's fees; the expenses of a guaranty association in handling claims.

[(c)] (b) All claims under policies for losses wherever incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, shall have the next priority. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment

values shall be treated as loss claims. 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 obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to his employee shall be treated as a gratuity.

(c) Claims of the Federal government other than those claims included in subsection (b).

(d) Debts due to employees for services performed to the extent that they do not exceed one thousand dollars (\$1,000) and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. This priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

[(d)] (e) Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

[(e)] (f) Claims of [the Federal or any] state or local government. Claims, including those of any governmental body, for a penalty or forfeiture shall be 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 occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection [(g)] (h).

[(f)] (g) The following claims:

(1) Claims under section 539(b), to the extent that such claims were disallowed under that section.

(2) Claims filed late.

(3) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered by the claimant.

[(g)] (h) Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

[(h)] (i) The claims of shareholders or other owners.

Section 2. Section 604(a) of the act, amended December 12, 1994 (P.L.1035, No.141), is amended to read:

Section 604. Issuance of Certificate of Qualification.—(a) When the Insurance Department is satisfied that the applicant is worthy of a certificate of qualification and has successfully passed an examination and otherwise complied with this article, it shall issue a certificate *to expire two years from the date of issue unless sooner revoked by the Insurance Department for cause*. The certificate shall state that the agent has complied with this article and has been authorized by the Insurance Department to transact business in specific lines of authority in this Commonwealth. Once a certificate is issued, the certificate holder is presumed worthy to secure additional specific lines

of authority under the certificate unless the department files an action to suspend or revoke or refuse to renew the certificate pursuant to section 639.

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Section 3. Section 622(h) of the act, amended June 11, 1992 (P.L.284, No.48), is amended to read:

Section 622. Brokers' Licenses.—* * *

(h) [Insurance brokers with a valid license to sell, issued after December 31, 1970, shall comply with any continuing education requirements established by the Insurance Department by regulation.] *Insurance brokers who were initially issued a valid license after December 31, 1970, shall comply with all continuing education requirements established by Insurance Department regulation. However, this section shall not apply to brokers who:*

(1) *were validly licensed as an agent for the same lines of authority on or prior to December 31, 1970, and who have continually maintained a licensed status; and*

(2) *have not added additional lines of authority to a broker's license in addition to those held as an agent on or prior to December 31, 1970.*

Section 4. The act is amended by adding a section to read:

Section 642. Temporary Certificate or License.—(a) *The Insurance Commissioner may temporarily certify or license individuals to perform the duties of an agent or broker. The applicant for a temporary certificate or license shall send a written request for the license to the Insurance Department, which request shall include an endorsement by each entity affected. The Insurance Commissioner may temporarily certify or license only the following individuals:*

(1) *The executor or administrator of a deceased person, who at the time of death, was an agent or broker.*

(2) *The surviving next of kin of a deceased agent or broker, if no administrator of the estate has been appointed and no executor has qualified under a probated will.*

(3) *The surviving member of a firm or association, at the time of the death of its certified or licensed member. If the firm or the association has surviving active officers or active partners who hold the same lines of authority as the deceased, approval will not be granted.*

(4) *The legal guardian of an agent or broker declared incompetent by a court of competent jurisdiction.*

(5) *The person holding the power of attorney to act for an agent or broker who is absent due to serving in the United States Armed Forces.*

(6) *Any other suitable person whose temporary certification or licensure is not otherwise prohibited under paragraph (3).*

(b) *Individuals issued a temporary certificate or license under this section shall be authorized to renew the business of the deceased, legally incompetent or absent agent or broker, or of the firm or association whose business is to be continued, for policies expiring during the period in which*

the individual is certified or licensed and to perform other acts as an insurance agent or broker incidental to the continuance of the insurance business for policies in force at the time of the agent's or broker's death, adjudication of incompetence or absence. A temporarily certified or licensed individual shall not be authorized to solicit, negotiate or procure new business.

(c) Approval of a temporary certificate or license may be granted for a term not exceeding one year from the date of the death or declaration of incompetence of the agent or broker or for the period the agent or broker is absent or incapacitated.

(d) The temporarily licensed individual may transact business only with an entity that has provided an endorsement and which the deceased, legally incompetent or absent agent or firm or association was appointed to represent at the time of death, adjudication of incompetency or absence.

Section 5. An agent or broker shall be subject to the continuing education credit-hour requirements of 31 Pa. Code § 39.8(b)(3) (relating to credit hours):

(1) if he held a valid agent's certificate of qualification or broker's license, which expired on or before December 31, 1995; and

(2) if the Insurance Department received his new application for such certificate or license on or before March 1, 1996.

Section 6. The amendment of section 544 of the act shall apply to the distribution of claims in existing estates in receivership and future estates in receivership.

Section 7. Section 5 of this act shall be retroactive to December 31, 1995.

Section 8. This act shall take effect as follows:

(1) The amendment of section 544 of the act shall take effect immediately.

(2) The remainder of this act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 1996.

THOMAS J. RIDGE