

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2310
(Senator Lips)

AN ACT to amend and reenact section 26.1-06.1-41 of the North Dakota Century Code, relating to priority of distributions in insurance company insolvencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-06.1-41 of the North Dakota Century Code is amended and reenacted as follows:

26.1-06.1-41. Priority of distribution. The priority of distribution of claims from the insurer's estate must be in accordance with the order in which each class of claims is herein set forth. Every claim in each class must be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses may be established within any class. The order of distribution of claims must be:

1. Class 1. The costs and expenses of administration during rehabilitation and liquidation, including the following:
 - a. The actual and necessary costs of preserving or recovering the assets of the insurer;
 - b. Compensation for all authorized services rendered in the rehabilitation and liquidation;
 - c. Any necessary filing fees;
 - d. The fees and mileage payable to witnesses;
 - e. Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation; and
 - f. The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.
2. Class 2. ~~Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for service performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority must be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.~~ All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values must be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits, or advantages recovered by the claimant, may 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. No payment by an employer to employees may be treated as a gratuity.
3. Class 3. ~~All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of~~

~~a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values must be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits, or advantages recovered by the claimant, may 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. No payment by an employer to employees may be treated as a gratuity. Claims of the federal government not included in class 2.~~

4. ~~Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority must be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.~~
5. ~~Class 5. Claims of the federal or any state or local government except those under class 3 above. Claims, including those of any governmental body for a penalty or forfeiture, may 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 must be postponed to the class of claims under subsection 8. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such.~~
6. ~~Class 6. Claims filed late or any other claims other than claims under subsections 7 and 8. Claims of any state or local government except those paid under class 2. Claims, including those of any state or local governmental body for a penalty or forfeiture, may 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 the claims must be postponed to the class of claims under subsection 9.~~
7. ~~Class 7. Surplus or contribution notes, or similar obligations, and premium funds on assessable policies. Payments to members of domestic mutual insurance companies must be limited in accordance with law. Claims filed late or any other claims other than claims under subsections 8 and 9.~~
8. ~~Class 8. The claims of shareholders or other owners in their capacity as shareholders. Surplus or contribution notes, or similar obligations, and premium funds on assessable policies. Payment to member of domestic mutual insurance companies must be limited in accordance with law.~~
9. Class 9. The claims of shareholders or other owners in their capacity as shareholders.

If any provision of this section or the application of any provision of this section to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section, and to this end the provisions are severable.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2310.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 95 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State