

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
STATE HOUSE • BOSTON 02133  
(617) 727-3600

WILLIAM F. WELD  
GOVERNOR

ARGEO PAUL CELLUCCI  
LIEUTENANT GOVERNOR

October 11, 1996

To the Honorable Senate and House of Representatives:

Pursuant to Part the Second, Chapter I, Section I, Article II of the Constitution of the Commonwealth of Massachusetts, I am returning unsigned Senate Bill No. 2335, "An Act Regulating Set Off of Mutual Debts and Credits Involving an Insolvent Insurer."

This bill would amend M.G.L. c. 175, § 180F, which governs the distribution of the assets of an insolvent insurer that is the subject of a liquidation proceeding. Under § 180F, an insolvent insurer's assets are distributed in accordance with the following priorities: (1) expenses of administration; (2) compensation of non-officer employees of the insolvent insurer for services rendered within three months prior to commencement of the liquidation proceeding, (3) claims for taxes and debts to the federal, state and local governments; (4) claims by policyholders, beneficiaries, and insureds arising from insurance policies issued by the insolvent insurer, and claims presented by the Massachusetts Insurers Insolvency Fund and the Massachusetts Life and Health Guaranty Association, and (5) all other claims.

This bill would establish a right on the part of an insurer to set off any amount owed by an insolvent insurer against any amount owed to an insolvent insurer. As a result, insurers with claims against insolvent insurers could in effect achieve a higher priority than any of the priorities set forth above. This result may be detrimental to the interests of those consumers who purchased policies from the insolvent insurers. In the event that the assets of the insolvent insurers are insufficient to pay claims against their policyholders, the Massachusetts Insurers Insolvency Fund will pay that amount of each covered claim that is less than \$300,000. M.G.L. c. 175D, § 5(1)(a). That expense will ultimately be passed on to the insurance-buying public in the form of higher premiums. This bill may thus be detrimental to the interests of consumers generally.

The insurers have previously looked to the equitable remedy of set off in these situations. E.g., Massachusetts Motor Vehicle Reinsurance Facility v Commissioner of Insurance, 379 Mass.

527, 538 (1980) (" In the absence of a statute, there is power in equity to 'compel a set-off of cross demands or of judgments . . . whenever necessary for the proper administration of justice ' ") The more flexible equitable remedy, which can be tailored to meet the circumstances at hand, may be preferable to the more rigid statutory remedy. In any event, I am not convinced that this bill is the best means to protect the competing interests in the assets of an insolvent insurer

For these reasons, I am returning unsigned Senate Bill No. 2335

Respectfully submitted,



William F. Weld  
Governor