

**SUBSTITUTE FOR
HOUSE BILL NO. 5292**

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3503, 7911, 7918, 7921, 7925, 7931, 7941,
7945, 8111, 8124, and 8134 (MCL 500.3503, 500.7911, 500.7918,
500.7921, 500.7925, 500.7931, 500.7941, 500.7945, 500.8111,
500.8124, and 500.8134), section 3503 as added by 2000 PA 252,
sections 7911 and 7921 as amended by 1993 PA 200, section 7918 as
amended by 2001 PA 182, sections 7925, 7931, and 7945 as amended by
1980 PA 41, section 7941 as amended by 1990 PA 137, section 8111 as
amended by 1992 PA 182, section 8124 as added by 1989 PA 302, and
section 8134 as amended by 1998 PA 279, and by adding sections

8124a and 8133a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3503. (1) All of the provisions of this act that apply to
2 a domestic insurer authorized to issue an expense-incurred
3 hospital, medical, or surgical policy or certificate, including,
4 but not limited to, ~~section 223~~ **SECTIONS 223 AND 7925** and
5 chapters 34 and 36, apply to a health maintenance organization
6 under this chapter unless specifically excluded, or otherwise
7 specifically provided for in this chapter.

8 (2) Sections 408, 410, 411, 901, and 5208, ~~and chapters~~
9 **CHAPTER 77**, and, **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)**,
10 **CHAPTER 79** do not apply to a health maintenance organization.

11 Sec. 7911. (1) To implement this chapter, there shall be
12 maintained within this state, by all insurers authorized to
13 transact in this state insurance other than life or disability
14 insurance, except the Michigan basic property insurance association
15 created pursuant to section 2920, an association of those insurers
16 to be known as the property and casualty guaranty association,
17 hereafter referred to as the "association". Each insurer shall be a
18 member of the association as a condition of its authority to
19 continue to transact insurance in this state.

20 (2) An insurer from which insurance has been or may be
21 procured in this state solely by virtue of ~~sections 1901 to 1955~~
22 **CHAPTER 19** shall not be considered to be an insurer authorized to
23 transact insurance in this state for the purposes of this chapter.

24 (3) The association ~~shall be~~ **IS** subject to the requirements
25 of this chapter ~~—, AND chapter 81 —, and section 3172a,~~ but

1 ~~shall~~ IS not ~~be~~ subject to the other chapters of this act. The
2 association shall be subject to other laws of this state to the
3 extent that it would be subject to those laws if it were an insurer
4 organized and operating under chapter 50, to the extent that those
5 other laws are consistent with this chapter.

6 Sec. 7918. (1) The association may borrow funds when necessary
7 to implement this act.

8 (2) The association, either in its own name or through a
9 servicing facility, may sue or be sued, and may use the courts to
10 assert or defend any rights the association may have under this
11 chapter, to the extent necessary to fully exercise its rights and
12 perform its duties under, and to implement, this chapter.

13 (3) The association may retain and employ legal counsel in its
14 discretion to represent the association in all respects.

15 **(4) THE ASSOCIATION MAY BRING AN ACTION AGAINST ANY THIRD**
16 **PARTY ADMINISTRATOR, AGENT, ATTORNEY, OR OTHER REPRESENTATIVE OF**
17 **THE INSOLVENT INSURER TO OBTAIN CUSTODY AND CONTROL OF ALL CLAIMS**
18 **INFORMATION, INCLUDING ALL FILES, RECORDS, AND ELECTRONIC DATA**
19 **RELATED TO AN INSOLVENT COMPANY THAT ARE APPROPRIATE OR NECESSARY**
20 **FOR THE ASSOCIATION, OR A SIMILAR ASSOCIATION IN OTHER STATES, TO**
21 **CARRY OUT ITS DUTIES UNDER THIS ACT. THE ASSOCIATION SHALL HAVE THE**
22 **ABSOLUTE RIGHT THROUGH EMERGENCY EQUITABLE RELIEF TO OBTAIN CUSTODY**
23 **AND CONTROL OF ALL CLAIMS INFORMATION IN THE CUSTODY OR CONTROL OF**
24 **THE THIRD PARTY ADMINISTRATOR, AGENT, ATTORNEY, OR OTHER**
25 **REPRESENTATIVE OF THE INSOLVENT INSURER, REGARDLESS OF WHERE THE**
26 **INFORMATION MAY BE PHYSICALLY LOCATED. IN BRINGING THE ACTION, THE**
27 **ASSOCIATION IS NOT SUBJECT TO ANY DEFENSE, LIEN, POSSESSORY OR**

1 OTHERWISE, OR OTHER LEGAL OR EQUITABLE GROUND FOR REFUSAL TO
 2 SURRENDER CLAIMS INFORMATION THAT MIGHT BE ASSERTED AGAINST THE
 3 LIQUIDATOR OF THE INSOLVENT INSURERS. IF LITIGATION IS NECESSARY
 4 FOR THE ASSOCIATION TO OBTAIN CUSTODY OF THE CLAIMS INFORMATION
 5 REQUESTED AND IT RESULTS IN THE RELINQUISHMENT OF CLAIMS
 6 INFORMATION TO THE ASSOCIATION AFTER REFUSAL TO PROVIDE THE
 7 INFORMATION IN RESPONSE TO A WRITTEN DEMAND, THE COURT SHALL AWARD
 8 THE ASSOCIATION ITS COSTS, EXPENSES, AND REASONABLE ATTORNEY FEES
 9 INCURRED IN BRINGING THE ACTION. THIS SECTION DOES NOT AFFECT THE
 10 RIGHTS AND REMEDIES THAT THE CUSTODIAN OF THE CLAIMS INFORMATION
 11 MAY HAVE AGAINST THE INSOLVENT INSURERS, SO LONG AS THOSE RIGHTS
 12 AND REMEDIES DO NOT CONFLICT WITH THE RIGHTS OF THE ASSOCIATION TO
 13 CUSTODY AND CONTROL OF THE CLAIMS INFORMATION UNDER THIS ACT.

14 (5) ~~-(4)-~~ Upon request of the commissioner, consent of the
 15 association, and appointment by the court, the association may act
 16 as deputy receiver in delinquency proceedings under chapter 81.

17 Sec. 7921. As used in this chapter:

18 (a) "Insolvent insurer" means an insurer ~~for which a~~
 19 ~~domiciliary receiver has been appointed by a final order in this~~
 20 ~~state or in a reciprocal state, as defined in section 8103 for the~~
 21 ~~liquidation of the insurer and~~ which has been a member insurer **AND**
 22 **AGAINST WHOM A FINAL ORDER OF LIQUIDATION HAS BEEN ENTERED WITH A**
 23 **FINDING OF INSOLVENCY BY A COURT OF COMPETENT JURISDICTION IN THE**
 24 **INSURER'S STATE OF DOMICILE.** The date on which the order becomes
 25 final shall be the date on which ~~the receiver is appointed for~~
 26 ~~purposes of this chapter~~ **ALL APPEALS OF THE FINDING OF INSOLVENCY**
 27 **ARE EXHAUSTED. IF THE FINDING OF INSOLVENCY IN THE ORDER OF**

1 LIQUIDATION IS NOT APPEALED, THE ORDER OF LIQUIDATION SHALL BE
2 CONSIDERED FINAL ON THE DATE THE ORDER WAS ISSUED.

3 (b) "Member insurer" means an insurer required to be a member
4 of the association pursuant to section 7911.

5 Sec. 7925. (1) "Covered claims" means obligations of an
6 insolvent insurer ~~which~~ **THAT** meet all of the following
7 requirements:

8 (a) Arise out of the insurance policy contracts of the
9 insolvent insurer issued to residents of this state or are payable
10 to residents of this state on behalf of insureds of the insolvent
11 insurer.

12 (b) Were unpaid by the insolvent insurer.

13 (c) Are presented as a claim to the receiver in this state or
14 the ~~association~~ **ASSOCIATION** on or before the last date fixed for
15 the filing of claims in the domiciliary delinquency proceedings.

16 (d) Were incurred or existed before, at the time of, or within
17 30 days after the date the receiver was appointed.

18 (e) Arise out of policy contracts of the insolvent insurer
19 issued for all kinds of insurance except life and disability
20 insurance.

21 (f) Arise out of insurance policy contracts issued on or
22 before the last date on which the insolvent insurer was a member
23 insurer.

24 (2) Covered claims shall not include any of the following:

25 (a) Obligations to refund unearned premiums above the first
26 \$500.00 of unearned premiums from each person from any 1 insolvent
27 insurer. The maximum amount of unearned premiums which shall

1 constitute a covered claim shall be adjusted annually to reflect
2 changes in the cost of living under rules prescribed by the
3 commissioner. **A REFUND IN AN AMOUNT LESS THAN \$50.00 SHALL NOT BE**
4 **MADE FOR UNEARNED PREMIUMS.**

5 (b) Obligations incurred after the expiration date of the
6 insurance policy, after the insurance policy has been replaced by
7 the insured, or after the insurance policy has been canceled by the
8 association as provided in this chapter.

9 (c) Obligations ~~which arise~~ **ARISING** out of sections 2001 to
10 2050, or similar provisions of law in another jurisdiction.

11 (3) Covered claims shall not include ~~obligations to an~~
12 ~~insurer, insurance pool, underwriting association, or to a person~~
13 ~~who has a net worth greater than 1/10 of 1% of the aggregate~~
14 ~~premiums written by member insurers in this state in the preceding~~
15 ~~calendar year.~~ **ANY AMOUNT DUE ANY REINSURER, INSURER, INSURANCE**
16 **POOL, UNDERWRITING ASSOCIATION, HEALTH MAINTENANCE ORGANIZATION,**
17 **HEALTH CARE CORPORATION, OR SELF-INSURER AS SUBROGATION RECOVERIES,**
18 **CONTRIBUTION, INDEMNIFICATION, OR OTHER OBLIGATION. A CLAIM FOR ANY**
19 **AMOUNT DUE ANY REINSURER, INSURER, INSURANCE POOL, UNDERWRITING**
20 **ASSOCIATION, HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE**
21 **CORPORATION, OR SELF-INSURER SHALL NOT BE BROUGHT AGAINST A PERSON**
22 **INSURED UNDER A POLICY ISSUED BY THE INSOLVENT INSURER UNLESS THE**
23 **CLAIM EXCEEDS THE ASSOCIATION'S OBLIGATION LIMITATIONS UNDER**
24 **SUBSECTION (6).**

25 (4) COVERED CLAIMS SHALL NOT INCLUDE OBLIGATIONS FOR ANY FIRST
26 PARTY OR THIRD PARTY CLAIM BY OR AGAINST AN INSURED WHOSE NET WORTH
27 EXCEEDS \$25,000,000.00 ON DECEMBER 31, OR ON THE LAST DATE OF THE

1 INSURED'S FISCAL PERIOD IF THAT IS OTHER THAN DECEMBER 31, OF THE
2 YEAR IMMEDIATELY PRECEDING THE DATE THE INSURER BECOMES AN
3 INSOLVENT INSURER. IN DETERMINING NET WORTH ON THIS DATE, AN
4 INSURED'S NET WORTH SHALL INCLUDE THE AGGREGATE NET WORTH OF THE
5 INSURED AND ALL OF ITS SUBSIDIARIES AND AFFILIATES AS CALCULATED ON
6 A CONSOLIDATED BASIS. THE \$25,000,000.00 NET WORTH LIMIT SHALL BE
7 ADJUSTED ANNUALLY TO REFLECT THE AGGREGATE ANNUAL PERCENTAGE CHANGE
8 IN THE CONSUMER PRICE INDEX SINCE THE PREVIOUS ADJUSTMENT, ROUNDED
9 TO THE NEAREST \$10,000.00. THE EFFECTIVE DATE OF THE ADJUSTMENT
10 SHALL BE JANUARY 1 OF EACH YEAR.

11 (5) ~~-(4)-~~ Covered claims shall not include any portion of a
12 claim ~~which~~ **THAT** is in excess of an applicable limit provided in
13 the insurance policy.

14 (6) ~~-(5)-~~ Covered claims shall not include that portion of a
15 claim, other than a worker's compensation claim ~~-, which is in~~
16 ~~excess of 1/20 of 1% of the aggregate premiums written by member~~
17 ~~insurers in this state in the preceding calendar year.~~ OR A CLAIM
18 FOR PERSONAL PROTECTION INSURANCE BENEFITS UNDER SECTION 3107, THAT
19 IS IN EXCESS OF \$5,000,000.00. THE \$5,000,000.00 CLAIM CAP SHALL BE
20 ADJUSTED ANNUALLY TO REFLECT THE AGGREGATE ANNUAL PERCENTAGE CHANGE
21 IN THE CONSUMER PRICE INDEX SINCE THE PREVIOUS ADJUSTMENT, ROUNDED
22 TO THE NEAREST \$10,000.00. THE EFFECTIVE DATE OF THE ADJUSTMENT
23 SHALL BE JANUARY 1 OF EACH YEAR AND SHALL APPLY TO CLAIMS MADE ON
24 OR AFTER THAT DATE. THE CLAIM CAP IN EFFECT AT THE TIME OF PAYMENT
25 OF A CLAIM SHALL APPLY.

26 (7) ~~-(6)-~~ Covered claims shall not include adjustment fees and
27 expenses, attorneys' fees and expenses, court costs, interest, or

1 bond premiums if the fees, expenses, costs, interest, or premiums
2 were incurred by the insolvent insurer before the receiver was
3 appointed.

4 (8) AS USED IN THIS SECTION:

5 (A) "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR
6 ALL URBAN CONSUMERS IN THE US CITY AVERAGE, AS MOST RECENTLY
7 REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR
8 STATISTICS, AND AS CERTIFIED BY THE COMMISSIONER.

9 (B) "CONTROL" MEANS THAT TERM AS DEFINED IN SECTION 115(B)(i).

10 (C) "HEALTH CARE CORPORATION" MEANS THAT TERM AS DEFINED IN
11 SECTION 105 OF THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT,
12 1980 PA 350, MCL 550.1105.

13 (D) "SELF-INSURER" MEANS A PERSON THAT COVERS ITS LIABILITY
14 THROUGH A QUALIFIED INDIVIDUAL OR GROUP SELF-INSURANCE PROGRAM OR
15 ANY OTHER FORMAL PROGRAM CREATED FOR THE SPECIFIC PURPOSE OF
16 COVERING LIABILITIES TYPICALLY COVERED BY INSURANCE.

17 Sec. 7931. (1) ~~The association shall pay and discharge~~
18 ~~covered claims for the amount by which each covered claim exceeds~~
19 ~~\$10.00.~~ The association may pay or discharge ~~the~~ **COVERED** claims
20 directly, through a servicing facility, or through a contract for
21 reinsurance or transfer of liabilities with a member insurer, in
22 accordance with the plan of operation.

23 (2) The association shall be a party in interest in all
24 proceedings involving a covered claim and shall have the same
25 rights as the insolvent insurer would have had if not in
26 receivership, including the right to appear, defend, and appeal a
27 claim in a court of competent jurisdiction; to receive notice of,

1 investigate, adjust, compromise, settle, and pay a covered claim;
2 and to investigate, handle, and deny a noncovered claim. The
3 association shall not have a cause of action against the insureds
4 of the insolvent insurer for any sums it has paid out, except those
5 causes of action ~~which~~ **THAT** the insolvent insurer would have had
6 if the sums had been paid by the insolvent insurer, or except as
7 otherwise provided by this chapter.

8 (3) If damages or benefits are recoverable by a claimant or
9 insured under an insurance policy other than a policy of the
10 insolvent insurer, or ~~from the motor vehicle accident claims fund,~~
11 ~~or a similar fund~~ **UNDER A WORKER'S COMPENSATION SELF-INSURED**
12 **PROGRAM OF A SELF-INSURED ENTITY**, the damages or benefits
13 recoverable shall be a credit against a covered claim payable under
14 this chapter. **THE CLAIMANT, INSURED, OR SELF-INSURED ENTITY SHALL**
15 **FIRST EXHAUST ALL COVERAGE PROVIDED BY ANY POLICY OR SELF-INSURED**
16 **PROGRAM.** If damages against an insured who is not a resident of
17 this state are recoverable by a claimant who is a resident of this
18 state, in whole or in part, from any ~~insolvency~~ **INSURANCE**
19 **GUARANTY ASSOCIATION OR** fund or its equivalent in the state where
20 the insured is a resident, the damages recoverable shall be a
21 credit against a covered claim payable under this chapter. **TO THE**
22 **EXTENT THAT THE ASSOCIATION'S OBLIGATION IS REDUCED BY THIS**
23 **SECTION, THE LIABILITY OF THE PERSON INSURED BY THE INSOLVENT**
24 **INSURER'S POLICY SHALL BE REDUCED IN THE SAME AMOUNT.** An insurer,
25 ~~or a fund may~~ **SELF-INSURED ENTITY, OR ANY OTHER PERSON SHALL** not
26 maintain an action against an insured of the insolvent insurer to
27 recover an amount ~~which~~ **THAT** constitutes a credit against a

1 covered claim under this section. An amount paid to a claimant in
2 excess of the amount authorized by this section may be recovered by
3 an action brought by the association.

4 (4) The association shall continue coverage for covered claims
5 under each insurance policy of the insolvent insurer that was in
6 force on the date the receiver was appointed until the insurance
7 policy has expired in accordance with its terms, has been replaced
8 by the insured, or has been canceled by the association as provided
9 in this chapter, but in no event for more than 30 days after the
10 date the receiver was appointed.

11 (5) The association may cancel insurance policies of the
12 insolvent insurer by mailing or delivering to the insured at the
13 last known address within this state a 10 days' written notice of
14 cancellation, notwithstanding a statute or policy provision to the
15 contrary.

16 Sec. 7941. (1) To the extent necessary to secure funds for the
17 association for payment of covered claims and for payment of
18 reasonable costs of administering the association, including the
19 cost of indemnifying members of the board of governors, other
20 member insurers, officers, employees, and other persons acting on
21 behalf of the association to the extent permitted by law and the
22 plan of ~~the~~ operation, the association shall levy assessments
23 upon all member insurers. The association shall allocate its claim
24 payments and costs to the following 5 categories:

25 (a) Worker's compensation insurance.

26 (b) Automobile insurance.

27 (c) Title insurance.

1 (d) Fire, allied lines, farm owner's multiple peril,
2 homeowner's multiple peril, inland marine, earthquake, and credit
3 insurance.

4 (e) All other kinds of insurance except life and disability
5 insurance.

6 (2) Separate assessments shall be made for each category
7 prescribed in subsection (1). The assessment for each category
8 shall be used to pay the claim payments and costs allocated to that
9 category. The assessment for each category shall be in proportion
10 to the net direct premiums written, after deducting dividends paid
11 or credited to policyholders, by each member insurer in this state
12 for kinds of insurance included within each category, as reported
13 in the most recent annual statement available at the time of
14 assessment. The rate of assessment shall be a uniform percentage of
15 the premiums for all member insurers. The assessments shall be
16 remitted to and administered by the association in accordance with
17 the plan of operation. Each member insurer assessed shall have not
18 less than 30 days' advance written notice of the date the
19 assessment is due and payable.

20 (3) A member insurer shall not be assessed during a calendar
21 year for more than 1% of its net direct premiums written in this
22 state during the previous calendar year. The commissioner may
23 exempt a member insurer from all or part of an assessment or may
24 defer, in whole or in part, the assessment of a member insurer, if
25 the assessment would cause the member insurer's financial statement
26 to reflect amounts of capital or surplus less than the minimum
27 amounts required for a certificate of authority by any jurisdiction

1 in which the member insurer is authorized to transact insurance.
2 However, during the period of exemption or deferment, dividends
3 shall not be declared or paid to shareholders or policyholders. If
4 a member insurer is exempted from all or part of an assessment, or
5 if an assessment against a member insurer is deferred in whole or
6 in part, the amount of the exemption or deferred assessment may be
7 assessed against the other member insurers in a manner consistent
8 with the basis for assessments prescribed in this section. The
9 commissioner may impose conditions on an exemption or deferral
10 which he or she considers reasonable and necessary. The state
11 accident fund ~~shall not be~~ **IS NOT** liable for any assessment based
12 on premiums written after ~~the effective date of this 1990~~
13 ~~amendatory act~~ **JUNE 29, 1990** including any assessment for an
14 insolvency occurring before the date of termination of its
15 membership in the association.

16 (4) The assessments shall be recognized in the rate-making
17 procedures for insurance rates in the same manner that expenses and
18 premium taxes are recognized. Unused assessments and reimbursements
19 from the receiver remaining in a category in excess of covered
20 claims and expenses allocated to that category shall be refunded by
21 the association to each member insurer who paid the assessments for
22 that category in proportion to its assessments paid. An insurer
23 ~~which~~ **THAT** ceases to be a member of the association shall not have
24 a right to a refund of an assessment previously remitted to the
25 association. The commissioner may revoke the certificate of
26 authority to transact business in this state of a member insurer
27 ~~which~~ **THAT** fails to pay an assessment when due as provided in this

1 act and after a demand has been made.

2 Sec. 7945. All proceedings in any court of law ~~of this state~~
3 **OR ADMINISTRATIVE TRIBUNAL, INCLUDING WORKER'S COMPENSATION**
4 **PROCEEDINGS**, to which the insolvent insurer is a party, or in which
5 the **INSOLVENT** insurer is obligated to defend or has assumed the
6 defense of a party, shall be stayed for 6 months after the date a
7 receiver is appointed, and for any additional time as determined by
8 the court ~~which~~ **OR ADMINISTRATIVE TRIBUNAL THAT** has jurisdiction
9 over those proceedings, to permit proper defense of all pending
10 causes of action.

11 Sec. 8111. (1) Except as provided in subsection (2), in all
12 proceedings and judicial review of these proceedings under sections
13 8109 and 8110, all records of the insurer, other documents,
14 ~~insurance bureau~~ **OFFICE OF FINANCIAL AND INSURANCE SERVICES** files,
15 and court records and papers, so far as they pertain to or are a
16 part of the record of the proceedings, are confidential and shall
17 be held by the clerk of the court in a confidential file except as
18 is necessary to obtain compliance therewith, unless the court,
19 after hearing arguments from the parties in chambers, orders
20 otherwise or the insurer requests that the matter be made public.

21 (2) Without compromising the confidentiality of the records of
22 the commissioner, ~~insurance bureau~~ **OFFICE OF FINANCIAL AND**
23 **INSURANCE SERVICES**, or supervisor, the commissioner or his or her
24 supervisor may advise third parties of the existence of a
25 supervision order and of the supervisor's authority if considered
26 by either of them necessary to further the insurer's compliance
27 with the supervision order. The commissioner may advise third

1 parties of the existence of a supervision order and of facts
2 pertaining to the supervision order if considered necessary by the
3 commissioner with regard to other regulatory matters affecting the
4 insurer or a person or entity related to the insurer. Third parties
5 advised under this subsection are required to keep the existence of
6 a supervision confidential. As used in this subsection, "third
7 parties" means the following persons:

8 (a) Debtors and creditors of the insurer and its affiliates.

9 (b) Persons who hold or control assets of the insurer and its
10 affiliates.

11 (c) Reinsurers of the insurer and its affiliates.

12 (d) Insurance regulatory officials.

13 (e) Law enforcement agencies.

14 **(F) REPRESENTATIVES OF A GUARANTY ASSOCIATION OR FOREIGN**
15 **GUARANTY ASSOCIATION THAT MAY BECOME OBLIGATED AS A RESULT OF THE**
16 **INSOLVENCY OF THE INSURER. CONFIDENTIALITY OBLIGATIONS OF A**
17 **GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION TO THE**
18 **RECEIVER END UPON THE ENTRY OF AN ORDER OF LIQUIDATION WITH A**
19 **FINDING OF INSOLVENCY AGAINST THE INSURER.**

20 Sec. 8124. (1) Upon issuance of an order appointing a
21 liquidator of a domestic insurer or of an alien insurer domiciled
22 in this state, an action at law or equity shall not be brought
23 against the insurer or liquidator, whether in this state or
24 elsewhere, and any such existing action shall not be maintained or
25 further presented after issuance of such order. The courts of this
26 state shall give full faith and credit to injunctions against the
27 liquidator or the company or the continuation of existing actions

1 against the liquidator or the company, if such injunctions are
2 included in an order to liquidate an insurer issued pursuant to
3 corresponding provisions in other states. If, in the liquidator's
4 judgment, protection of the estate of the insurer necessitates
5 intervention in an action against the insurer that is pending
6 outside this state, he or she may intervene in the action. The
7 liquidator may defend an action in which he or she intervenes under
8 this section at the expense of the estate of the insurer.

9 (2) The liquidator may, upon or after an order for
10 liquidation, within 2 years or such time in addition to 2 years as
11 applicable law may permit, institute an action or proceeding on
12 behalf of the estate of the insurer upon any cause of action
13 against which the period of limitation fixed by applicable law has
14 not expired at the time of the filing of the petition upon which
15 the order is entered. If, by agreement, a period of limitation is
16 fixed for instituting a suit or proceeding upon a claim, or for
17 filing a claim, proof of claim, proof of loss, demand, notice, or
18 the like, or if in a proceeding, judicial or otherwise, a period of
19 limitation is fixed, either in the proceeding or by applicable law,
20 for taking action, filing a claim or pleading, or doing any act,
21 and the period had not expired at the date of the filing of the
22 petition, the liquidator may, for the benefit of the estate, take
23 action or do an act required of or permitted to the insurer within
24 a period of 180 days subsequent to the entry of an order for
25 liquidation, or within such further period as is shown to the
26 satisfaction of the court not to be unfairly prejudicial to the
27 other party.

1 (3) A statute of limitation or defense of laches shall not run
2 with respect to an action against an insurer between the filing of
3 a petition for liquidation against an insurer and the denial of the
4 petition. An action against the insurer that might have been
5 commenced when the petition was filed may be commenced at least
6 within 60 days after the petition is denied.

7 ~~—— (4) A guaranty association or foreign guaranty association~~
8 ~~shall have standing to appear in a court proceeding concerning the~~
9 ~~liquidation of an insurer if the association is or may become~~
10 ~~liable to act as a result of the liquidation.~~

11 SEC. 8124A. ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY
12 ASSOCIATION HAS STANDING TO APPEAR AND MAY INTERVENE AS A PARTY AS
13 A MATTER OF RIGHT OR OTHERWISE APPEAR AND PARTICIPATE IN ANY COURT
14 PROCEEDING CONCERNING THE REHABILITATION OR LIQUIDATION OF AN
15 INSURER IF THE ASSOCIATION IS OR MAY BECOME LIABLE TO ACT AS A
16 RESULT OF THE LIQUIDATION. EXERCISE BY ANY GUARANTY ASSOCIATION OR
17 ITS DESIGNATED REPRESENTATIVE OF THE RIGHT TO INTERVENE CONFERRED
18 UNDER THIS SUBSECTION DOES NOT CONSTITUTE GROUNDS TO ESTABLISH
19 GENERAL PERSONAL JURISDICTION BY THE COURTS OF THIS STATE. THE
20 INTERVENING GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION IS
21 SUBJECT TO THE COURT'S JURISDICTION ONLY FOR THE LIMITED PURPOSE
22 FOR WHICH IT INTERVENES.

23 SEC. 8133A. (1) NOTWITHSTANDING ANY OTHER LAW OR CONTRACT TO
24 THE CONTRARY, ANY COLLATERAL HELD BY OR FOR THE BENEFIT OF OR
25 ASSIGNED TO THE INSURER OR SUBSEQUENTLY THE RECEIVER IN ORDER TO
26 SECURE THE OBLIGATIONS OF A POLICYHOLDER UNDER A DEDUCTIBLE
27 AGREEMENT SHALL NOT BE CONSIDERED AN ASSET OF THE ESTATE AND SHALL

1 BE MAINTAINED AND ADMINISTERED BY THE RECEIVER AS PROVIDED IN THIS
2 SECTION.

3 (2) IF COLLATERAL IS BEING HELD BY OR FOR THE BENEFIT OF OR
4 ASSIGNED TO THE INSURER OR SUBSEQUENTLY THE RECEIVER TO SECURE
5 OBLIGATIONS UNDER A DEDUCTIBLE AGREEMENT WITH A POLICYHOLDER, THE
6 COLLATERAL SHALL BE USED TO SECURE THE POLICYHOLDER'S OBLIGATION TO
7 FUND OR REIMBURSE CLAIMS PAYMENT WITHIN THE AGREED DEDUCTIBLE
8 AMOUNT AS PROVIDED IN THIS SECTION.

9 (3) IF A CLAIM THAT IS SUBJECT TO A DEDUCTIBLE AGREEMENT AND
10 SECURED BY COLLATERAL IS NOT COVERED BY ANY GUARANTY ASSOCIATION OR
11 FOREIGN GUARANTY ASSOCIATION AND THE POLICYHOLDER IS UNWILLING OR
12 UNABLE TO TAKE OVER THE HANDLING AND PAYMENT OF THE NONCOVERED
13 CLAIMS, THE RECEIVER SHALL ADJUST AND PAY THE NONCOVERED CLAIMS
14 USING THE COLLATERAL BUT ONLY TO THE EXTENT THE AVAILABLE
15 COLLATERAL AFTER ALLOCATION UNDER SUBSECTION (4) IS SUFFICIENT TO
16 PAY ALL OUTSTANDING AND ANTICIPATED CLAIMS. IF THE COLLATERAL IS
17 EXHAUSTED AND THE INSURED IS NOT ABLE TO PROVIDE FUNDS TO PAY THE
18 REMAINING CLAIMS WITHIN THE DEDUCTIBLE AFTER ALL REASONABLE MEANS
19 OF COLLECTION AGAINST THE INSURED HAVE BEEN EXHAUSTED, THE
20 RECEIVER'S OBLIGATION TO PAY THE CLAIMS FROM THE COLLATERAL
21 TERMINATES AND THE REMAINING CLAIMS SHALL BE CLAIMS AGAINST THE
22 INSURER'S ESTATE SUBJECT TO COMPLYING WITH OTHER PROVISIONS IN THIS
23 CHAPTER FOR THE FILING AND ALLOWANCE OF THOSE CLAIMS. IF THE
24 LIQUIDATOR DETERMINES THAT THE COLLATERAL IS INSUFFICIENT TO PAY
25 ALL ADDITIONAL AND ANTICIPATED CLAIMS, THE LIQUIDATOR MAY FILE A
26 PLAN, SUBJECT TO COURT APPROVAL, FOR EQUITABLY ALLOCATING THE
27 COLLATERAL AMONG CLAIMANTS.

1 (4) TO THE EXTENT THAT THE RECEIVER IS HOLDING COLLATERAL
2 PROVIDED BY A POLICYHOLDER THAT WAS OBTAINED TO SECURE A DEDUCTIBLE
3 AGREEMENT AND TO SECURE OTHER OBLIGATIONS OF THE POLICYHOLDER TO
4 PAY THE INSURER DIRECTLY OR INDIRECTLY AMOUNTS THAT BECOME ASSETS
5 OF THE ESTATE, SUCH AS REINSURANCE OBLIGATIONS UNDER A CAPTIVE
6 REINSURANCE PROGRAM OR ADJUSTABLE PREMIUM OBLIGATIONS UNDER A
7 RETROSPECTIVELY RATED INSURANCE POLICY WHERE THE PREMIUM DUE IS
8 SUBJECT TO ADJUSTMENT BASED UPON ACTUAL LOSS EXPERIENCE, THE
9 RECEIVER SHALL EQUITABLY ALLOCATE THE COLLATERAL AMONG THOSE
10 OBLIGATIONS AND ADMINISTER THE COLLATERAL ALLOCATED TO THE
11 DEDUCTIBLE AGREEMENT AS PROVIDED IN THIS SECTION. FOR COLLATERAL
12 ALLOCATED TO OBLIGATIONS UNDER THE DEDUCTIBLE AGREEMENT, IF THE
13 COLLATERAL SECURED REIMBURSEMENT OBLIGATION UNDER MORE THAN 1 LINE
14 OF INSURANCE, THEN THE COLLATERAL SHALL BE EQUITABLY ALLOCATED
15 AMONG THE VARIOUS LINES BASED UPON THE ESTIMATED ULTIMATE EXPOSURE
16 WITHIN THE DEDUCTIBLE AMOUNT FOR EACH LINE. THE RECEIVER SHALL
17 INFORM THE GUARANTY ASSOCIATIONS AND FOREIGN GUARANTY ASSOCIATIONS
18 OF THE METHOD AND DETAILS OF ALL THE FOREGOING ALLOCATIONS.

19 (5) REGARDLESS OF WHETHER THERE IS COLLATERAL, IF THE INSURER
20 HAS CONTRACTUALLY AGREED TO ALLOW THE POLICYHOLDER TO FUND ITS OWN
21 CLAIMS WITHIN THE DEDUCTIBLE AMOUNT PURSUANT TO A DEDUCTIBLE
22 AGREEMENT, EITHER THROUGH THE POLICYHOLDER'S OWN ADMINISTRATION OF
23 ITS CLAIMS OR THROUGH THE POLICYHOLDER PROVIDING FUNDS DIRECTLY TO
24 A THIRD PARTY ADMINISTRATOR WHO ADMINISTERS THE CLAIMS, THE
25 RECEIVER SHALL ALLOW THIS FUNDING ARRANGEMENT TO CONTINUE AND,
26 WHERE APPLICABLE, WILL ENFORCE THE ARRANGEMENT TO THE FULLEST
27 EXTENT POSSIBLE. THE FUNDING OF THESE CLAIMS BY THE POLICYHOLDER

1 WITHIN THE DEDUCTIBLE AMOUNT WILL ACT AS A BAR TO ANY CLAIM FOR
2 SUCH AMOUNT IN THE LIQUIDATION PROCEEDING, INCLUDING, BUT NOT
3 LIMITED TO, ANY CLAIM BY THE POLICYHOLDER OR THE THIRD PARTY
4 CLAIMANT. THIS FUNDING ARRANGEMENT EXTINGUISHES BOTH THE
5 OBLIGATION, IF ANY, OF ANY GUARANTY ASSOCIATION TO PAY THOSE CLAIMS
6 WITHIN THE DEDUCTIBLE AMOUNT, AS WELL AS THE OBLIGATIONS, IF ANY,
7 OF THE POLICYHOLDER OR THIRD PARTY ADMINISTRATOR TO REIMBURSE THE
8 GUARANTY ASSOCIATION. NO CHARGE OF ANY KIND SHALL BE MADE AGAINST
9 ANY GUARANTY ASSOCIATION ON THE BASIS OF THE POLICYHOLDER FUNDING
10 OF CLAIM PAYMENTS MADE PURSUANT TO AN ARRANGEMENT DESCRIBED IN THIS
11 SUBSECTION.

12 (6) IF THE INSURER HAS NOT CONTRACTUALLY AGREED TO ALLOW THE
13 POLICYHOLDER TO FUND ITS OWN CLAIMS WITHIN THE DEDUCTIBLE AMOUNT,
14 TO THE EXTENT A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
15 ASSOCIATION IS REQUIRED BY APPLICABLE STATE LAW TO PAY ANY CLAIMS
16 FOR WHICH THE INSURER WOULD HAVE BEEN ENTITLED TO REIMBURSEMENT
17 FROM THE POLICYHOLDER UNDER THE TERMS OF THE DEDUCTIBLE AGREEMENT
18 AND TO THE EXTENT THE CLAIMS HAVE NOT BEEN PAID BY A POLICYHOLDER
19 OR THIRD PARTY, THE RECEIVER SHALL PROMPTLY BILL THE POLICYHOLDER
20 FOR REIMBURSEMENT AND THE POLICYHOLDER IS OBLIGATED TO PAY THE
21 REIMBURSEMENT AMOUNT TO THE RECEIVER FOR THE BENEFIT OF THE
22 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATIONS WHO PAID THE
23 CLAIMS. NEITHER THE INSOLVENCY OF THE INSURER, NOR ITS INABILITY TO
24 PERFORM ANY OF ITS OBLIGATIONS UNDER THE DEDUCTIBLE AGREEMENT, IS A
25 DEFENSE TO THE POLICYHOLDER'S REIMBURSEMENT OBLIGATION UNDER THE
26 DEDUCTIBLE AGREEMENT. THE RECEIVER SHALL PROMPTLY REIMBURSE THE
27 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION FOR CLAIMS

1 PAID THAT WERE SUBJECT TO THE DEDUCTIBLE WHEN THE POLICYHOLDER
2 REIMBURSEMENTS ARE COLLECTED. IF THE POLICYHOLDER FAILS TO PAY THE
3 AMOUNTS DUE WITHIN 60 DAYS AFTER THE BILL FOR THE REIMBURSEMENT IS
4 DUE, THE RECEIVER SHALL USE THE COLLATERAL TO THE EXTENT NECESSARY
5 TO REIMBURSE THE GUARANTY ASSOCIATION OR FOREIGN GUARANTY
6 ASSOCIATIONS, AND, AT THE SAME TIME, MAY PURSUE OTHER COLLECTIONS
7 EFFORTS AGAINST THE POLICYHOLDER. IF MORE THAN 1 GUARANTY
8 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAS A CLAIM AGAINST THE
9 SAME COLLATERAL AND THE AVAILABLE COLLATERAL, AFTER ALLOCATION
10 UNDER SUBSECTION (4), ALONG WITH BILLING AND COLLECTION EFFORTS,
11 ARE TOGETHER INSUFFICIENT TO PAY EACH GUARANTY ASSOCIATION AND
12 FOREIGN GUARANTY ASSOCIATION IN FULL, THEN THE RECEIVER WILL
13 PRORATE PAYMENTS TO EACH GUARANTY ASSOCIATION AND FOREIGN GUARANTY
14 ASSOCIATION BASED UPON THE RELATIONSHIP THE AMOUNT OF CLAIMS EACH
15 GUARANTY ASSOCIATION AND FOREIGN GUARANTY ASSOCIATION HAS PAID
16 BEARS TO THE TOTAL OF ALL CLAIMS PAID BY THE GUARANTY ASSOCIATION
17 AND FOREIGN GUARANTY ASSOCIATIONS.

18 (7) THE RECEIVER IS ENTITLED TO DEDUCT FROM REIMBURSEMENTS
19 OWED TO A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION OR
20 COLLATERAL TO BE RETURNED TO A POLICYHOLDER REASONABLE ACTUAL
21 EXPENSES INCURRED IN FULFILLING THE RESPONSIBILITIES UNDER THIS
22 SECTION, NOT TO EXCEED 3% OF THE COLLATERAL OR THE TOTAL DEDUCTIBLE
23 REIMBURSEMENTS ACTUALLY COLLECTED BY THE RECEIVER. FOR CLAIM
24 PAYMENTS MADE BY A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
25 ASSOCIATION, THE RECEIVER SHALL PROMPTLY PROVIDE THE GUARANTY
26 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION WITH A COMPLETE
27 ACCOUNTING OF THE RECEIVER'S DEDUCTIBLE BILLING AND COLLECTION

1 ACTIVITIES, INCLUDING COPIES OF THE POLICYHOLDER BILLINGS WHEN
2 RENDERED, THE REIMBURSEMENTS COLLECTED, THE AVAILABLE AMOUNTS AND
3 USE OF COLLATERAL FOR EACH ACCOUNT, AND ANY PRORATION OF PAYMENTS
4 WHEN IT OCCURS. IF THE RECEIVER FAILS TO MAKE A GOOD FAITH EFFORT
5 WITHIN 120 DAYS OF RECEIPT OF CLAIMS PAYMENT REPORTS TO COLLECT
6 REIMBURSEMENTS DUE FROM A POLICYHOLDER UNDER A DEDUCTIBLE AGREEMENT
7 BASED ON CLAIM PAYMENTS MADE BY THE GUARANTY ASSOCIATION OR FOREIGN
8 GUARANTY ASSOCIATION, THE GUARANTY ASSOCIATION OR FOREIGN GUARANTY
9 ASSOCIATION MAY PURSUE COLLECTION FROM THE POLICYHOLDERS DIRECTLY
10 ON THE SAME BASIS AS THE RECEIVER, AND WITH THE SAME RIGHTS AND
11 REMEDIES, AND SHALL REPORT ANY AMOUNTS COLLECTED FROM EACH
12 POLICYHOLDER TO THE RECEIVER. TO THE EXTENT THAT A GUARANTY
13 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION PAYS CLAIMS WITHIN THE
14 DEDUCTIBLE AMOUNT, BUT IS NOT REIMBURSED BY EITHER THE RECEIVER
15 UNDER THIS SECTION OR BY POLICYHOLDER PAYMENTS FROM THE GUARANTY
16 ASSOCIATION'S OR FOREIGN GUARANTY ASSOCIATION'S OWN COLLECTION
17 EFFORTS, THE GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION
18 SHALL HAVE A CLAIM IN THE INSOLVENT INSURER'S ESTATE FOR
19 UNREIMBURSED CLAIMS PAYMENTS.

20 (8) THE RECEIVER SHALL ADJUST THE COLLATERAL BEING HELD AS THE
21 CLAIMS SUBJECT TO THE DEDUCTIBLE AGREEMENT ARE RUN OFF, SO LONG AS
22 ADEQUATE COLLATERAL IS MAINTAINED TO SECURE THE ENTIRE ESTIMATED
23 ULTIMATE OBLIGATION OF THE POLICYHOLDER PLUS A REASONABLE SAFETY
24 FACTOR. THE RECEIVER SHALL MAKE THESE ADJUSTMENTS PERIODICALLY, BUT
25 IS NOT REQUIRED TO ADJUST THE COLLATERAL MORE THAN ONCE A YEAR. THE
26 GUARANTY ASSOCIATION AND ANY FOREIGN GUARANTY ASSOCIATION SHALL BE
27 INFORMED OF ALL SUCH COLLATERAL REVIEWS, INCLUDING, BUT NOT LIMITED

1 TO, THE BASIS FOR THE ADJUSTMENT. ONCE ALL CLAIMS COVERED BY THE
2 COLLATERAL HAVE BEEN PAID AND THE RECEIVER IS SATISFIED THAT NO NEW
3 CLAIMS CAN BE PRESENTED, THE RECEIVER WILL RELEASE ANY REMAINING
4 COLLATERAL TO THE POLICYHOLDER.

5 (9) THE INGHAM COUNTY CIRCUIT COURT HAVING JURISDICTION OVER
6 THE LIQUIDATION PROCEEDINGS SHALL HAVE JURISDICTION TO RESOLVE
7 DISPUTES ARISING UNDER THIS SECTION.

8 (10) THIS SECTION DOES NOT LIMIT OR ADVERSELY AFFECT ANY RIGHT
9 A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION MAY HAVE
10 UNDER APPLICABLE STATE LAW TO OBTAIN REIMBURSEMENT FROM CERTAIN
11 CLASSES OF POLICYHOLDERS FOR CLAIMS PAYMENTS MADE BY THE GUARANTY
12 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION UNDER POLICIES OF THE
13 INSOLVENT INSURER OR FOR RELATED EXPENSES THE GUARANTY ASSOCIATION
14 OR FOREIGN GUARANTY ASSOCIATION INCURS.

15 (11) THIS SECTION APPLIES TO ALL DELINQUENCY PROCEEDINGS THAT
16 ARE OPEN AND PENDING ON THE EFFECTIVE DATE OF THIS SECTION.

17 (12) THIS SECTION DOES NOT APPLY TO FIRST PARTY CLAIMS OR TO
18 CLAIMS FUNDED BY A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
19 ASSOCIATION NET OF THE DEDUCTIBLE UNLESS SUBSECTION (5) APPLIES.

20 (13) AS USED IN THIS SECTION:

21 (A) "DEDUCTIBLE AGREEMENT" MEANS ANY COMBINATION OF 1 OR MORE
22 POLICIES, ENDORSEMENTS, CONTRACTS, OR SECURITY AGREEMENTS THAT
23 PROVIDE FOR THE POLICYHOLDER TO BEAR THE RISK OF LOSS WITHIN A
24 SPECIFIED AMOUNT PER CLAIM OR OCCURRENCE COVERED UNDER A POLICY OF
25 INSURANCE AND MAY BE SUBJECT TO AGGREGATE LIMIT OF POLICYHOLDER
26 REIMBURSEMENT OBLIGATIONS.

27 (B) "NONCOVERED CLAIM" MEANS A CLAIM THAT IS SUBJECT TO A

1 DEDUCTIBLE AGREEMENT, MAY BE SECURED BY COLLATERAL, AND IS NOT
2 COVERED BY A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION.

3 Sec. 8134. (1) Within 120 days of a final determination of
4 insolvency of an insurer by a court of competent jurisdiction of
5 this state, the liquidator shall make application to the court for
6 approval of a proposal ~~to disburse assets out of marshalled~~
7 ~~assets, from time to time as those assets become available, to a~~
8 ~~guaranty association or foreign guaranty association having~~
9 ~~obligations because of the insolvency. If the liquidator determines~~
10 ~~that there are insufficient assets to disburse, the application~~
11 ~~required by this section shall be considered satisfied by a filing~~
12 ~~by the liquidator stating the reasons for this determination. TO~~
13 MAKE EARLY ACCESS DISBURSEMENTS OUT OF MARSHALED ASSETS, TO ANY
14 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAVING
15 OBLIGATIONS BECAUSE OF THE INSOLVENCY. IF THE LIQUIDATOR DETERMINES
16 THAT THE ESTATE WILL NOT HAVE SUFFICIENT ASSETS TO MAKE ANY EARLY
17 ACCESS DISBURSEMENTS TO A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
18 ASSOCIATION UNDER THIS SECTION, THE LIQUIDATOR SHALL FILE A REPORT
19 WITH THE COURT SUPPORTING THIS DETERMINATION. NOTICE TO THE STATE
20 INSURANCE COMMISSIONERS, GUARANTY ASSOCIATIONS, AND FOREIGN
21 GUARANTY ASSOCIATIONS AND COURT REVIEW OF THE REPORT SHALL BE
22 PROVIDED UNDER SUBSECTION (5). THIS REPORT MAY BE GIVEN INSTEAD OF
23 AN APPLICATION FOR A PROPOSAL TO MAKE EARLY ACCESS DISBURSEMENTS.
24 HOWEVER, IF AT ANY TIME THE ESTATE OBTAINS SUFFICIENT ASSETS TO
25 SUPPORT AN EARLY ACCESS DISBURSEMENT UNDER THIS SECTION, THE
26 LIQUIDATOR SHALL FILE AN APPLICATION FOR A PROPOSAL TO MAKE EARLY
27 ACCESS DISBURSEMENTS WITHIN 60 DAYS OF THE ESTATE OBTAINING THOSE

1 ASSETS. IF, WITHIN 120 DAYS OF A FINAL DETERMINATION OF INSOLVENCY,
2 THE LIQUIDATOR FAILS TO FILE AN APPLICATION WITH THE COURT FOR
3 APPROVAL OF A PROPOSAL TO MAKE EARLY ACCESS DISBURSEMENTS OR,
4 ALTERNATIVELY, FAILS TO FILE A REPORT WITH THE COURT SUPPORTING THE
5 DETERMINATION THAT THE ESTATE WILL NOT HAVE SUFFICIENT ASSETS TO
6 MAKE EARLY ACCESS DISBURSEMENTS, ANY GUARANTY ASSOCIATION OR
7 FOREIGN GUARANTY ASSOCIATION THAT MAY BECOME OBLIGATED TO PAY
8 CLAIMS AS A RESULT OF THE INSOLVENCY MAY FILE THIS APPLICATION. AN
9 APPLICATION FILED BY AN ASSOCIATION SHALL BE REVIEWED BY THE COURT
10 AND, IF THE PROPOSAL SUBMITTED BY THE ASSOCIATION MEETS THE
11 REQUIREMENTS SET OUT IN THIS SECTION, THE APPLICATION SHALL BE
12 APPROVED BY THE COURT. UPON COURT APPROVAL OF THE GUARANTY
13 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION PROPOSAL, THE
14 LIQUIDATOR SHALL BEGIN MAKING EARLY ACCESS DISBURSEMENTS IN
15 ACCORDANCE WITH THE PROPOSAL.

16 (2) A proposal under subsection (1) shall at least include
17 provisions for all of the following:

18 (a) Reserving amounts for the payment of expenses of
19 administration and the payment of claims of secured creditors, to
20 the extent of the value of the security held, and claims falling
21 within the priorities established in section 8142(1)(a) and (b) and
22 (2). WHEN A RESERVE FOR UNCOVERED CLAIMS UNDER SECTION 8142(2) IS
23 APPROPRIATE, THE AMOUNT OF ESTATE ASSETS TO BE RESERVED FOR THOSE
24 CLAIMS SHALL BE A PERCENTAGE OF THE UNCOVERED CLAIMS UNDER SECTION
25 8142(2), EQUAL IN PROPORTION TO THE PERCENTAGE OF ASSETS
26 DISTRIBUTED, OR PROPOSED FOR DISTRIBUTION, TO THE GUARANTY
27 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION WITH RESPECT TO COVERED

1 OBLIGATIONS AT THE TIME THE RESERVE FOR UNCOVERED CLAIMS IS
2 CALCULATED. RESERVES SHALL BE ESTABLISHED BASED ON THE BEST
3 AVAILABLE INFORMATION AT THE TIME THE DISTRIBUTION IS CALCULATED
4 AND MODIFIED FROM TIME TO TIME AS MORE REFINED INFORMATION BECOMES
5 AVAILABLE.

6 (b) Disbursement of the assets ~~marshalled~~ **MARSHALED** to date
7 and subsequent disbursement of assets as they become available.

8 (c) Equitable allocation of disbursements to each of the
9 guaranty associations and foreign guaranty associations entitled to
10 disbursements.

11 (d) The securing by the liquidator from each of the
12 associations entitled to disbursements pursuant to this section of
13 an agreement to return to the liquidator such assets, together with
14 income earned on assets previously disbursed, as may be required to
15 pay claims of secured creditors and claims falling within the
16 priorities established in section 8142 in accordance with those
17 priorities. A bond shall not be required of any such association.

18 (e) A full report to be made by each association to the
19 liquidator accounting for assets disbursed to the association, all
20 disbursements made from the assets, interest earned by the
21 association on the assets, and any other matter as the court
22 directs.

23 (3) The liquidator's proposal shall provide for disbursements
24 to the associations in amounts estimated at least equal to the
25 claim payments made or to be made thereby for which the
26 associations could assert a claim against the liquidator, and shall
27 further provide that if the assets available for disbursement from

1 time to time do not equal or exceed the amount of claim payments
2 made or to be made by the association, then disbursements shall be
3 in the amount of available assets.

4 (4) The liquidator's proposal shall, with respect to an
5 insolvent insurer writing life or health insurance or annuities,
6 provide for disbursements of assets to any guaranty association or
7 any foreign guaranty association covering life or health insurance
8 or annuities or to any other entity or organization reinsuring,
9 assuming, or guaranteeing policies or contracts of insurance under
10 the acts creating the associations.

11 (5) Notice of application shall be given to the association in
12 each state and to the commissioners of insurance of each state.
13 Notice shall be considered to have been given when deposited in the
14 United States certified mails, first-class postage prepaid, at
15 least 30 days before submission of the application to the court.
16 Action on the application may be taken by the court if the notice
17 under this subsection has been given and if the liquidator's
18 proposal complies with subsection (2)(a) and (b).

19 **(6) THE LIQUIDATOR SHALL NOT OFFSET THE AMOUNT TO BE DISBURSED**
20 **TO ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION BY ANY**
21 **SPECIAL OR STATUTORY DEPOSIT OR ANY OTHER ASSET OF THE INSOLVENT**
22 **INSURER EXCEPT TO THE EXTENT THE DEPOSIT OR ASSET HAS BEEN PAID TO**
23 **THE ASSOCIATION FOR THE PURPOSE OF SATISFYING THE ASSOCIATION'S**
24 **CLAIMS. IF A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION**
25 **HAS RECEIVED AN EARLY ACCESS DISTRIBUTION AND THEREAFTER ALSO**
26 **RECEIVES A SPECIAL OR STATUTORY DEPOSIT OR ANY OTHER ASSET OF THE**
27 **INSOLVENT INSURER, THE LIQUIDATOR MAY REQUEST THE RETURN OF THE**

- 1 EARLY ACCESS FUNDS UP TO THE AMOUNT OF THE SPECIAL OR STATUTORY
- 2 DEPOSIT OR OTHER ASSET OF THE INSOLVENT INSURER.