

HOUSE BILL No. 6223

June 20, 2006, Introduced by Rep. Mortimer and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 8134 (MCL 500.8134), as amended by 1998 PA 279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8134. (1) Within 120 days of a final determination of
2 insolvency of an insurer by a court of competent jurisdiction of
3 this state, the liquidator shall make application to the court for
4 approval of a proposal ~~to disburse assets out of marshalled~~
5 ~~assets, from time to time as those assets become available, to a~~
6 ~~guaranty association or foreign guaranty association having~~
7 ~~obligations because of the insolvency. If the liquidator determines~~
8 ~~that there are insufficient assets to disburse, the application~~
9 ~~required by this section shall be considered satisfied by a filing~~

1 ~~by the liquidator stating the reasons for this determination.~~ TO
2 MAKE EARLY ACCESS DISBURSEMENTS OUT OF MARSHALED ASSETS, TO ANY
3 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAVING
4 OBLIGATIONS BECAUSE OF THE INSOLVENCY. IF THE LIQUIDATOR DETERMINES
5 THAT THE ESTATE WILL NOT HAVE SUFFICIENT ASSETS TO MAKE ANY EARLY
6 ACCESS DISBURSEMENTS TO A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
7 ASSOCIATION UNDER THIS SECTION, THE LIQUIDATOR SHALL FILE A REPORT
8 WITH THE COURT SUPPORTING THIS DETERMINATION. NOTICE TO THE STATE
9 INSURANCE COMMISSIONERS, GUARANTY ASSOCIATIONS, AND FOREIGN
10 GUARANTY ASSOCIATIONS AND COURT REVIEW OF THE REPORT SHALL BE
11 PROVIDED UNDER SUBSECTION (5). THIS REPORT MAY BE GIVEN INSTEAD OF
12 AN APPLICATION FOR A PROPOSAL TO MAKE EARLY ACCESS DISBURSEMENTS.
13 HOWEVER, IF AT ANY TIME THE ESTATE OBTAINS SUFFICIENT ASSETS TO
14 SUPPORT AN EARLY ACCESS DISBURSEMENT UNDER THIS SECTION, THE
15 LIQUIDATOR SHALL FILE AN APPLICATION FOR A PROPOSAL TO MAKE EARLY
16 ACCESS DISBURSEMENTS WITHIN 60 DAYS OF THE ESTATE OBTAINING THOSE
17 ASSETS. IF, WITHIN 120 DAYS OF A FINAL DETERMINATION OF INSOLVENCY,
18 THE LIQUIDATOR FAILS TO FILE AN APPLICATION WITH THE COURT FOR
19 APPROVAL OF A PROPOSAL TO MAKE EARLY ACCESS DISBURSEMENTS OR,
20 ALTERNATIVELY, FAILS TO FILE A REPORT WITH THE COURT SUPPORTING THE
21 DETERMINATION THAT THE ESTATE WILL NOT HAVE SUFFICIENT ASSETS TO
22 MAKE EARLY ACCESS DISBURSEMENTS, ANY GUARANTY ASSOCIATION OR
23 FOREIGN GUARANTY ASSOCIATION THAT MAY BECOME OBLIGATED TO PAY
24 CLAIMS AS A RESULT OF THE INSOLVENCY MAY FILE THIS APPLICATION. AN
25 APPLICATION FILED BY AN ASSOCIATION SHALL BE REVIEWED BY THE COURT
26 AND, IF THE PROPOSAL SUBMITTED BY THE ASSOCIATION MEETS THE
27 REQUIREMENTS SET OUT IN THIS SECTION, THE APPLICATION SHALL BE

1 APPROVED BY THE COURT. UPON COURT APPROVAL OF THE GUARANTY
2 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION PROPOSAL, THE
3 LIQUIDATOR SHALL BEGIN MAKING EARLY ACCESS DISBURSEMENTS IN
4 ACCORDANCE WITH THE PROPOSAL.

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

7 (a) Reserving amounts for the payment of expenses of
8 administration and the payment of claims of secured creditors, to
9 the extent of the value of the security held, and claims falling
10 within the priorities established in section 8142(1)(a) and (b) and
11 (2). **WHEN A RESERVE FOR UNCOVERED CLAIMS UNDER SECTION 8142(2) IS**
12 **APPROPRIATE, THE AMOUNT OF ESTATE ASSETS TO BE RESERVED FOR THOSE**
13 **CLAIMS SHALL BE A PERCENTAGE OF THE UNCOVERED CLAIMS UNDER SECTION**
14 **8142(2), EQUAL IN PROPORTION TO THE PERCENTAGE OF ASSETS**
15 **DISTRIBUTED, OR PROPOSED FOR DISTRIBUTION, TO THE GUARANTY**
16 **ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION WITH RESPECT TO COVERED**
17 **OBLIGATIONS AT THE TIME THE RESERVE FOR UNCOVERED CLAIMS IS**
18 **CALCULATED. RESERVES SHALL BE ESTABLISHED BASED ON THE BEST**
19 **AVAILABLE INFORMATION AT THE TIME THE DISTRIBUTION IS CALCULATED**
20 **AND MODIFIED FROM TIME TO TIME AS MORE REFINED INFORMATION BECOMES**
21 **AVAILABLE.**

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

24 (c) Equitable allocation of disbursements to each of the
25 guaranty associations and foreign guaranty associations entitled to
26 disbursements.

27 (d) The securing by the liquidator from each of the

1 associations entitled to disbursements pursuant to this section of
2 an agreement to return to the liquidator such assets, together with
3 income earned on assets previously disbursed, as may be required to
4 pay claims of secured creditors and claims falling within the
5 priorities established in section 8142 in accordance with those
6 priorities. A bond shall not be required of any such association.

7 (e) A full report to be made by each association to the
8 liquidator accounting for assets disbursed to the association, all
9 disbursements made from the assets, interest earned by the
10 association on the assets, and any other matter as the court
11 directs.

12 (3) The liquidator's proposal shall provide for disbursements
13 to the associations in amounts estimated at least equal to the
14 claim payments made or to be made thereby for which the
15 associations could assert a claim against the liquidator, and shall
16 further provide that if the assets available for disbursement from
17 time to time do not equal or exceed the amount of claim payments
18 made or to be made by the association, then disbursements shall be
19 in the amount of available assets.

20 (4) The liquidator's proposal shall, with respect to an
21 insolvent insurer writing life or health insurance or annuities,
22 provide for disbursements of assets to any guaranty association or
23 any foreign guaranty association covering life or health insurance
24 or annuities or to any other entity or organization reinsuring,
25 assuming, or guaranteeing policies or contracts of insurance under
26 the acts creating the associations.

27 (5) Notice of application shall be given to the association in

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

8 **(6) THE LIQUIDATOR SHALL NOT OFFSET THE AMOUNT TO BE DISBURSED**
9 **TO ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION BY ANY**
10 **SPECIAL OR STATUTORY DEPOSIT OR ANY OTHER ASSET OF THE INSOLVENT**
11 **INSURER EXCEPT TO THE EXTENT THE DEPOSIT OR ASSET HAS BEEN PAID TO**
12 **THE ASSOCIATION FOR THE PURPOSE OF SATISFYING THE ASSOCIATION'S**
13 **CLAIMS. IF A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION**
14 **HAS RECEIVED AN EARLY ACCESS DISTRIBUTION AND THEREAFTER ALSO**
15 **RECEIVES A SPECIAL OR STATUTORY DEPOSIT OR ANY OTHER ASSET OF THE**
16 **INSOLVENT INSURER, THE LIQUIDATOR MAY REQUEST THE RETURN OF THE**
17 **EARLY ACCESS FUNDS UP TO THE AMOUNT OF THE SPECIAL OR STATUTORY**
18 **DEPOSIT OR OTHER ASSET OF THE INSOLVENT INSURER.**

19 Enacting section 1. This amendatory act does not take effect
20 unless all of the following bills of the 93rd Legislature are
21 enacted into law:

22 (a) Senate Bill No.____ or House Bill No. 6235(request no.
23 07127'06).

24 (b) Senate Bill No.____ or House Bill No. 6234(request no.
25 07128'06).

26 (c) Senate Bill No.____ or House Bill No. 6233(request no.
27 07129'06).

1 (d) Senate Bill No.____ or House Bill No. 6232(request no.
2 07130'06).

3 (e) Senate Bill No.____ or House Bill No. 6231(request no.
4 07131'06).

5 (f) Senate Bill No.____ or House Bill No. 6230(request no.
6 07132'06).

7 (g) Senate Bill No.____ or House Bill No. 6229(request no.
8 07133'06).

9 (h) Senate Bill No.____ or House Bill No. 6228(request no.
10 07134'06).

11 (i) Senate Bill No.____ or House Bill No. 6227(request no.
12 07135'06).

13 (j) Senate Bill No.____ or House Bill No. 6226(request no.
14 07136'06).

15 (k) Senate Bill No.____ or House Bill No. 6225(request no.
16 07137'06).

17 (l) Senate Bill No.____ or House Bill No. 6224(request no.
18 07138'06).