

HOUSE BILL No. 6224

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,"
(MCL 500.100 to 500.8302) by adding section 8133a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 8133A. (1) NOTWITHSTANDING ANY OTHER LAW OR CONTRACT TO
2 THE CONTRARY, ANY COLLATERAL HELD BY OR FOR THE BENEFIT OF OR
3 ASSIGNED TO THE INSURER OR SUBSEQUENTLY THE RECEIVER IN ORDER TO
4 SECURE THE OBLIGATIONS OF A POLICYHOLDER UNDER A DEDUCTIBLE
5 AGREEMENT SHALL NOT BE CONSIDERED AN ASSET OF THE ESTATE AND SHALL
6 BE MAINTAINED AND ADMINISTERED BY THE RECEIVER AS PROVIDED IN THIS
7 SECTION.

8 (2) IF COLLATERAL IS BEING HELD BY OR FOR THE BENEFIT OF OR
9 ASSIGNED TO THE INSURER OR SUBSEQUENTLY THE RECEIVER TO SECURE

1 OBLIGATIONS UNDER A DEDUCTIBLE AGREEMENT WITH A POLICYHOLDER, THE
2 COLLATERAL SHALL BE USED TO SECURE THE POLICYHOLDER'S OBLIGATION TO
3 FUND OR REIMBURSE CLAIMS PAYMENT WITHIN THE AGREED DEDUCTIBLE
4 AMOUNT AS PROVIDED IN THIS SECTION.

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

24 (4) TO THE EXTENT THAT THE RECEIVER IS HOLDING COLLATERAL
25 PROVIDED BY A POLICYHOLDER THAT WAS OBTAINED TO SECURE A DEDUCTIBLE
26 AGREEMENT AND TO SECURE OTHER OBLIGATIONS OF THE POLICYHOLDER TO
27 PAY THE INSURER DIRECTLY OR INDIRECTLY AMOUNTS THAT BECOME ASSETS

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

15 (5) REGARDLESS OF WHETHER THERE IS COLLATERAL, IF THE INSURER
16 HAS CONTRACTUALLY AGREED TO ALLOW THE POLICYHOLDER TO FUND ITS OWN
17 CLAIMS WITHIN THE DEDUCTIBLE AMOUNT PURSUANT TO A DEDUCTIBLE
18 AGREEMENT, EITHER THROUGH THE POLICYHOLDER'S OWN ADMINISTRATION OF
19 ITS CLAIMS OR THROUGH THE POLICYHOLDER PROVIDING FUNDS DIRECTLY TO
20 A THIRD PARTY ADMINISTRATOR WHO ADMINISTERS THE CLAIMS, THE
21 RECEIVER SHALL ALLOW THIS FUNDING ARRANGEMENT TO CONTINUE AND,
22 WHERE APPLICABLE, WILL ENFORCE THE ARRANGEMENT TO THE FULLEST
23 EXTENT POSSIBLE. THE FUNDING OF THESE CLAIMS BY THE POLICYHOLDER
24 WITHIN THE DEDUCTIBLE AMOUNT WILL ACT AS A BAR TO ANY CLAIM FOR
25 SUCH AMOUNT IN THE LIQUIDATION PROCEEDING, INCLUDING, BUT NOT
26 LIMITED TO, ANY CLAIM BY THE POLICYHOLDER OR THE THIRD PARTY
27 CLAIMANT. THIS FUNDING ARRANGEMENT EXTINGUISHES BOTH THE

1 OBLIGATION, IF ANY, OF ANY GUARANTY ASSOCIATION TO PAY THOSE CLAIMS
2 WITHIN THE DEDUCTIBLE AMOUNT, AS WELL AS THE OBLIGATIONS, IF ANY,
3 OF THE POLICYHOLDER OR THIRD PARTY ADMINISTRATOR TO REIMBURSE THE
4 GUARANTY ASSOCIATION. IF A POLICYHOLDER HAS ENTERED INTO AN
5 AGREEMENT TO WHICH THIS SUBSECTION APPLIES AND IS PREVENTED FROM
6 FUNDING ITS OWN CLAIMS DUE TO ANY PROCEEDING UNDER 11 USC 101 TO
7 1330 AND 1501 TO 1532, THEN THE GUARANTY FUNDS THAT WOULD OTHERWISE
8 BE OBLIGATED TO PAY THE CLAIMS SHALL PAY THE CLAIMS TO THE EXTENT
9 REQUIRED BY APPLICABLE STATE LAW AND, IN ADDITION TO ANY OTHER
10 RIGHTS OF RECOVERY ARISING FROM PAYMENT OF THE CLAIMS, SHALL HAVE
11 THE FULL BENEFIT OF ALL COLLATERAL AND OTHER RIGHTS OF
12 REIMBURSEMENT AND RECOVERY UNDER THIS SECTION FROM THE BANKRUPTCY
13 COURT, LIQUIDATOR, OR RECEIVER. NO CHARGE OF ANY KIND SHALL BE MADE
14 AGAINST ANY GUARANTY ASSOCIATION ON THE BASIS OF THE POLICYHOLDER
15 FUNDING OF CLAIM PAYMENTS MADE PURSUANT TO AN ARRANGEMENT DESCRIBED
16 IN THIS SUBSECTION.

17 (6) IF THE INSURER HAS NOT CONTRACTUALLY AGREED TO ALLOW THE
18 POLICYHOLDER TO FUND ITS OWN CLAIMS WITHIN THE DEDUCTIBLE AMOUNT,
19 TO THE EXTENT A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
20 ASSOCIATION IS REQUIRED BY APPLICABLE STATE LAW TO PAY ANY CLAIMS
21 FOR WHICH THE INSURER WOULD HAVE BEEN ENTITLED TO REIMBURSEMENT
22 FROM THE POLICYHOLDER UNDER THE TERMS OF THE DEDUCTIBLE AGREEMENT
23 AND TO THE EXTENT THE CLAIMS HAVE NOT BEEN PAID BY A POLICYHOLDER
24 OR THIRD PARTY, THE RECEIVER SHALL PROMPTLY BILL THE POLICYHOLDER
25 FOR REIMBURSEMENT AND THE POLICYHOLDER IS OBLIGATED TO PAY THE
26 REIMBURSEMENT AMOUNT TO THE RECEIVER FOR THE BENEFIT OF THE
27 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATIONS WHO PAID THE

1 CLAIMS. NEITHER THE INSOLVENCY OF THE INSURER, NOR ITS INABILITY TO
2 PERFORM ANY OF ITS OBLIGATIONS UNDER THE DEDUCTIBLE AGREEMENT, IS A
3 DEFENSE TO THE POLICYHOLDER'S REIMBURSEMENT OBLIGATION UNDER THE
4 DEDUCTIBLE AGREEMENT. THE RECEIVER SHALL PROMPTLY REIMBURSE THE
5 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION FOR CLAIMS
6 PAID THAT WERE SUBJECT TO THE DEDUCTIBLE WHEN THE POLICYHOLDER
7 REIMBURSEMENTS ARE COLLECTED. IF THE POLICYHOLDER FAILS TO PAY THE
8 AMOUNTS DUE WITHIN 60 DAYS AFTER THE BILL FOR THE REIMBURSEMENT IS
9 DUE, THE RECEIVER SHALL USE THE COLLATERAL TO THE EXTENT NECESSARY
10 TO REIMBURSE THE GUARANTY ASSOCIATION OR FOREIGN GUARANTY
11 ASSOCIATIONS, AND, AT THE SAME TIME, MAY PURSUE OTHER COLLECTIONS
12 EFFORTS AGAINST THE POLICYHOLDER. IF MORE THAN 1 GUARANTY
13 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAS A CLAIM AGAINST THE
14 SAME COLLATERAL AND THE AVAILABLE COLLATERAL, AFTER ALLOCATION
15 UNDER SUBSECTION (4), ALONG WITH BILLING AND COLLECTION EFFORTS,
16 ARE TOGETHER INSUFFICIENT TO PAY EACH GUARANTY ASSOCIATION AND
17 FOREIGN GUARANTY ASSOCIATION IN FULL, THEN THE RECEIVER WILL
18 PRORATE PAYMENTS TO EACH GUARANTY ASSOCIATION AND FOREIGN GUARANTY
19 ASSOCIATION BASED UPON THE RELATIONSHIP THE AMOUNT OF CLAIMS EACH
20 GUARANTY ASSOCIATION AND FOREIGN GUARANTY ASSOCIATION HAS PAID
21 BEARS TO THE TOTAL OF ALL CLAIMS PAID BY THE GUARANTY ASSOCIATION
22 AND FOREIGN GUARANTY ASSOCIATIONS.

23 (7) THE RECEIVER IS ENTITLED TO DEDUCT FROM REIMBURSEMENTS
24 OWED TO A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION OR
25 COLLATERAL TO BE RETURNED TO A POLICYHOLDER REASONABLE ACTUAL
26 EXPENSES INCURRED IN FULFILLING THE RESPONSIBILITIES UNDER THIS
27 SECTION, NOT TO EXCEED 3% OF THE COLLATERAL OR THE TOTAL DEDUCTIBLE

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

25 (8) THE RECEIVER SHALL ADJUST THE COLLATERAL BEING HELD AS THE
26 CLAIMS SUBJECT TO THE DEDUCTIBLE AGREEMENT ARE RUN OFF, SO LONG AS
27 ADEQUATE COLLATERAL IS MAINTAINED TO SECURE THE ENTIRE ESTIMATED

1 ULTIMATE OBLIGATION OF THE POLICYHOLDER PLUS A REASONABLE SAFETY
2 FACTOR. THE RECEIVER SHALL MAKE THESE ADJUSTMENTS PERIODICALLY, BUT
3 IS NOT REQUIRED TO ADJUST THE COLLATERAL MORE THAN ONCE A YEAR. THE
4 GUARANTY ASSOCIATION AND ANY FOREIGN GUARANTY ASSOCIATION SHALL BE
5 INFORMED OF ALL SUCH COLLATERAL REVIEWS, INCLUDING, BUT NOT LIMITED
6 TO, THE BASIS FOR THE ADJUSTMENT. ONCE ALL CLAIMS COVERED BY THE
7 COLLATERAL HAVE BEEN PAID AND THE RECEIVER IS SATISFIED THAT NO NEW
8 CLAIMS CAN BE PRESENTED, THE RECEIVER WILL RELEASE ANY REMAINING
9 COLLATERAL TO THE POLICYHOLDER.

10 (9) THE INGHAM COUNTY CIRCUIT COURT HAVING JURISDICTION OVER
11 THE LIQUIDATION PROCEEDINGS SHALL HAVE JURISDICTION TO RESOLVE
12 DISPUTES ARISING UNDER THIS SECTION.

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

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

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

25 (13) AS USED IN THIS SECTION:

26 (A) "DEDUCTIBLE AGREEMENT" MEANS ANY COMBINATION OF 1 OR MORE
27 POLICIES, ENDORSEMENTS, CONTRACTS, OR SECURITY AGREEMENTS THAT

1 PROVIDE FOR THE POLICYHOLDER TO BEAR THE RISK OF LOSS WITHIN A
2 SPECIFIED AMOUNT PER CLAIM OR OCCURRENCE COVERED UNDER A POLICY OF
3 INSURANCE AND MAY BE SUBJECT TO AGGREGATE LIMIT OF POLICYHOLDER
4 REIMBURSEMENT OBLIGATIONS.

5 (B) "NONCOVERED CLAIM" MEANS A CLAIM THAT IS SUBJECT TO A
6 DEDUCTIBLE AGREEMENT, MAY BE SECURED BY COLLATERAL, AND IS NOT
7 COVERED BY A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION.

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

11 (a) Senate Bill No.____ or House Bill No. 6235(request no.
12 07127'06).

13 (b) Senate Bill No.____ or House Bill No. 6234(request no.
14 07128'06).

15 (c) Senate Bill No.____ or House Bill No. 6233(request no.
16 07129'06).

17 (d) Senate Bill No.____ or House Bill No. 6232(request no.
18 07130'06).

19 (e) Senate Bill No.____ or House Bill No. 6231(request no.
20 07131'06).

21 (f) Senate Bill No.____ or House Bill No. 6230(request no.
22 07132'06).

23 (g) Senate Bill No.____ or House Bill No. 6229(request no.
24 07133'06).

25 (h) Senate Bill No.____ or House Bill No. 6228(request no.
26 07134'06).

27 (i) Senate Bill No.____ or House Bill No. 6227(request no.

1 07135'06).

2 (j) Senate Bill No.____ or House Bill No. 6226(request no.
3 07136'06).

4 (k) Senate Bill No.____ or House Bill No. 6225(request no.
5 07137'06).

6 (l) Senate Bill No.____ or House Bill No. 6223(request no.
7 07139'06).