

# 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).