

HOUSE BILL No. 5292

October 12, 2005, Introduced by Reps. Mortimer, Gaffney and Hune and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 7911, 7918, 7921, 7925, 7931, 7941, 7945,
8111, 8124, and 8134 (MCL 500.7911, 500.7918, 500.7921, 500.7925,
500.7931, 500.7941, 500.7945, 500.8111, 500.8124, and 500.8134),
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, 8125a, and 8133a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7911. (1) To implement this chapter, there shall be

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1 maintained within this state, by all insurers authorized to
2 transact in this state insurance other than life or disability
3 insurance, except the Michigan basic property insurance association
4 created pursuant to section 2920, an association of those insurers
5 to be known as the property and casualty guaranty association,
6 hereafter referred to as the "association". Each insurer shall be a
7 member of the association as a condition of its authority to
8 continue to transact insurance in this state.

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

13 (3) The association ~~shall be~~ **IS** subject to the requirements
14 of this chapter ~~— AND chapter 81 —, and section 3172a,~~ but
15 ~~shall~~ **IS** not ~~be~~ subject to the other chapters of this act. The
16 association shall be subject to other laws of this state to the
17 extent that it would be subject to those laws if it were an insurer
18 organized and operating under chapter 50, to the extent that those
19 other laws are consistent with this chapter.

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

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

27 (3) The association may retain and employ legal counsel in its

1 discretion to represent the association in all respects.

2 (4) THE ASSOCIATION MAY BRING AN ACTION AGAINST ANY THIRD
3 PARTY ADMINISTRATOR, AGENT, ATTORNEY, OR OTHER REPRESENTATIVE OF
4 THE INSOLVENT INSURER TO OBTAIN CUSTODY AND CONTROL OF ALL CLAIMS
5 INFORMATION, INCLUDING ALL FILES, RECORDS, AND ELECTRONIC DATA
6 RELATED TO AN INSOLVENT COMPANY THAT ARE APPROPRIATE OR NECESSARY
7 FOR THE ASSOCIATION, OR A SIMILAR ASSOCIATION IN OTHER STATES, TO
8 CARRY OUT ITS DUTIES UNDER THIS ACT. THE ASSOCIATION SHALL HAVE THE
9 ABSOLUTE RIGHT THROUGH EMERGENCY EQUITABLE RELIEF TO OBTAIN CUSTODY
10 AND CONTROL OF ALL CLAIMS INFORMATION IN THE CUSTODY OR CONTROL OF
11 THE THIRD PARTY ADMINISTRATOR, AGENT, ATTORNEY, OR OTHER
12 REPRESENTATIVE OF THE INSOLVENT INSURER, REGARDLESS OF WHERE THE
13 INFORMATION MAY BE PHYSICALLY LOCATED. IN BRINGING THE ACTION, THE
14 ASSOCIATION IS NOT SUBJECT TO ANY DEFENSE, LIEN, POSSESSORY OR
15 OTHERWISE, OR OTHER LEGAL OR EQUITABLE GROUND FOR REFUSAL TO
16 SURRENDER CLAIMS INFORMATION THAT MIGHT BE ASSERTED AGAINST THE
17 LIQUIDATOR OF THE INSOLVENT INSURERS. IF LITIGATION IS NECESSARY
18 FOR THE ASSOCIATION TO OBTAIN CUSTODY OF THE CLAIMS INFORMATION
19 REQUESTED AND IT RESULTS IN THE RELINQUISHMENT OF CLAIMS
20 INFORMATION TO THE ASSOCIATION AFTER REFUSAL TO PROVIDE THE
21 INFORMATION IN RESPONSE TO A WRITTEN DEMAND, THE COURT SHALL AWARD
22 THE ASSOCIATION ITS COSTS, EXPENSES, AND REASONABLE ATTORNEY FEES
23 INCURRED IN BRINGING THE ACTION. THIS SECTION DOES NOT AFFECT THE
24 RIGHTS AND REMEDIES THAT THE CUSTODIAN OF THE CLAIMS INFORMATION
25 MAY HAVE AGAINST THE INSOLVENT INSURERS, SO LONG AS THOSE RIGHTS
26 AND REMEDIES DO NOT CONFLICT WITH THE RIGHTS OF THE ASSOCIATION TO
27 CUSTODY AND CONTROL OF THE CLAIMS INFORMATION UNDER THIS ACT.

1 (5) ~~-(4)-~~ Upon request of the commissioner, consent of the
2 association, and appointment by the court, the association may act
3 as deputy receiver in delinquency proceedings under chapter 81.

4 Sec. 7921. As used in this chapter:

5 (a) "Insolvent insurer" means an insurer ~~for which a~~
6 ~~domiciliary receiver has been appointed by a final order in this~~
7 ~~state or in a reciprocal state, as defined in section 8103 for the~~
8 ~~liquidation of the insurer and~~ which has been a member insurer **AND**
9 **AGAINST WHOM A FINAL ORDER OF LIQUIDATION HAS BEEN ENTERED WITH A**
10 **FINDING OF INSOLVENCY BY A COURT OF COMPETENT JURISDICTION IN THE**
11 **INSURER'S STATE OF DOMICILE.** The date on which the order becomes
12 final shall be the date on which ~~the receiver is appointed for~~
13 ~~purposes of this chapter~~ **ALL APPEALS OF THE FINDING OF INSOLVENCY**
14 **ARE EXHAUSTED. IF THE FINDING OF INSOLVENCY IN THE ORDER OF**
15 **LIQUIDATION IS NOT APPEALED, THE ORDER OF LIQUIDATION SHALL BE**
16 **CONSIDERED FINAL ON THE DATE THE ORDER WAS ISSUED.**

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

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

22 (a) Arise out of the insurance policy contracts of the
23 insolvent insurer issued to residents of this state or are payable
24 to residents of this state on behalf of insureds of the insolvent
25 insurer.

26 (b) Were unpaid by the insolvent insurer.

27 (c) Are presented as a claim to the receiver in this state or

1 the ~~association~~ **ASSOCIATION** on or before the last date fixed for
2 the filing of claims in the domiciliary delinquency proceedings.

3 (d) Were incurred or existed before, at the time of, or within
4 30 days after the date the receiver was appointed.

5 (e) Arise out of policy contracts of the insolvent insurer
6 issued for all kinds of insurance except life and disability
7 insurance.

8 (f) Arise out of insurance policy contracts issued on or
9 before the last date on which the insolvent insurer was a member
10 insurer.

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

12 (a) Obligations to refund unearned premiums above the first
13 \$500.00 of unearned premiums from each person from any 1 insolvent
14 insurer. The maximum amount of unearned premiums which shall
15 constitute a covered claim shall be adjusted annually to reflect
16 changes in the cost of living under rules prescribed by the
17 commissioner. **A REFUND IN AN AMOUNT LESS THAN \$50.00 SHALL NOT BE**
18 **MADE FOR UNEARNED PREMIUMS.**

19 (b) Obligations incurred after the expiration date of the
20 insurance policy, after the insurance policy has been replaced by
21 the insured, or after the insurance policy has been canceled by the
22 association as provided in this chapter.

23 (c) Obligations ~~which arise~~ **ARISING** out of sections 2001 to
24 2050, or similar provisions of law in another jurisdiction.

25 (3) Covered claims shall not include ~~obligations to an~~
26 ~~insurer, insurance pool, underwriting association, or to a person~~
27 ~~who has a net worth greater than 1/10 of 1% of the aggregate~~

1 ~~premiums written by member insurers in this state in the preceding~~
2 ~~calendar year.~~ ANY AMOUNT DUE ANY REINSURER, INSURER, INSURANCE
3 POOL, UNDERWRITING ASSOCIATION, HEALTH MAINTENANCE ORGANIZATION,
4 HEALTH CARE CORPORATION, OR SELF-INSURER AS SUBROGATION RECOVERIES,
5 CONTRIBUTION, INDEMNIFICATION, OR OTHER OBLIGATION. A CLAIM FOR ANY
6 AMOUNT DUE ANY REINSURER, INSURER, INSURANCE POOL, UNDERWRITING
7 ASSOCIATION, HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE
8 CORPORATION, OR SELF-INSURER SHALL NOT BE BROUGHT AGAINST A PERSON
9 INSURED UNDER A POLICY ISSUED BY THE INSOLVENT INSURER UNLESS THE
10 CLAIM EXCEEDS THE ASSOCIATION'S OBLIGATION LIMITATIONS UNDER
11 SUBSECTION (6).

12 (4) COVERED CLAIMS SHALL NOT INCLUDE OBLIGATIONS FOR ANY FIRST
13 PARTY OR THIRD PARTY CLAIM BY OR AGAINST AN INSURED WHOSE NET WORTH
14 EXCEEDS \$25,000,000.00 ON DECEMBER 31, OR ON THE LAST DATE OF THE
15 INSURED'S FISCAL PERIOD IF THAT IS OTHER THAN DECEMBER 31, OF THE
16 YEAR IMMEDIATELY PRECEDING THE DATE THE INSURER BECOMES AN
17 INSOLVENT INSURER. IN DETERMINING NET WORTH ON THIS DATE, AN
18 INSURED'S NET WORTH SHALL INCLUDE THE AGGREGATE NET WORTH OF THE
19 INSURED AND ALL OF ITS SUBSIDIARIES AND AFFILIATES AS CALCULATED ON
20 A CONSOLIDATED BASIS. THE \$25,000,000.00 NET WORTH LIMIT SHALL BE
21 ADJUSTED ANNUALLY TO REFLECT THE AGGREGATE ANNUAL PERCENTAGE CHANGE
22 IN THE CONSUMER PRICE INDEX SINCE THE PREVIOUS ADJUSTMENT, ROUNDED
23 TO THE NEAREST \$10,000.00. THE EFFECTIVE DATE OF THE ADJUSTMENT
24 SHALL BE JANUARY 1 OF EACH YEAR.

25 (5) ~~-(4)-~~ Covered claims shall not include any portion of a
26 claim ~~which~~ THAT is in excess of an applicable limit provided in
27 the insurance policy.

1 (6) ~~-(5)-~~ Covered claims shall not include that portion of a
2 claim, other than a worker's compensation claim ~~—, which is in~~
3 ~~excess of 1/20 of 1% of the aggregate premiums written by member~~
4 ~~insurers in this state in the preceding calendar year.~~ OR A CLAIM
5 FOR PERSONAL PROTECTION INSURANCE BENEFITS UNDER SECTION 3107 THAT
6 IS IN EXCESS OF \$5,000,000.00. THE \$5,000,000.00 CLAIM CAP 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 AND SHALL APPLY TO CLAIMS MADE ON
11 OR AFTER THAT DATE.

12 (7) ~~-(6)-~~ Covered claims shall not include adjustment fees and
13 expenses, attorneys' fees and expenses, court costs, interest, or
14 bond premiums if the fees, expenses, costs, interest, or premiums
15 were incurred by the insolvent insurer before the receiver was
16 appointed.

17 (8) AS USED IN THIS SECTION:

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

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

23 (C) "HEALTH CARE CORPORATION" MEANS THAT TERM AS DEFINED IN
24 SECTION 105 OF THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT,
25 1980 PA 350, MCL 550.1105.

26 (D) "SELF-INSURER" MEANS A PERSON THAT COVERS ITS LIABILITY
27 THROUGH A QUALIFIED INDIVIDUAL OR GROUP SELF-INSURANCE PROGRAM OR

1 ANY OTHER FORMAL PROGRAM CREATED FOR THE SPECIFIC PURPOSE OF
2 COVERING LIABILITIES TYPICALLY COVERED BY INSURANCE.

3 Sec. 7931. (1) ~~The association shall pay and discharge~~
4 ~~covered claims for the amount by which each covered claim exceeds~~
5 ~~\$10.00.~~ The association may pay or discharge ~~the~~ **COVERED** claims
6 directly, through a servicing facility, or through a contract for
7 reinsurance or transfer of liabilities with a member insurer, in
8 accordance with the plan of operation.

9 (2) The association shall be a party in interest in all
10 proceedings involving a covered claim and shall have the same
11 rights as the insolvent insurer would have had if not in
12 receivership, including the right to appear, defend, and appeal a
13 claim in a court of competent jurisdiction; to receive notice of,
14 investigate, adjust, compromise, settle, and pay a covered claim;
15 and to investigate, handle, and deny a noncovered claim. The
16 association shall not have a cause of action against the insureds
17 of the insolvent insurer for any sums it has paid out, except those
18 causes of action ~~which~~ **THAT** the insolvent insurer would have had
19 if the sums had been paid by the insolvent insurer, or except as
20 otherwise provided by this chapter.

21 (3) If damages or benefits are recoverable by a claimant or
22 insured under an insurance policy other than a policy of the
23 insolvent insurer, or ~~from the motor vehicle accident claims fund,~~
24 ~~or a similar fund~~ **UNDER A WORKER'S COMPENSATION SELF-INSURED**
25 **PROGRAM OF A SELF-INSURED ENTITY**, the damages or benefits
26 recoverable shall be a credit against a covered claim payable under
27 this chapter. **THE CLAIMANT, INSURED, OR SELF-INSURED ENTITY SHALL**

1 **FIRST EXHAUST ALL COVERAGE PROVIDED BY ANY POLICY OR SELF-INSURED**
 2 **PROGRAM.** If damages against an insured who is not a resident of
 3 this state are recoverable by a claimant who is a resident of this
 4 state, in whole or in part, from any ~~insolvency~~ **INSURANCE**
 5 **GUARANTY ASSOCIATION OR** fund or its equivalent in the state where
 6 the insured is a resident, the damages recoverable shall be a
 7 credit against a covered claim payable under this chapter. **TO THE**
 8 **EXTENT THAT THE ASSOCIATION'S OBLIGATION IS REDUCED BY THIS**
 9 **SECTION, THE LIABILITY OF THE PERSON INSURED BY THE INSOLVENT**
 10 **INSURER'S POLICY SHALL BE REDUCED IN THE SAME AMOUNT.** An insurer,
 11 ~~or a fund may~~ **SELF-INSURED ENTITY, OR ANY OTHER PERSON SHALL** not
 12 maintain an action against an insured of the insolvent insurer to
 13 recover an amount ~~which~~ **THAT** constitutes a credit against a
 14 covered claim under this section. An amount paid to a claimant in
 15 excess of the amount authorized by this section may be recovered by
 16 an action brought by the association.

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

24 (5) The association may cancel insurance policies of the
 25 insolvent insurer by mailing or delivering to the insured at the
 26 last known address within this state a 10 days' written notice of
 27 cancellation, notwithstanding a statute or policy provision to the

1 contrary.

2 Sec. 7941. (1) To the extent necessary to secure funds for the
3 association for payment of covered claims and for payment of
4 reasonable costs of administering the association, including the
5 cost of indemnifying members of the board of governors, other
6 member insurers, officers, employees, and other persons acting on
7 behalf of the association to the extent permitted by law and the
8 plan of ~~the~~ operation, the association shall levy assessments
9 upon all member insurers. The association shall allocate its claim
10 payments and costs to the following 5 categories:

11 (a) Worker's compensation insurance.

12 (b) Automobile insurance.

13 (c) Title insurance.

14 (d) Fire, allied lines, farm owner's multiple peril,
15 homeowner's multiple peril, inland marine, earthquake, and credit
16 insurance.

17 (e) All other kinds of insurance except life and disability
18 insurance.

19 (2) Separate assessments shall be made for each category
20 prescribed in subsection (1). The assessment for each category
21 shall be used to pay the claim payments and costs allocated to that
22 category. The assessment for each category shall be in proportion
23 to the net direct premiums written, after deducting dividends paid
24 or credited to policyholders, by each member insurer in this state
25 for kinds of insurance included within each category, as reported
26 in the most recent annual statement available at the time of
27 assessment. The rate of assessment shall be a uniform percentage of

1 the premiums for all member insurers. The assessments shall be
2 remitted to and administered by the association in accordance with
3 the plan of operation. Each member insurer assessed shall have not
4 less than 30 days' advance written notice of the date the
5 assessment is due and payable.

6 (3) A member insurer shall not be assessed during a calendar
7 year for more than 1% of its net direct premiums written in this
8 state during the previous calendar year. The commissioner may
9 exempt a member insurer from all or part of an assessment or may
10 defer, in whole or in part, the assessment of a member insurer, if
11 the assessment would cause the member insurer's financial statement
12 to reflect amounts of capital or surplus less than the minimum
13 amounts required for a certificate of authority by any jurisdiction
14 in which the member insurer is authorized to transact insurance.
15 However, during the period of exemption or deferment, dividends
16 shall not be declared or paid to shareholders or policyholders. If
17 a member insurer is exempted from all or part of an assessment, or
18 if an assessment against a member insurer is deferred in whole or
19 in part, the amount of the exemption or deferred assessment may be
20 assessed against the other member insurers in a manner consistent
21 with the basis for assessments prescribed in this section. The
22 commissioner may impose conditions on an exemption or deferral
23 which he or she considers reasonable and necessary. The state
24 accident fund ~~shall not be~~ **IS NOT** liable for any assessment based
25 on premiums written after ~~the effective date of this 1990~~
26 ~~amendatory act~~ **JUNE 29, 1990** including any assessment for an
27 insolvency occurring before the date of termination of its

1 membership in the association.

2 (4) The assessments shall be recognized in the rate-making
3 procedures for insurance rates in the same manner that expenses and
4 premium taxes are recognized. Unused assessments and reimbursements
5 from the receiver remaining in a category in excess of covered
6 claims and expenses allocated to that category shall be refunded by
7 the association to each member insurer who paid the assessments for
8 that category in proportion to its assessments paid. An insurer
9 ~~which~~ **THAT** ceases to be a member of the association shall not have
10 a right to a refund of an assessment previously remitted to the
11 association. The commissioner may revoke the certificate of
12 authority to transact business in this state of a member insurer
13 ~~which~~ **THAT** fails to pay an assessment when due as provided in this
14 act and after a demand has been made.

15 Sec. 7945. All proceedings in any court of law ~~of this state~~
16 **OR ADMINISTRATIVE TRIBUNAL, INCLUDING WORKER'S COMPENSATION**
17 **PROCEEDINGS**, to which the insolvent insurer is a party, or in which
18 the **INSOLVENT** insurer is obligated to defend or has assumed the
19 defense of a party, shall be stayed for 6 months after the date a
20 receiver is appointed, and for any additional time as determined by
21 the court ~~which~~ **OR ADMINISTRATIVE TRIBUNAL THAT** has jurisdiction
22 over those proceedings, to permit proper defense of all pending
23 causes of action.

24 Sec. 8111. (1) Except as provided in subsection (2), in all
25 proceedings and judicial review of these proceedings under sections
26 8109 and 8110, all records of the insurer, other documents,
27 ~~insurance bureau~~ **OFFICE OF FINANCIAL AND INSURANCE SERVICES** files,

1 and court records and papers, so far as they pertain to or are a
2 part of the record of the proceedings, are confidential and shall
3 be held by the clerk of the court in a confidential file except as
4 is necessary to obtain compliance therewith, unless the court,
5 after hearing arguments from the parties in chambers, orders
6 otherwise or the insurer requests that the matter be made public.

7 (2) Without compromising the confidentiality of the records of
8 the commissioner, ~~insurance bureau~~ **OFFICE OF FINANCIAL AND**
9 **INSURANCE SERVICES**, or supervisor, the commissioner or his or her
10 supervisor may advise third parties of the existence of a
11 supervision order and of the supervisor's authority if considered
12 by either of them necessary to further the insurer's compliance
13 with the supervision order. The commissioner may advise third
14 parties of the existence of a supervision order and of facts
15 pertaining to the supervision order if considered necessary by the
16 commissioner with regard to other regulatory matters affecting the
17 insurer or a person or entity related to the insurer. Third parties
18 advised under this subsection are required to keep the existence of
19 a supervision confidential. As used in this subsection, "third
20 parties" means the following persons:

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

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

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

25 (d) Insurance regulatory officials.

26 (e) Law enforcement agencies.

27 **(F) REPRESENTATIVES OF A GUARANTY ASSOCIATION OR FOREIGN**

1 GUARANTY ASSOCIATION THAT MAY BECOME OBLIGATED AS A RESULT OF THE
2 INSOLVENCY OF THE INSURER. CONFIDENTIALITY OBLIGATIONS OF A
3 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION TO THE
4 RECEIVER END UPON THE ENTRY OF AN ORDER OF LIQUIDATION WITH A
5 FINDING OF INSOLVENCY AGAINST THE INSURER.

6 Sec. 8124. (1) Upon issuance of an order appointing a
7 liquidator of a domestic insurer or of an alien insurer domiciled
8 in this state, an action at law or equity shall not be brought
9 against the insurer or liquidator, whether in this state or
10 elsewhere, and any such existing action shall not be maintained or
11 further presented after issuance of such order. The courts of this
12 state shall give full faith and credit to injunctions against the
13 liquidator or the company or the continuation of existing actions
14 against the liquidator or the company, if such injunctions are
15 included in an order to liquidate an insurer issued pursuant to
16 corresponding provisions in other states. If, in the liquidator's
17 judgment, protection of the estate of the insurer necessitates
18 intervention in an action against the insurer that is pending
19 outside this state, he or she may intervene in the action. The
20 liquidator may defend an action in which he or she intervenes under
21 this section at the expense of the estate of the insurer.

22 (2) The liquidator may, upon or after an order for
23 liquidation, within 2 years or such time in addition to 2 years as
24 applicable law may permit, institute an action or proceeding on
25 behalf of the estate of the insurer upon any cause of action
26 against which the period of limitation fixed by applicable law has
27 not expired at the time of the filing of the petition upon which

1 the order is entered. If, by agreement, a period of limitation is
2 fixed for instituting a suit or proceeding upon a claim, or for
3 filing a claim, proof of claim, proof of loss, demand, notice, or
4 the like, or if in a proceeding, judicial or otherwise, a period of
5 limitation is fixed, either in the proceeding or by applicable law,
6 for taking action, filing a claim or pleading, or doing any act,
7 and the period had not expired at the date of the filing of the
8 petition, the liquidator may, for the benefit of the estate, take
9 action or do an act required of or permitted to the insurer within
10 a period of 180 days subsequent to the entry of an order for
11 liquidation, or within such further period as is shown to the
12 satisfaction of the court not to be unfairly prejudicial to the
13 other party.

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

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

24 **SEC. 8124A. (1) ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY**
25 **ASSOCIATION OR ITS DESIGNATED REPRESENTATIVE HAS STANDING TO APPEAR**
26 **AND MAY INTERVENE AS A PARTY AS A MATTER OF RIGHT OR OTHERWISE**
27 **APPEAR AND PARTICIPATE IN ANY COURT PROCEEDING CONCERNING THE**

1 REHABILITATION OR LIQUIDATION OF AN INSURER IF THE ASSOCIATION IS
2 OR MAY BECOME LIABLE TO ACT AS A RESULT OF THE LIQUIDATION. ANY
3 NATIONAL ASSOCIATION OF GUARANTY ASSOCIATIONS MAY ALSO INTERVENE AS
4 A PARTY AS A MATTER OF RIGHT OR OTHERWISE APPEAR AND PARTICIPATE IN
5 ANY COURT PROCEEDING CONCERNING THE LIQUIDATION OF AN INSURER IF 1
6 OR MORE OF ITS MEMBER GUARANTY ASSOCIATIONS IS OR MAY BECOME LIABLE
7 TO ACT AS A RESULT OF THE LIQUIDATION. EXERCISE BY ANY GUARANTY
8 ASSOCIATION, OR ITS DESIGNATED REPRESENTATIVE OR NATIONAL
9 ASSOCIATION OF GUARANTY ASSOCIATIONS, OF THE RIGHT TO INTERVENE
10 CONFERRED UNDER THIS SUBSECTION DOES NOT CONSTITUTE GROUNDS TO
11 ESTABLISH GENERAL PERSONAL JURISDICTION BY THE COURTS OF THIS
12 STATE. THE INTERVENING GUARANTY ASSOCIATION, OR ITS DESIGNATED
13 REPRESENTATIVE OR NATIONAL ASSOCIATION OF GUARANTY ASSOCIATIONS, IS
14 SUBJECT TO THE COURT'S JURISDICTION ONLY FOR THE LIMITED PURPOSE
15 FOR WHICH IT INTERVENES.

16 (2) ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION
17 OR ITS DESIGNATED REPRESENTATIVE, OTHERWISE QUALIFIED TO INTERVENE
18 OR PARTICIPATE UNDER SUBSECTION (1), MAY ALSO, WITH OR WITHOUT
19 INTERVENTION, REQUEST IN WRITING THAT THE COURT CONVENE A CASE
20 MANAGEMENT CONFERENCE WITH THE LIQUIDATOR AND ALL INTERESTED
21 GUARANTY ASSOCIATIONS AND FOREIGN GUARANTY ASSOCIATIONS OR THEIR
22 DESIGNATED REPRESENTATIVES. THE REQUEST SHALL SPECIFY THE TOPICS
23 THAT THE REQUESTING ASSOCIATION SEEKS TO HAVE ADDRESSED DURING THE
24 CONFERENCE, AND THOSE THE COURT WILL ADDRESS SHALL BE IDENTIFIED IN
25 A WRITTEN NOTICE SCHEDULING THE CONFERENCE. APPROPRIATE TOPICS FOR
26 A CONFERENCE UNDER THIS SUBSECTION INCLUDE, BUT ARE NOT LIMITED TO,
27 THE FOLLOWING:

1 (A) TRANSFER AND ADMINISTRATION OF CLAIMS PAYMENT
2 RESPONSIBILITIES.

3 (B) REIMBURSEMENT OF GUARANTY ASSOCIATION ADMINISTRATIVE
4 EXPENSES, PURSUANT TO SECTION 8142.

5 (C) THE FILING AND ADMINISTRATION OF A PLAN FOR EARLY ACCESS
6 DISTRIBUTIONS OF ASSETS PURSUANT TO SECTION 8134.

7 (D) THE COLLECTION AND DISTRIBUTION OF LARGE DEDUCTIBLE
8 REIMBURSEMENTS AND ADMINISTRATION OF COLLATERAL AND RELATED MATTERS
9 UNDER SECTION 8133A.

10 (E) THE REPORTING OF DATA TO THE LIQUIDATOR BY GUARANTY
11 ASSOCIATIONS.

12 (F) THE TIMING AND AMOUNT OF ANY INTERIM DISTRIBUTIONS.

13 (G) REINSURANCE COLLECTIONS ON CLAIMS PAID BY GUARANTY
14 ASSOCIATIONS.

15 (H) CAUSES OF ACTION AGAINST PERSONS RESPONSIBLE FOR THE
16 INSOLVENCY OF THE INSURER.

17 (3) FOLLOWING A CASE MANAGEMENT CONFERENCE UNDER SUBSECTION
18 (2), THE COURT MAY ISSUE ORDERS ON THE SUBJECT MATTER OF THE
19 CONFERENCE AS IT SEES FIT. THE REQUEST FOR AND PARTICIPATION IN ANY
20 CASE MANAGEMENT CONFERENCE UNDER THIS SECTION DOES NOT CONSTITUTE
21 GROUNDS TO ESTABLISH GENERAL PERSONAL JURISDICTION OVER THE
22 PARTICIPATING GUARANTY ASSOCIATIONS OR THEIR DESIGNATED
23 REPRESENTATIVES IN THE LIQUIDATION PROCEEDINGS OR IN THE COURTS OF
24 THIS STATE.

25 SEC. 8125A. IF AN INSURER, PRIOR TO THE INITIATION OF
26 PROCEEDINGS UNDER THIS CHAPTER, WAS REQUIRED TO REPORT UNIT
27 STATISTICAL CARD OR EQUIVALENT CLAIM-BASED LOSS AND RELATED

1 WORKER'S COMPENSATION DATA TO ANY LICENSED STATISTICAL, RATING, OR
2 ADVISORY ORGANIZATION, THE RECEIVER SHALL CONTINUE OR RESUME AS
3 SOON AS POSSIBLE THIS REPORTING AND CONTINUE TO COMPLY WITH THE
4 INSURER'S DATA REPORTING REQUIREMENTS DURING THE PENDENCY OF
5 PROCEEDINGS UNDER THIS CHAPTER.

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

13 (2) IF COLLATERAL IS BEING HELD BY OR FOR THE BENEFIT OF OR
14 ASSIGNED TO THE INSURER OR SUBSEQUENTLY THE RECEIVER TO SECURE
15 OBLIGATIONS UNDER A DEDUCTIBLE AGREEMENT WITH A POLICYHOLDER, THE
16 COLLATERAL SHALL BE USED TO SECURE THE POLICYHOLDER'S OBLIGATION TO
17 FUND OR REIMBURSE CLAIMS PAYMENT WITHIN THE AGREED DEDUCTIBLE
18 AMOUNT AS PROVIDED IN THIS SECTION.

19 (3) IF A CLAIM THAT IS SUBJECT TO A DEDUCTIBLE AGREEMENT AND
20 SECURED BY COLLATERAL IS NOT COVERED BY ANY GUARANTY ASSOCIATION OR
21 FOREIGN GUARANTY ASSOCIATION AND THE POLICYHOLDER IS UNWILLING OR
22 UNABLE TO TAKE OVER THE HANDLING AND PAYMENT OF THE NONCOVERED
23 CLAIMS, THE RECEIVER SHALL ADJUST AND PAY THE NONCOVERED CLAIMS
24 USING THE COLLATERAL BUT ONLY TO THE EXTENT THE AVAILABLE
25 COLLATERAL AFTER ALLOCATION UNDER SUBSECTION (4) IS SUFFICIENT TO
26 PAY ALL OUTSTANDING AND ANTICIPATED CLAIMS. IF THE COLLATERAL IS
27 EXHAUSTED AND THE INSURED IS NOT ABLE TO PROVIDE FUNDS TO PAY THE

1 REMAINING CLAIMS WITHIN THE DEDUCTIBLE AFTER ALL REASONABLE MEANS
2 OF COLLECTION AGAINST THE INSURED HAVE BEEN EXHAUSTED, THE
3 RECEIVER'S OBLIGATION TO PAY THE CLAIMS FROM THE COLLATERAL
4 TERMINATES AND THE REMAINING CLAIMS SHALL BE CLAIMS AGAINST THE
5 INSURER'S ESTATE SUBJECT TO COMPLYING WITH OTHER PROVISIONS IN THIS
6 CHAPTER FOR THE FILING AND ALLOWANCE OF THOSE CLAIMS. IF THE
7 LIQUIDATOR DETERMINES THAT THE COLLATERAL IS INSUFFICIENT TO PAY
8 ALL ADDITIONAL AND ANTICIPATED CLAIMS, THE LIQUIDATOR MAY FILE A
9 PLAN, SUBJECT TO COURT APPROVAL, FOR EQUITABLY ALLOCATING THE
10 COLLATERAL AMONG CLAIMANTS.

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

1 OF THE METHOD AND DETAILS OF ALL THE FOREGOING ALLOCATIONS.

2 (5) REGARDLESS OF WHETHER THERE IS COLLATERAL, IF THE INSURER
3 HAS CONTRACTUALLY AGREED TO ALLOW THE POLICYHOLDER TO FUND ITS OWN
4 CLAIMS WITHIN THE DEDUCTIBLE AMOUNT PURSUANT TO A DEDUCTIBLE
5 AGREEMENT, EITHER THROUGH THE POLICYHOLDER'S OWN ADMINISTRATION OF
6 ITS CLAIMS OR THROUGH THE POLICYHOLDER PROVIDING FUNDS DIRECTLY TO
7 A THIRD PARTY ADMINISTRATOR WHO ADMINISTERS THE CLAIMS, THE
8 RECEIVER SHALL ALLOW THIS FUNDING ARRANGEMENT TO CONTINUE AND,
9 WHERE APPLICABLE, WILL ENFORCE THE ARRANGEMENT TO THE FULLEST
10 EXTENT POSSIBLE. THE FUNDING OF THESE CLAIMS BY THE POLICYHOLDER
11 WITHIN THE DEDUCTIBLE AMOUNT WILL ACT AS A BAR TO ANY CLAIM FOR
12 SUCH AMOUNT IN THE LIQUIDATION PROCEEDING, INCLUDING, BUT NOT
13 LIMITED TO, ANY CLAIM BY THE POLICYHOLDER OR THE THIRD PARTY
14 CLAIMANT. THIS FUNDING ARRANGEMENT EXTINGUISHES BOTH THE
15 OBLIGATION, IF ANY, OF ANY GUARANTY ASSOCIATION TO PAY THOSE CLAIMS
16 WITHIN THE DEDUCTIBLE AMOUNT, AS WELL AS THE OBLIGATIONS, IF ANY,
17 OF THE POLICYHOLDER OR THIRD PARTY ADMINISTRATOR TO REIMBURSE THE
18 GUARANTY ASSOCIATION. NO CHARGE OF ANY KIND SHALL BE MADE AGAINST
19 ANY GUARANTY ASSOCIATION ON THE BASIS OF THE POLICYHOLDER FUNDING
20 OF CLAIM PAYMENTS MADE PURSUANT TO AN ARRANGEMENT DESCRIBED IN THIS
21 SUBSECTION.

22 (6) IF THE INSURER HAS NOT CONTRACTUALLY AGREED TO ALLOW THE
23 POLICYHOLDER TO FUND ITS OWN CLAIMS WITHIN THE DEDUCTIBLE AMOUNT,
24 TO THE EXTENT A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
25 ASSOCIATION IS REQUIRED BY APPLICABLE STATE LAW TO PAY ANY CLAIMS
26 FOR WHICH THE INSURER WOULD HAVE BEEN ENTITLED TO REIMBURSEMENT
27 FROM THE POLICYHOLDER UNDER THE TERMS OF THE DEDUCTIBLE AGREEMENT

1 AND TO THE EXTENT THE CLAIMS HAVE NOT BEEN PAID BY A POLICYHOLDER
2 OR THIRD PARTY, THE RECEIVER SHALL PROMPTLY BILL THE POLICYHOLDER
3 FOR REIMBURSEMENT AND THE POLICYHOLDER IS OBLIGATED TO PAY THE
4 REIMBURSEMENT AMOUNT TO THE RECEIVER FOR THE BENEFIT OF THE
5 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATIONS WHO PAID THE
6 CLAIMS. NEITHER THE INSOLVENCY OF THE INSURER, NOR ITS INABILITY TO
7 PERFORM ANY OF ITS OBLIGATIONS UNDER THE DEDUCTIBLE AGREEMENT, IS A
8 DEFENSE TO THE POLICYHOLDER'S REIMBURSEMENT OBLIGATION UNDER THE
9 DEDUCTIBLE AGREEMENT. THE RECEIVER SHALL PROMPTLY REIMBURSE THE
10 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION FOR CLAIMS
11 PAID THAT WERE SUBJECT TO THE DEDUCTIBLE WHEN THE POLICYHOLDER
12 REIMBURSEMENTS ARE COLLECTED. IF THE POLICYHOLDER FAILS TO PAY THE
13 AMOUNTS DUE WITHIN 60 DAYS AFTER THE BILL FOR THE REIMBURSEMENT IS
14 DUE, THE RECEIVER SHALL USE THE COLLATERAL TO THE EXTENT NECESSARY
15 TO REIMBURSE THE GUARANTY ASSOCIATION OR FOREIGN GUARANTY
16 ASSOCIATIONS, AND, AT THE SAME TIME, MAY PURSUE OTHER COLLECTIONS
17 EFFORTS AGAINST THE POLICYHOLDER. IF MORE THAN 1 GUARANTY
18 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAS A CLAIM AGAINST THE
19 SAME COLLATERAL AND THE AVAILABLE COLLATERAL, AFTER ALLOCATION
20 UNDER SUBSECTION (4), ALONG WITH BILLING AND COLLECTION EFFORTS,
21 ARE TOGETHER INSUFFICIENT TO PAY EACH GUARANTY ASSOCIATION AND
22 FOREIGN GUARANTY ASSOCIATION IN FULL, THEN THE RECEIVER WILL
23 PRORATE PAYMENTS TO EACH GUARANTY ASSOCIATION AND FOREIGN GUARANTY
24 ASSOCIATION BASED UPON THE RELATIONSHIP THE AMOUNT OF CLAIMS EACH
25 GUARANTY ASSOCIATION AND FOREIGN GUARANTY ASSOCIATION HAS PAID
26 BEARS TO THE TOTAL OF ALL CLAIMS PAID BY THE GUARANTY ASSOCIATION
27 AND FOREIGN GUARANTY ASSOCIATIONS.

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

1 SHALL HAVE A CLAIM IN THE INSOLVENT INSURER'S ESTATE FOR
2 UNREIMBURSED CLAIMS PAYMENTS.

3 (8) THE RECEIVER SHALL ADJUST THE COLLATERAL BEING HELD AS THE
4 CLAIMS SUBJECT TO THE DEDUCTIBLE AGREEMENT ARE RUN OFF, SO LONG AS
5 ADEQUATE COLLATERAL IS MAINTAINED TO SECURE THE ENTIRE ESTIMATED
6 ULTIMATE OBLIGATION OF THE POLICYHOLDER PLUS A REASONABLE SAFETY
7 FACTOR. THE RECEIVER SHALL MAKE THESE ADJUSTMENTS PERIODICALLY, BUT
8 IS NOT REQUIRED TO ADJUST THE COLLATERAL MORE THAN ONCE A YEAR. THE
9 GUARANTY ASSOCIATION AND ANY FOREIGN GUARANTY ASSOCIATION SHALL BE
10 INFORMED OF ALL SUCH COLLATERAL REVIEWS, INCLUDING, BUT NOT LIMITED
11 TO, THE BASIS FOR THE ADJUSTMENT. ONCE ALL CLAIMS COVERED BY THE
12 COLLATERAL HAVE BEEN PAID AND THE RECEIVER IS SATISFIED THAT NO NEW
13 CLAIMS CAN BE PRESENTED, THE RECEIVER WILL RELEASE ANY REMAINING
14 COLLATERAL TO THE POLICYHOLDER.

15 (9) THE INGHAM COUNTY CIRCUIT COURT HAVING JURISDICTION OVER
16 THE LIQUIDATION PROCEEDINGS SHALL HAVE JURISDICTION TO RESOLVE
17 DISPUTES ARISING UNDER THIS SECTION.

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

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

27 (12) THIS SECTION DOES NOT APPLY TO FIRST PARTY CLAIMS OR TO

1 CLAIMS FUNDED BY A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
2 ASSOCIATION NET OF THE DEDUCTIBLE UNLESS SUBSECTION (5) APPLIES.

3 (13) AS USED IN THIS SECTION:

4 (A) "DEDUCTIBLE AGREEMENT" MEANS ANY COMBINATION OF 1 OR MORE
5 POLICIES, ENDORSEMENTS, CONTRACTS, OR SECURITY AGREEMENTS THAT
6 PROVIDE FOR THE POLICYHOLDER TO BEAR THE RISK OF LOSS WITHIN A
7 SPECIFIED AMOUNT PER CLAIM OR OCCURRENCE COVERED UNDER A POLICY OF
8 INSURANCE AND MAY BE SUBJECT TO AGGREGATE LIMIT OF POLICYHOLDER
9 REIMBURSEMENT OBLIGATIONS.

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

13 Sec. 8134. (1) Within 120 days of a final determination of
14 insolvency of an insurer by a court of competent jurisdiction of
15 this state, the liquidator shall make application to the court for
16 approval of a proposal ~~to disburse assets out of marshalled~~
17 ~~assets, from time to time as those assets become available, to a~~
18 ~~guaranty association or foreign guaranty association having~~
19 ~~obligations because of the insolvency. If the liquidator determines~~
20 ~~that there are insufficient assets to disburse, the application~~
21 ~~required by this section shall be considered satisfied by a filing~~
22 ~~by the liquidator stating the reasons for this determination. TO~~
23 MAKE EARLY ACCESS DISBURSEMENTS OUT OF MARSHALED ASSETS, TO ANY
24 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION HAVING
25 OBLIGATIONS BECAUSE OF THE INSOLVENCY. IF THE LIQUIDATOR DETERMINES
26 THAT THE ESTATE WILL NOT HAVE SUFFICIENT ASSETS TO MAKE ANY EARLY
27 ACCESS DISBURSEMENTS TO A GUARANTY ASSOCIATION OR FOREIGN GUARANTY

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

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

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

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

18 (c) Equitable allocation of disbursements to each of the
19 guaranty associations and foreign guaranty associations entitled to
20 disbursements.

21 (d) The securing by the liquidator from each of the
22 associations entitled to disbursements pursuant to this section of
23 an agreement to return to the liquidator such assets, together with
24 income earned on assets previously disbursed, as may be required to
25 pay claims of secured creditors and claims falling within the
26 priorities established in section 8142 in accordance with those
27 priorities. A bond shall not be required of any such association.

1 (e) A full report to be made by each association to the
2 liquidator accounting for assets disbursed to the association, all
3 disbursements made from the assets, interest earned by the
4 association on the assets, and any other matter as the court
5 directs.

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

14 (4) The liquidator's proposal shall, with respect to an
15 insolvent insurer writing life or health insurance or annuities,
16 provide for disbursements of assets to any guaranty association or
17 any foreign guaranty association covering life or health insurance
18 or annuities or to any other entity or organization reinsuring,
19 assuming, or guaranteeing policies or contracts of insurance under
20 the acts creating the associations.

21 (5) Notice of application shall be given to the association in
22 each state and to the commissioners of insurance of each state.
23 Notice shall be considered to have been given when deposited in the
24 United States certified mails, first-class postage prepaid, at
25 least 30 days before submission of the application to the court.
26 Action on the application may be taken by the court if the notice
27 under this subsection has been given and if the liquidator's

1 proposal complies with subsection (2)(a) and (b).

2 (6) THE LIQUIDATOR SHALL NOT OFFSET THE AMOUNT TO BE DISBURSED
3 TO ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION BY ANY
4 SPECIAL OR STATUTORY DEPOSIT OR ANY OTHER ASSET OF THE INSOLVENT
5 INSURER EXCEPT TO THE EXTENT THE DEPOSIT OR ASSET HAS BEEN PAID TO
6 THE ASSOCIATION FOR THE PURPOSE OF SATISFYING THE ASSOCIATION'S
7 CLAIMS.