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LRB093 20938 AMC 49701 a

1 AMENDMENT TO HOUSE BILL 5928

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5928 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Insurance Code is amended by  
5 adding Section 205.1 as follows:

6 (215 ILCS 5/205.1 new)

7 Sec. 205.1. Policyholder collateral, deductible  
8 reimbursements, and other policyholder obligations.

9 (a) Any collateral held by, for the benefit of, or assigned  
10 to the insurer or the Director as rehabilitator, liquidator, or  
11 conservator to secure the obligations of a policyholder under a  
12 deductible agreement shall not be considered an asset of the  
13 estate and shall be maintained and administered by the Director  
14 as rehabilitator, liquidator, or conservator as provided in  
15 this Section and notwithstanding any other provision of law or  
16 contract to the contrary.

17 (b) If the collateral is being held by, for the benefit of,  
18 or assigned to the insurer or subsequently the Director as  
19 rehabilitator, liquidator, or conservator to secure  
20 obligations under a deductible agreement with a policyholder,  
21 subject to the provisions of this Section, the collateral shall  
22 be used to secure the policyholder's obligation to fund or  
23 reimburse claims payment within the agreed deductible amount.

24 (c) If a claim that is subject to a deductible agreement

1 and secured by collateral is not covered by any guaranty  
2 association or the Illinois Insurance Guaranty Fund and the  
3 policyholder is unwilling or unable to take over the handling  
4 and payment of the non-covered claims, the Director as  
5 rehabilitator, liquidator, or conservator shall adjust and pay  
6 the non-covered claims utilizing the collateral but only to the  
7 extent the available collateral after allocation under  
8 subsection (d), is sufficient to pay all outstanding and  
9 anticipated claims. If the collateral is exhausted and the  
10 insured is not able to provide funds to pay the remaining  
11 claims within the deductible after all reasonable means of  
12 collection against the insured have been exhausted, the  
13 Director's obligation to pay such claims from the collateral as  
14 the rehabilitator, liquidator, or conservator terminates, and  
15 the remaining claims shall be claims against the insurer's  
16 estate subject to complying with other provisions in this  
17 Article for the filing and allowance of such claims. When the  
18 liquidator determines that the collateral is insufficient to  
19 pay all additional and anticipated claims, the liquidator may  
20 file a plan for equitably allocating the collateral among  
21 claimants, subject to court approval.

22 (d) To the extent that the Director as rehabilitator,  
23 liquidator, or conservator is holding collateral provided by a  
24 policyholder that was obtained to secure a deductible agreement  
25 and to secure other obligations of the policyholder to pay the  
26 insurer, directly or indirectly, amounts that become assets of  
27 the estate, such as reinsurance obligations under a captive  
28 reinsurance program or adjustable premium obligations under a  
29 retrospectively rated insurance policy where the premium due is  
30 subject to adjustment based upon actual loss experience, the  
31 Director as rehabilitator, liquidator, or conservator shall  
32 equitably allocate the collateral among such obligations and  
33 administer the collateral allocated to the deductible  
34 agreement pursuant to this Section. With respect to the

1 collateral allocated to obligations under the deductible  
2 agreement, if the collateral secured reimbursement obligations  
3 under more than one line of insurance, then the collateral  
4 shall be equitably allocated among the various lines based upon  
5 the estimated ultimate exposure within the deductible amount  
6 for each line. The Director as rehabilitator, liquidator, or  
7 conservator shall inform the guaranty association or the  
8 Illinois Insurance Guaranty Fund that is or may be obligated  
9 for claims against the insurer of the method and details of all  
10 the foregoing allocations.

11 (e) Regardless of whether there is collateral, if the  
12 insurer has contractually agreed to allow the policyholder to  
13 fund its own claims within the deductible amount pursuant to a  
14 deductible agreement, either through the policyholder's own  
15 administration of its claims or through the policyholder  
16 providing funds directly to a third party administrator who  
17 administers the claims, the Director as rehabilitator,  
18 liquidator, or conservator shall allow such funding  
19 arrangement to continue and, where applicable, will enforce  
20 such arrangements to the fullest extent possible. The funding  
21 of such claims by the policyholder within the deductible amount  
22 will act as a bar to any claim for such amount in the  
23 liquidation proceeding, including but not limited to any such  
24 claim by the policyholder or the third party claimant. The  
25 funding will extinguish both the obligation, if any, of any  
26 guaranty association or the Illinois Insurance Guaranty Fund to  
27 pay such claims within the deductible amount, as well as the  
28 obligations, if any, of the policyholder or third party  
29 administrator to reimburse the guaranty association or the  
30 Illinois Insurance Guaranty Fund. No charge of any kind shall  
31 be made by the Director as rehabilitator, liquidator, or  
32 conservator against any guaranty association or the Illinois  
33 Insurance Guaranty Fund on the basis of the policyholder  
34 funding of claims payment made pursuant to the mechanism set

1 forth in this subsection.

2 (f) If the insurer has not contractually agreed to allow  
3 the policyholder to fund its own claims within the deductible  
4 amount, to the extent a guaranty association or the Illinois  
5 Insurance Guaranty Fund is required by applicable state law to  
6 pay any claims for which the insurer would be or would have  
7 been entitled to reimbursement from the policyholder under the  
8 terms of the deductible agreement and to the extent the claims  
9 have not been paid by a policyholder or third party, the  
10 Director as rehabilitator, liquidator, or conservator shall  
11 promptly bill the policyholder for such reimbursement and the  
12 policyholder will be obligated to pay such amount to the  
13 Director as rehabilitator, liquidator, or conservator for the  
14 benefit of the guaranty association or the Illinois Insurance  
15 Guaranty Fund that paid such claims. Neither the insolvency of  
16 the insurer, nor its inability to perform any of its  
17 obligations under the deductible agreement, shall be a defense  
18 to the policyholder's reimbursement obligation under the  
19 deductible agreement. When the policyholder reimbursements are  
20 collected, the Director as rehabilitator, liquidator, or  
21 conservator shall promptly reimburse the guaranty association  
22 or the Illinois Insurance Guaranty Fund for claims paid that  
23 were subject to the deductible. If the policyholder fails to  
24 pay the amounts due within 60 days after such bill for such  
25 reimbursements is due, the Director as rehabilitator,  
26 liquidator, or conservator shall use the collateral to the  
27 extent necessary to reimburse the guaranty association or the  
28 Illinois Insurance Guaranty Fund, and, at the same time, may  
29 pursue other collections efforts against the policyholder. If  
30 more than one guaranty association or the Illinois Insurance  
31 Guaranty Fund has a claim against the same collateral and the  
32 available collateral (after allocation under subsection (d)),  
33 along with billing and collection efforts, are together  
34 insufficient to pay each guaranty association or the Illinois

1 Insurance Guaranty Fund in full, then the Director as  
2 rehabilitator, liquidator, or conservator will pro-rate  
3 payments to each guaranty association or the Illinois Insurance  
4 Guaranty Fund based upon the relationship the amount of claims  
5 each guaranty association or the Illinois Insurance Guaranty  
6 Fund has paid bears to the total of all claims paid by such  
7 guaranty association or the Illinois Insurance Guaranty Fund.

8 (g) Director's duties and powers as rehabilitator,  
9 liquidator, or conservator.

10 (1) The Director as rehabilitator, liquidator, or  
11 conservator is entitled to deduct from reimbursements owed  
12 to guaranty associations or the Illinois Insurance  
13 Guaranty Fund or collateral to be returned to a  
14 policyholder reasonable actual expenses incurred in  
15 fulfilling the responsibilities under this provision, not  
16 to exceed 3% of the collateral or the total deductible  
17 reimbursements actually collected by the Director as  
18 rehabilitator, liquidator, or conservator.

19 (2) With respect to claim payments made by any guaranty  
20 association or the Illinois Insurance Guaranty Fund, the  
21 Director as rehabilitator, liquidator, or conservator  
22 shall promptly provide the court, with a copy of the  
23 guaranty associations or the Illinois Insurance Guaranty  
24 Fund, with a complete report of the Director's deductible  
25 billing and collection activities as rehabilitator,  
26 liquidator, or conservator including copies of the  
27 policyholder billings when rendered, the reimbursements  
28 collected, the available amounts and use of collateral for  
29 each policyholder, and any pro-ration of payments when it  
30 occurs. If the Director as rehabilitator, liquidator, or  
31 conservator fails to make a good faith effort within 120  
32 days of receipt of claims payment reports to collect  
33 reimbursements due from a policyholder under a deductible  
34 agreement based on claim payments made by one or more

1 guaranty associations or the Illinois Insurance Guaranty  
2 Fund, then after such 120 day period such guaranty  
3 associations or the Illinois Insurance Guaranty Fund may  
4 pursue collection from the policyholders directly on the  
5 same basis as the Director as rehabilitator, liquidator, or  
6 conservator, and with the same rights and remedies, and  
7 will report any amounts so collected from each policyholder  
8 to the Director as rehabilitator, liquidator, or  
9 conservator. To the extent that guaranty associations or  
10 the Illinois Insurance Guaranty Fund pay claims within the  
11 deductible amount, but are not reimbursed by either the  
12 Director as rehabilitator, liquidator, or conservator  
13 under this Section or by policyholder payments from the  
14 guaranty associations' or the Illinois Insurance Guaranty  
15 Fund's own collection efforts, the guaranty association or  
16 the Illinois Insurance Guaranty Fund shall have a claim in  
17 the insolvent insurer's estate for such un-reimbursed  
18 claims payments.

19 (3) The Director as rehabilitator, liquidator, or  
20 conservator shall periodically adjust the collateral being  
21 held as the claims subject to the deductible agreement are  
22 run-off, provided that adequate collateral is maintained  
23 to secure the entire estimated ultimate obligation of the  
24 policyholder plus a reasonable safety factor, and the  
25 Director as rehabilitator, liquidator, or conservator  
26 shall not be required to adjust the collateral more than  
27 once a year. The guaranty associations or the Illinois  
28 Insurance Guaranty Fund shall be informed of all such  
29 collateral reviews, including but not limited to the basis  
30 for the adjustment. Once all claims covered by the  
31 collateral have been paid and the Director as  
32 rehabilitator, liquidator, or conservator is satisfied  
33 that no new claims can be presented, the Director as  
34 rehabilitator, liquidator, or conservator will release any

1       remaining collateral to the policyholder.

2       (h) The Illinois Circuit Court having jurisdiction over the  
3 liquidation proceedings shall have jurisdiction to resolve  
4 disputes arising under this provision.

5       (i) Nothing in this Section is intended to limit or  
6 adversely affect any right the guaranty associations or the  
7 Illinois Insurance Guaranty Fund may have under applicable  
8 state law to obtain reimbursement from certain classes of  
9 policyholders for claims payments made by such guaranty  
10 associations or the Illinois Insurance Guaranty Fund under  
11 policies of the insolvent insurer, or for related expenses the  
12 guaranty associations or the Illinois Insurance Guaranty Fund  
13 incur.

14       (j) This Section applies to all receivership proceedings  
15 under Article XIII that either (1) commence on or after the  
16 effective date of this amendatory Act of the 93rd General  
17 Assembly or (2) are on file or open on the effective date of  
18 this amendatory Act of the 93rd General Assembly and in which  
19 an Order of Liquidation is entered on or after May 1, 2004.

20       (k) For purposes of this Section, a "deductible agreement"  
21 is any combination of one or more policies, endorsements,  
22 contracts, or security agreements, which provide for the  
23 policyholder to bear the risk of loss within a specified amount  
24 per claim or occurrence covered under a policy of insurance,  
25 and may be subject to the aggregate limit of policyholder  
26 reimbursement obligations. This Section shall not apply to  
27 first party claims, or to claims funded by a guaranty  
28 association or the Illinois Insurance Guaranty Fund in excess  
29 of the deductible unless subsection (e) above applies. The term  
30 "non-covered claim" shall mean a claim that is subject to a  
31 deductible agreement and is not covered by a guaranty  
32 association or the Illinois Insurance Guaranty Fund.

33       Section 99. Effective date. This Act takes effect upon

1 becoming law.".