



Sen. William E. Peterson

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LRB094 06684 LJB 45141 a

1 AMENDMENT TO HOUSE BILL 316

2 AMENDMENT NO. _____. Amend House Bill 316 on page 1, by
3 replacing line 5 with "changing Sections 205.1 and 500-77 as
4 follows:"; and

5 on page 1, immediately below line 5, by inserting the
6 following:

7 "(215 ILCS 5/205.1)

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

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

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

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

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

1 to this Section. With respect to the collateral allocated to
2 obligations under the deductible agreement, if the collateral
3 secured reimbursement obligations under more than one line of
4 insurance, then the collateral shall be equitably allocated
5 among the various lines based upon the estimated ultimate
6 exposure within the deductible amount for each line. The
7 Director as rehabilitator or liquidator shall inform the
8 guaranty association or the Illinois Insurance Guaranty Fund
9 that is or may be obligated for claims against the insurer of
10 the method and details of all 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 or
18 liquidator shall allow such funding arrangement to continue
19 and, where applicable, will enforce such arrangements to the
20 fullest extent possible. The funding of such claims by the
21 policyholder within the deductible amount will act as a bar to
22 any claim for such amount in the liquidation proceeding,
23 including but not limited to any such claim by the policyholder
24 or the third party claimant. The funding will extinguish both
25 the obligation, if any, of any guaranty association or the
26 Illinois Insurance Guaranty Fund to pay such claims within the
27 deductible amount, as well as the obligations, if any, of the
28 policyholder or third party administrator to reimburse the
29 guaranty association or the Illinois Insurance Guaranty Fund.
30 No charge of any kind shall be made by the Director as
31 rehabilitator or liquidator against any guaranty association
32 or the Illinois Insurance Guaranty Fund on the basis of the
33 policyholder funding of claims payment made pursuant to the
34 mechanism set forth in this subsection.

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

1 guaranty association or the Illinois Insurance Guaranty Fund
2 based upon the relationship the amount of claims each guaranty
3 association or the Illinois Insurance Guaranty Fund has paid
4 bears to the total of all claims paid by such guaranty
5 association or the Illinois Insurance Guaranty Fund.

6 (g) Director's duties and powers as rehabilitator or
7 liquidator.

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

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

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

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

32 (h) The Illinois Circuit Court having jurisdiction over the
33 liquidation proceedings shall have jurisdiction to resolve
34 disputes arising under this provision.

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

10 (j) This Section applies to all receivership proceedings
11 under Article XIII that either (1) commence on or after the
12 effective date of this amendatory Act of the 93rd General
13 Assembly or (2) are on file or open on the effective date of
14 this amendatory Act of the 93rd General Assembly and in which
15 an Order of Liquidation is entered on or after May 1, 2004.
16 However, this Section applies to rehabilitation proceedings
17 only to the extent that guaranty associations are required to
18 pay claims and does not apply to receivership proceedings in
19 which only an order of conservation has been entered.

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 (Source: P.A. 93-1028, eff. 8-25-04.)".