



## 93RD GENERAL ASSEMBLY

### State of Illinois

#### 2003 and 2004

Introduced 2/6/2004, by Frank J. Mautino

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/205.1 new

Amends the Illinois Insurance Code Article concerning Rehabilitation, Liquidation, Conservation, and Dissolution of Companies. Creates a new Section pertaining to policyholder collateral, deductible reimbursements, and other policyholder obligations. Adds provisions concerning: any collateral held by, for the benefit of, or assigned to the insurer or the Director of Insurance as rehabilitator, liquidator, or conservator to secure obligations under a deductible agreement with a policyholder; non-covered claims; amounts that become assets of an estate; an insurer that has contractually agreed to allow the policyholder to fund its own claims within the deductible amount pursuant to a deductible agreement; and an insurer that has not contractually agreed to allow the policyholder to fund its own claims within the deductible amount pursuant to a deductible agreement. Defines the Director's duties and powers as rehabilitator, liquidator, or conservator. Provides that the Illinois Circuit Court having jurisdiction over the liquidation proceedings shall have jurisdiction to resolve disputes. Applies to delinquency proceedings pending on the effective date of this amendatory Act. Makes other changes.

LRB093 20938 SAS 46916 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by adding  
5 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  
25 and secured by collateral is not covered by any guaranty  
26 association or the Illinois Insurance Guaranty Fund and the  
27 policyholder is unwilling or unable to take over the handling  
28 and payment of the non-covered claims, the Director as  
29 rehabilitator, liquidator, or conservator shall adjust and pay  
30 the non-covered claims utilizing the collateral but only to the  
31 extent the available collateral after allocation under  
32 subsection (d), is sufficient to pay all outstanding and

1 anticipated claims. If the collateral is exhausted and the  
2 insured is not able to provide funds to pay the remaining  
3 claims within the deductible after all reasonable means of  
4 collection against the insured have been exhausted, the  
5 Director's obligation to pay such claims from the collateral as  
6 the rehabilitator, liquidator, or conservator terminates, and  
7 the remaining claims shall be claims against the insurer's  
8 estate subject to complying with other provisions in this  
9 Article for the filing and allowance of such claims. When the  
10 liquidator determines that the collateral is insufficient to  
11 pay all additional and anticipated claims, the liquidator may  
12 file a plan for equitably allocating the collateral among  
13 claimants, subject to court approval.

14 (d) To the extent that the Director as rehabilitator,  
15 liquidator, or conservator is holding collateral provided by a  
16 policyholder that was obtained to secure a deductible agreement  
17 and to secure other obligations of the policyholder to pay the  
18 insurer, directly or indirectly, amounts that become assets of  
19 the estate, such as reinsurance obligations under a captive  
20 reinsurance program or adjustable premium obligations under a  
21 retrospectively rated insurance policy where the premium due is  
22 subject to adjustment based upon actual loss experience, the  
23 Director as rehabilitator, liquidator, or conservator shall  
24 equitably allocate the collateral among such obligations and  
25 administer the collateral allocated to the deductible  
26 agreement pursuant to this Section. With respect to the  
27 collateral allocated to obligations under the deductible  
28 agreement, if the collateral secured reimbursement obligations  
29 under more than one line of insurance, then the collateral  
30 shall be equitably allocated among the various lines based upon  
31 the estimated ultimate exposure within the deductible amount  
32 for each line. The Director as rehabilitator, liquidator, or  
33 conservator shall inform the guaranty association or the  
34 Illinois Insurance Guaranty Fund that is or may be obligated  
35 for claims against the insurer of the method and details of all  
36 the foregoing allocations.

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

26       (f) If the insurer has not contractually agreed to allow  
27 the policyholder to fund its own claims within the deductible  
28 amount, to the extent a guaranty association or the Illinois  
29 Insurance Guaranty Fund is required by applicable state law to  
30 pay any claims for which the insurer would be or would have  
31 been entitled to reimbursement from the policyholder under the  
32 terms of the deductible agreement and to the extent the claims  
33 have not been paid by a policyholder or third party, the  
34 Director as rehabilitator, liquidator, or conservator shall  
35 promptly bill the policyholder for such reimbursement and the  
36 policyholder will be obligated to pay such amount to the

1 Director as rehabilitator, liquidator, or conservator for the  
2 benefit of the guaranty association or the Illinois Insurance  
3 Guaranty Fund that paid such claims. Neither the insolvency of  
4 the insurer, nor its inability to perform any of its  
5 obligations under the deductible agreement, shall be a defense  
6 to the policyholder's reimbursement obligation under the  
7 deductible agreement. When the policyholder reimbursements are  
8 collected, the Director as rehabilitator, liquidator, or  
9 conservator shall promptly reimburse the guaranty association  
10 or the Illinois Insurance Guaranty Fund for claims paid that  
11 were subject to the deductible. If the policyholder fails to  
12 pay the amounts due within 60 days after such bill for such  
13 reimbursements is due, the Director as rehabilitator,  
14 liquidator, or conservator shall use the collateral to the  
15 extent necessary to reimburse the guaranty association or the  
16 Illinois Insurance Guaranty Fund, and, at the same time, may  
17 pursue other collections efforts against the policyholder. If  
18 more than one guaranty association or the Illinois Insurance  
19 Guaranty Fund has a claim against the same collateral and the  
20 available collateral (after allocation under subsection (d)),  
21 along with billing and collection efforts, are together  
22 insufficient to pay each guaranty association or the Illinois  
23 Insurance Guaranty Fund in full, then the Director as  
24 rehabilitator, liquidator, or conservator will pro-rate  
25 payments to each guaranty association or the Illinois Insurance  
26 Guaranty Fund based upon the relationship the amount of claims  
27 each guaranty association or the Illinois Insurance Guaranty  
28 Fund has paid bears to the total of all claims paid by such  
29 guaranty association or the Illinois Insurance Guaranty Fund.

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

32 (1) The Director as rehabilitator, liquidator, or  
33 conservator is entitled to deduct from reimbursements owed  
34 to guaranty associations or the Illinois Insurance  
35 Guaranty Fund or collateral to be returned to a  
36 policyholder reasonable actual expenses incurred in

1 fulfilling the responsibilities under this provision, not  
2 to exceed 3% of the collateral or the total deductible  
3 reimbursements actually collected by the Director as  
4 rehabilitator, liquidator, or conservator.

5 (2) With respect to claim payments made by any guaranty  
6 association or the Illinois Insurance Guaranty Fund, the  
7 Director as rehabilitator, liquidator, or conservator  
8 shall promptly provide the court, with a copy of the  
9 guaranty associations or the Illinois Insurance Guaranty  
10 Fund, with a complete report of the Director's deductible  
11 billing and collection activities as rehabilitator,  
12 liquidator, or conservator including copies of the  
13 policyholder billings when rendered, the reimbursements  
14 collected, the available amounts and use of collateral for  
15 each policyholder, and any pro-ration of payments when it  
16 occurs. If the Director as rehabilitator, liquidator, or  
17 conservator fails to make a good faith effort within 120  
18 days of receipt of claims payment reports to collect  
19 reimbursements due from a policyholder under a deductible  
20 agreement based on claim payments made by one or more  
21 guaranty associations or the Illinois Insurance Guaranty  
22 Fund, then after such 120 day period such guaranty  
23 associations or the Illinois Insurance Guaranty Fund may  
24 pursue collection from the policyholders directly on the  
25 same basis as the Director as rehabilitator, liquidator, or  
26 conservator, and with the same rights and remedies, and  
27 will report any amounts so collected from each policyholder  
28 to the Director as rehabilitator, liquidator, or  
29 conservator. To the extent that guaranty associations or  
30 the Illinois Insurance Guaranty Fund pay claims within the  
31 deductible amount, but are not reimbursed by either the  
32 Director as rehabilitator, liquidator, or conservator  
33 under this Section or by policyholder payments from the  
34 guaranty associations' or the Illinois Insurance Guaranty  
35 Fund's own collection efforts, the guaranty association or  
36 the Illinois Insurance Guaranty Fund shall have a claim in

1 the insolvent insurer's estate for such un-reimbursed  
2 claims payments.

3 (3) The Director as rehabilitator, liquidator, or  
4 conservator shall periodically adjust the collateral being  
5 held as the claims subject to the deductible agreement are  
6 run-off, provided that adequate collateral is maintained  
7 to secure the entire estimated ultimate obligation of the  
8 policyholder plus a reasonable safety factor, and the  
9 Director as rehabilitator, liquidator, or conservator  
10 shall not be required to adjust the collateral more than  
11 once a year. The guaranty associations or the Illinois  
12 Insurance Guaranty Fund shall be informed of all such  
13 collateral reviews, including but not limited to the basis  
14 for the adjustment. Once all claims covered by the  
15 collateral have been paid and the Director as  
16 rehabilitator, liquidator, or conservator is satisfied  
17 that no new claims can be presented, the Director as  
18 rehabilitator, liquidator, or conservator will release any  
19 remaining collateral to the policyholder.

20 (h) The Illinois Circuit Court having jurisdiction over the  
21 liquidation proceedings shall have jurisdiction to resolve  
22 disputes arising under this provision.

23 (i) Nothing in this Section is intended to limit or  
24 adversely affect any right the guaranty associations or the  
25 Illinois Insurance Guaranty Fund may have under applicable  
26 state law to obtain reimbursement from certain classes of  
27 policyholders for claims payments made by such guaranty  
28 associations or the Illinois Insurance Guaranty Fund under  
29 policies of the insolvent insurer, or for related expenses the  
30 guaranty associations or the Illinois Insurance Guaranty Fund  
31 incur.

32 (j) This provision applies to all delinquency proceedings  
33 which are open and pending as of the effective date of this  
34 amendatory Act of the 93rd General Assembly.

35 (k) For purposes of this Section, a "deductible agreement"  
36 is any combination of one or more policies, endorsements,

1 contracts, or security agreements, which provide for the  
2 policyholder to bear the risk of loss within a specified amount  
3 per claim or occurrence covered under a policy of insurance,  
4 and may be subject to the aggregate limit of policyholder  
5 reimbursement obligations. This Section shall not apply to  
6 first party claims, or to claims funded by a guaranty  
7 association or the Illinois Insurance Guaranty Fund in excess  
8 of the deductible unless subsection (e) above applies. The term  
9 "non-covered claim" shall mean a claim that is subject to a  
10 deductible agreement and is not covered by a guaranty  
11 association or the Illinois Insurance Guaranty Fund.

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law.