

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 or liquidator
11 to secure the obligations of a policyholder under a deductible
12 agreement shall not be considered an asset of the estate and
13 shall be maintained and administered by the Director as
14 rehabilitator or liquidator as provided in this Section and
15 notwithstanding any other provision of law or contract to the
16 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 or liquidator to secure obligations under a
20 deductible agreement with a policyholder, subject to the
21 provisions of this Section, the collateral shall be used to
22 secure the policyholder's obligation to fund or reimburse
23 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 or liquidator shall adjust and pay the
30 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 or liquidator terminates, and the remaining
7 claims shall be claims against the insurer's estate subject to
8 complying with other provisions in this Article for the filing
9 and allowance of such claims. When the liquidator determines
10 that the collateral is insufficient to pay all additional and
11 anticipated claims, the liquidator may file a plan for
12 equitably allocating the collateral among claimants, subject
13 to court approval.

14 (d) To the extent that the Director as rehabilitator or
15 liquidator is holding collateral provided by a policyholder
16 that was obtained to secure a deductible agreement and to
17 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 or liquidator shall equitably
24 allocate the collateral among such obligations and administer
25 the collateral allocated to the deductible agreement pursuant
26 to this Section. With respect to the collateral allocated to
27 obligations under the deductible agreement, if the collateral
28 secured reimbursement obligations under more than one line of
29 insurance, then the collateral shall be equitably allocated
30 among the various lines based upon the estimated ultimate
31 exposure within the deductible amount for each line. The
32 Director as rehabilitator or liquidator shall inform the
33 guaranty association or the Illinois Insurance Guaranty Fund
34 that is or may be obligated for claims against the insurer of
35 the method and details of all the foregoing allocations.

36 (e) Regardless of whether there is collateral, if the

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

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

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

27 (g) Director's duties and powers as rehabilitator or
28 liquidator.

29 (1) The Director as rehabilitator or liquidator is
30 entitled to deduct from reimbursements owed to guaranty
31 associations or the Illinois Insurance Guaranty Fund or
32 collateral to be returned to a policyholder reasonable
33 actual expenses incurred in fulfilling the
34 responsibilities under this provision, not to exceed 3% of
35 the collateral or the total deductible reimbursements
36 actually collected by the Director as rehabilitator or

1 liquidator.

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

35 (3) The Director as rehabilitator or liquidator shall
36 periodically adjust the collateral being held as the claims

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

15 (h) The Illinois Circuit Court having jurisdiction over the
16 liquidation proceedings shall have jurisdiction to resolve
17 disputes arising under this provision.

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

27 (j) This Section applies to all receivership proceedings
28 under Article XIII that either (1) commence on or after the
29 effective date of this amendatory Act of the 93rd General
30 Assembly or (2) are on file or open on the effective date of
31 this amendatory Act of the 93rd General Assembly and in which
32 an Order of Liquidation is entered on or after May 1, 2004.
33 However, this Section applies to rehabilitation proceedings
34 only to the extent that guaranty associations are required to
35 pay claims and does not apply to receivership proceedings in
36 which an order of conservation has been entered.

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.