

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 815 Session of
2003

INTRODUCED BY D. WHITE, KUKOVICH, STACK, STOUT, MOWERY, MADIGAN,
COSTA, WENGER, ROBBINS, WAGNER, ORIE, ERICKSON, CORMAN AND
RAFFERTY, JUNE 18, 2003

REFERRED TO BANKING AND INSURANCE, JUNE 18, 2003

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," providing
13 for policyholder collateral, for deductible reimbursements
14 and for other policyholder obligations.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The act of May 17, 1921 (P.L.789, No.285), known
18 as The Insurance Department Act of 1921, is amended by adding a
19 section to read:

20 Section 523.1. Policyholder Collateral, Deductible
21 Reimbursements and Other Policyholder Obligations.--(a) Any
22 collateral held by, for the benefit of or assigned to the
23 insurer or subsequently to the receiver in order to secure the

1 obligations of a policyholder under a deductible agreement shall
2 not be considered an asset of the estate and shall be maintained
3 and administered by the receiver as provided in this section,
4 notwithstanding any other provision of law to the contrary.

5 (b) If the collateral is being held by, for the benefit of
6 or assigned to the insurer or subsequently to the receiver to
7 secure obligations under a deductible agreement with a
8 policyholder, subject to the provisions of this section, the
9 collateral shall be used to secure the policyholder's obligation
10 to fund or reimburse claims payment within the agreed deductible
11 amount.

12 (c) If a claim that is subject to a deductible agreement and
13 secured by collateral is not covered by any association and the
14 policyholder is unwilling or unable to take over the handling
15 and payment of the non-covered claims, the receiver shall adjust
16 and pay the non-covered claims utilizing the collateral but only
17 to the extent the available collateral, after allocation under
18 subsection (d), is sufficient to pay all outstanding and
19 anticipated claims. If the collateral is exhausted and the
20 insured is not able to provide funds to pay the remaining claims
21 within the deductible after all collection means against the
22 insured have been exhausted, the receiver's obligation to pay
23 such claims from the collateral terminates and the remaining
24 claims shall be claims against the insurer's estate subject to
25 complying with other provisions of this article for the filing
26 and allowance of claims.

27 (d) To the extent that the receiver is holding collateral
28 provided by a policyholder that was obtained to secure a
29 deductible agreement and also other obligations of the
30 policyholder to pay the insurer directly or indirectly amounts

1 that will become assets of the estate, such as reinsurance
2 obligations under a captive reinsurance program or premium
3 obligations under a retrospectively rated insurance policy where
4 the premium due is subject to adjustment based upon actual loss
5 experience, the receiver shall equitably allocate the collateral
6 among such obligations and administer the collateral allocated
7 to the deductible agreement pursuant to this section. With
8 respect to the collateral allocated to obligations under the
9 deductible agreement, if the collateral secured reimbursement
10 obligations are under more than one line of insurance, then the
11 collateral shall be equitably allocated among the various lines
12 based upon the estimated ultimate exposure within the deductible
13 amount for each line. The receiver shall inform the guaranty
14 associations of the method and details of all the foregoing
15 allocations.

16 (e) Regardless of whether there is collateral, if the
17 insurer has contractually agreed to allow the policyholder to
18 fund its own claims within the deductible amount pursuant to a
19 deductible agreement, either through the policyholder's own
20 administration of its claims or through the policyholder
21 providing funds directly to a third party administrator who
22 administers the claims, the receiver shall allow such funding
23 arrangement to continue and, where applicable, will enforce such
24 arrangements to the fullest extent possible. The funding of such
25 claims by the policyholder within the deductible amount will act
26 as a bar to a claim for such amount in the liquidation
27 proceeding including, but not limited to, a claim by the
28 policyholder or the third party claimant. The funding will
29 extinguish both the obligation, if any, of any guaranty
30 association to pay such claims within the deductible amount, as

1 well as the obligation, if any, of the policyholder or the
2 third-party administrator to reimburse the guaranty association.
3 No charge of any kind shall be made against a guaranty
4 association on the basis of the policyholder funding of claims
5 payment made pursuant to the mechanism set forth in this
6 subsection.

7 (f) If the insurer has not contractually agreed to allow the
8 policyholder to fund its own claims within the deductible
9 amount, to the extent a guaranty association is required by
10 applicable State law to pay any claims for which the insurer
11 would have been entitled to reimbursement from the policyholder
12 under the terms of the deductible agreement and to the extent
13 the claims have not been paid by the policyholder or by a third
14 party, the receiver shall promptly bill the policyholder for
15 such reimbursement and the policyholder will be obligated to pay
16 such amount to the receiver for the benefit of the guaranty
17 associations who paid such claims. Neither the insolvency of the
18 insurer, nor its inability to perform any of its obligations
19 under the deductible agreement, shall be a defense to the
20 policyholder's reimbursements obligation under the deductible
21 agreement. When the policyholder reimbursements are collected,
22 the receiver shall promptly reimburse such guaranty association
23 for claims paid that were subject to the deductible. If the
24 policyholder fails to pay the amounts due within thirty days
25 after such bill for such reimbursements is due, the receiver
26 shall use the collateral to the extent necessary to reimburse
27 the guaranty association, and, at the same time, may pursue
28 other collections efforts against the policyholder. If more than
29 one guaranty association has a claim against the same collateral
30 and the available collateral, after allocation under subsection

1 (d), along with billing and collection efforts, are together
2 insufficient to pay each guaranty association in full, then the
3 receiver will prorate payments to each guaranty association
4 based upon the amount of claims each guaranty association has
5 paid bears to the total of all claims paid by such guaranty
6 associations.

7 (g) Receiver's duties and powers:

8 (1) The receiver is entitled to deduct from reimbursements
9 owed to guaranty associations or collateral to be returned to a
10 policyholder reasonable actual expenses incurred in fulfilling
11 the responsibilities under this provision, not to exceed three
12 per centum of the collateral or the total deductible
13 reimbursements actually collected by the receiver.

14 (2) With respect to claim payments made by any guaranty
15 associations, the receiver shall promptly provide the guaranty
16 associations with a complete accounting of the receiver's
17 deductible billing and collection activities, including copies
18 of the policyholder billings when rendered, the reimbursements
19 collected, the available amounts and use of collateral for each
20 account, and any proration of payments when it occurs. If the
21 receiver fails to make a good faith effort within one hundred
22 twenty days of receipt of claims payment reports to collect
23 reimbursements due from a policyholder under a deductible
24 agreement based on claim payments made by one or more guaranty
25 associations, then after such one hundred twenty day period such
26 guaranty associations may pursue collection from the
27 policyholders based on whatever legal remedies they believe they
28 may have, and will report any amounts so collected from each
29 policyholder to the receiver. To the extent that guaranty
30 associations pay claims within the deductible amount, but are

1 not reimbursed by either the receiver under this section or by
2 policyholder payments from the guaranty association's own
3 collection efforts, the guaranty association shall have a claim
4 in the insolvent insurer's estate for such unreimbursed claims
5 payments.

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

18 (h) The Commonwealth Court shall have jurisdiction to
19 resolve disputes arising under this section.

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

26 (j) This provision will apply to all delinquency proceedings
27 which are open and pending as of the effective date of this
28 provision.

29 (k) For purposes of this section, the term "deductible
30 agreement" shall include any combination of one or more

1 policies, endorsements, contracts or security agreements which
2 provide for the policyholder to bear the risk of loss within a
3 specified amount per each claim covered under a policy of
4 insurance and may be subject to aggregate limit of policyholder
5 reimbursement obligations. The term "non-covered claims" shall
6 mean a claim that is subject to a deductible agreement, secured
7 by collateral and not covered by a guaranty association.

8 Section 2. This act shall take effect immediately.