
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 815 Session of
2003

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

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 13, 2004

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

~~insurer or subsequently to the receiver in order to secure the obligations of a policyholder under a deductible agreement shall~~
COLLATERAL SHALL not be considered an asset of the estate and
shall be maintained and administered by the receiver as provided
in this section, notwithstanding any other provision of law or
contract to the contrary.

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

(c) If a claim that is subject to a deductible agreement and
secured by collateral is not covered by any guaranty association
and the policyholder is unwilling or unable to take over the
handling and payment of the non-covered claims, the receiver
shall adjust and pay the non-covered claims utilizing the
collateral but only to the extent the available collateral,
after allocation under subsection (d), is sufficient to pay all
outstanding and anticipated claims. A claim against the
collateral by a third-party claimant is not a claim against the
insolvent insurer's estate for the purposes of releasing the
policyholder to the extent of applicable policy coverage. If the
collateral is exhausted and the insured is not able to provide
funds to pay the remaining claims within the deductible after
all collection means against the insured have been exhausted,
the receiver's obligation to pay such claims from the collateral
terminates and the remaining claims shall be claims against the
insurer's estate subject to complying with other provisions of

this article for the filing and allowance of claims. When the liquidator determines the collateral provided by the insured is insufficient to pay all additional and anticipated claims against the insured, the liquidator may file a plan for equitably allocating the collateral among claimants of the insured which provided the collateral, subject to court approval.

(d) To the extent that the receiver is holding collateral
~~provided by a policyholder that was obtained to secure a~~ <—
~~deductible agreement and to secure~~ THAT SECURES other <—
obligations of the policyholder to pay the insurer directly or indirectly amounts that will become assets of the estate, such as reinsurance obligations under a captive reinsurance program or premium obligations under a retrospectively rated insurance policy where the premium due is subject to adjustment based upon actual loss experience, the receiver shall equitably allocate the collateral among such obligations and administer the collateral allocated to the deductible agreement pursuant to this section. With respect to the collateral allocated to obligations under the deductible agreement, if the collateral secured reimbursement obligations are under more than one line of insurance, then the collateral shall be equitably allocated among the various lines based upon the estimated ultimate exposure within the deductible amount for each line. The receiver shall inform the guaranty associations of the method and details of all the foregoing allocations.

(e) Regardless of whether there is collateral, if the insurer has contractually agreed to allow the policyholder to fund its own claims within the deductible amount pursuant to a deductible agreement, either through the policyholder's own

1 administration of its claims or through the policyholder
2 providing funds directly to a third party administrator who
3 administers the claims, the receiver shall allow such funding
4 arrangement to continue and, where applicable, will enforce such
5 arrangements to the fullest extent possible. The funding of such
6 claims by the policyholder within the deductible amount will act
7 as a bar to a claim for such amount in the liquidation
8 proceeding including, but not limited to, a claim by the
9 policyholder or the third party claimant. The funding will
10 extinguish both the obligation, if any, of any guaranty
11 association to pay such claims within the deductible amount, as
12 well as the obligation, if any, of the policyholder or the
13 third-party administrator to reimburse the guaranty association.
14 No charge of any kind shall be made against a guaranty
15 association on the basis of the policyholder funding of claims
16 payment made pursuant to the mechanism set forth in this
17 subsection.

18 (f) (1) If the insurer has not contractually agreed to allow
19 the policyholder to fund its own claims within the deductible
20 amount, to the extent a guaranty association is required by
21 applicable State law to pay any claims for which the insurer
22 would have been entitled to reimbursement from the policyholder
23 under the terms of the deductible agreement and to the extent
24 the claims have not been paid by the policyholder or by a third
25 party, the receiver shall promptly bill the policyholder for
26 such reimbursement and the policyholder will be obligated to pay
27 such amount to the receiver for the benefit of the guaranty
28 associations who paid such claims. Neither the insolvency of the
29 insurer, nor its inability to perform any of its obligations
30 under the deductible agreement, shall be a defense to the

1 policyholder's reimbursements obligation under the deductible
2 agreement. When the policyholder reimbursements are collected,
3 the receiver shall promptly reimburse such guaranty association
4 for claims paid that were subject to the deductible. If the
5 policyholder fails to pay the amounts due within sixty days
6 after such bill for such reimbursements is due, the receiver
7 shall use the collateral to the extent necessary to reimburse
8 the guaranty association, and, at the same time, may pursue
9 other collections efforts against the policyholder. If the
10 policyholder reimbursements are not collected due to the
11 reduction in such reimbursements as provided in paragraph (2),
12 the receiver shall nonetheless reimburse such guaranty
13 association as if such reimbursements had been collected. The
14 receiver will obtain funds to reimburse a guaranty association
15 claim affected by paragraph (2) by subtracting from funds
16 collected by the receiver for other policyholder claim
17 reimbursements under this paragraph amounts sufficient to
18 reimburse the guaranty association affected by the application
19 of paragraph (2). Subtraction of funds shall be made against all
20 guaranty associations, including the guaranty association
21 affected by paragraph (2) on the basis of the ratio stated in
22 paragraph (3). If more than one guaranty association has a claim
23 against the same collateral and the available collateral, after
24 allocation under subsection (d), along with billing and
25 collection efforts, are together insufficient to pay each
26 guaranty association in full, then the receiver will prorate
27 payments to each guaranty association based upon the proportion
28 of the amount of claims each guaranty association has paid bears
29 to the total of all claims paid by such guaranty associations.

30 (2) The obligation of a policyholder arising solely from a

1 deductible agreement to reimburse the receiver for the benefit
2 of one or more guaranty associations under paragraph (1) for
3 losses paid by one or more guaranty associations shall be
4 reduced by the amount of premium paid by or on behalf of the
5 policyholder for one or more policies issued by a wholly owned
6 affiliate or subsidiary of the insurer, which affiliate or
7 subsidiary was either licensed to do business in this
8 Commonwealth or was an eligible surplus lines insurer under
9 Article XVI of the act of May 17, 1921 (P.L.682, No.284), known
10 as "The Insurance Company Law of 1921," at the time of the
11 issuance of such policies, where such policies were purchased to
12 fund the policyholder's obligation to reimburse the insurer for
13 deductibles under the deductible agreement, but in no event
14 shall the reduction in liability be less than ninety per centum
15 of the total premiums paid to the insurer and such affiliate or
16 subsidiary for such policies and coverage provided under the
17 related deductible agreement, provided that the policyholder's
18 reimbursement obligation shall be reduced only if: (i) the
19 wholly owned affiliate or subsidiary was merged into the insurer
20 that was a party to the deductible agreement before the entry of
21 a liquidation order against the insurer; (ii) the merger was
22 approved by the commissioner; and (iii) the merger took place
23 before the enactment of this section.

24 (3) The reduction as a result of paragraph (2) in the amount
25 of deductible reimbursements that one or more guaranty
26 associations would have been entitled to claim from a
27 policyholder of the insurer under paragraph (1) shall be
28 allocated by the receiver pursuant to this paragraph prorata
29 among all guaranty associations receiving deductible
30 reimbursements under paragraph (1). The pro rata allocation

among guaranty associations shall be based upon the ratio of:
(i) claims paid and to be paid as estimated by each guaranty
association that are referred to in paragraph (1) to (ii) the
total amount of claims paid and to be paid estimated by all the
guaranty associations that are referred to in paragraph (1).
Amounts used for the pro rata allocation shall be determined
after giving effect to the provisions referred to in subsection
~~(i)~~ (K) relating to insured net worth.

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(4) Any claim of the policyholder under one or more policies
issued by the affiliate or subsidiary as described in paragraph
(2) is hereby waived except for those claims under policies that
are not paid by a guaranty association as a covered claim or
amounts the policyholder has reimbursed a guaranty association
under Article XVIII of "The Insurance Company Law of 1921" or
similar laws in other states.

(G) IF THE INSURER HAS NOT CONTRACTUALLY AGREED TO ALLOW THE
POLICYHOLDER TO FUND ITS OWN CLAIMS WITHIN THE DEDUCTIBLE AMOUNT
AND A DEDUCTIBLE REIMBURSEMENT POLICY IS PRESENT, TO THE EXTENT
A GUARANTY ASSOCIATION IS REQUIRED BY APPLICABLE STATE LAW TO
PAY ANY CLAIMS FOR WHICH THE INSURER WOULD HAVE BEEN ENTITLED TO
REIMBURSEMENT UNDER THE DEDUCTIBLE REIMBURSEMENT POLICY AND TO
THE EXTENT THE CLAIMS HAVE NOT BEEN PAID BY THE POLICYHOLDER OR
BY A THIRD PARTY, THE RECEIVER SHALL FIRST MAKE A GOOD FAITH
ATTEMPT TO RECOVER REIMBURSEMENTS OR COLLATERAL UNDER THE
DEDUCTIBLE REIMBURSEMENT POLICY. ANY RESULTING RECOVERIES UNDER
THE DEDUCTIBLE REIMBURSEMENT POLICY SHALL BE PAYABLE TO THE
GUARANTY ASSOCIATIONS TO THE EXTENT OF CLAIMS PAID WITHIN THE
DEDUCTIBLE. TO THE EXTENT THE RECEIVER IS UNABLE IN WHOLE OR IN
PART TO RECOVER FIRST UNDER THE DEDUCTIBLE REIMBURSEMENT POLICY
FOR CLAIMS PAID BY THE GUARANTY ASSOCIATIONS, THE RECEIVER SHALL

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PROMPTLY BILL THE POLICYHOLDER FOR THE REIMBURSEMENT AND THE
POLICYHOLDER WILL BE OBLIGATED TO PAY THE AMOUNT TO THE RECEIVER
FOR THE BENEFIT OF THE GUARANTY ASSOCIATIONS WHO PAID THE
CLAIMS. THE POLICYHOLDER SHALL RETAIN ANY AND ALL DEFENSES THAT
MAY BE ASSERTED IN CONNECTION WITH THE RECEIVER'S EFFORTS TO
COLLECT REIMBURSEMENTS FROM THE POLICYHOLDER.

(H) IF THE INSURER HAS NOT CONTRACTUALLY AGREED TO ALLOW THE
POLICYHOLDER TO FUND ITS OWN CLAIMS WITHIN THE DEDUCTIBLE AMOUNT
AND A DEDUCTIBLE REIMBURSEMENT POLICY IS PRESENT AND IF A
GUARANTY ASSOCIATION IS NOT PAYING CLAIMS FOR ANY REASON FOR
WHICH THE INSURER WOULD HAVE BEEN ENTITLED TO REIMBURSEMENT
UNDER THE DEDUCTIBLE REIMBURSEMENT POLICY, TO THE EXTENT CLAIMS
COVERED UNDER A DEDUCTIBLE REIMBURSEMENT POLICY HAVE BEEN PAID
BY THE POLICYHOLDER AND SUFFICIENT INFORMATION ON THE PAYMENTS
HAS BEEN PROVIDED BY THE POLICYHOLDER TO THE RECEIVER FOR
PURPOSES OF BILLING UNDER THE DEDUCTIBLE REIMBURSEMENT POLICY,
THE RECEIVER SHALL MAKE A GOOD FAITH ATTEMPT TO RECOVER
REIMBURSEMENTS OR COLLATERAL UNDER THE DEDUCTIBLE REIMBURSEMENT
POLICY FROM THE INSURER OF THE DEDUCTIBLE REIMBURSEMENT POLICY.
ANY RESULTING RECOVERIES UNDER THE DEDUCTIBLE REIMBURSEMENT
POLICY SHALL BE PAYABLE TO THE POLICYHOLDER.

~~(g)~~ (I) Receiver's duties and powers: <—

(1) The receiver is entitled to deduct from reimbursements
owed to guaranty associations AND/OR POLICYHOLDERS UNDER THIS <—
SECTION or collateral to be returned to a policyholder
reasonable actual expenses incurred in fulfilling the
responsibilities under this provision, not to exceed three per
centum of the collateral or the total deductible reimbursements
actually collected by the receiver.

(2) With respect to claim payments made by any guaranty

associations, the receiver shall promptly provide the guaranty
associations with a complete accounting of the receiver's
deductible billing and collection activities, including, but not
limited to, copies of the policyholder billings when rendered,
the reimbursements collected, the available amounts and use of
collateral for each account, and any proration of payments when
it occurs. The receiver's costs of accounting shall be included
with expenses referred to under this subsection and, together
with other reasonable actual expenses, be subject to the overall
limit called for by this subsection. If the receiver fails to
make a good faith effort within one hundred twenty days of
receipt of claims payment reports to collect reimbursements due
from a policyholder under a deductible agreement based on claim
payments made by one or more guaranty associations, then after
such one hundred twenty day period such guaranty associations
may pursue collection from the policyholders directly on the
same basis as the receiver, and with the same rights and
remedies, and will report any amounts so collected from each
policyholder to the receiver. To the extent that guaranty
associations pay claims within the deductible amount, but are
not reimbursed by either the receiver under this section or by
policyholder payments from the guaranty association's own
collection efforts, the guaranty association shall have a claim
in the insolvent insurer's estate for such unreimbursed claims
payments.

(3) The receiver shall periodically adjust the collateral
being held while the claims subject to the deductible agreement
are run off, provided that adequate collateral is maintained to
secure the entire estimated ultimate obligation of the
policyholder plus a reasonable safety factor, and the receiver

1 shall not be required to adjust the collateral more than once a
2 year. The guaranty associations and the policyholder shall be
3 informed of all such collateral reviews, including, but not
4 limited to, the basis for the adjustment. Once all claims
5 covered by the collateral have been paid and the receiver is
6 satisfied that no new claims can be presented, the receiver will
7 release any remaining collateral to the policyholder.

8 ~~(h)~~ (J) The Commonwealth Court shall have jurisdiction to <—
9 resolve disputes arising under this section.

10 ~~(i)~~ (K) Nothing in this section is intended to limit or <—
11 adversely affect any right the guaranty associations may have
12 under applicable State law to obtain reimbursement from certain
13 classes of policyholders for claims payments made by such
14 guaranty associations under policies of the insolvent insurer,
15 or for related expenses the guaranty associations incur.

16 ~~(j)~~ (L) This provision will apply to all delinquency <—
17 proceedings which are open and pending as of the effective date
18 of this provision.

19 ~~(k)~~ For purposes of this section, the term "deductible <—
20 agreement" shall include any combination of one or more
21 policies, endorsements, contracts or security agreements which
22 provide for the policyholder to bear the risk of loss within a
23 specified amount per each claim or occurrence covered under a
24 policy of insurance and may be subject to aggregate limit of
25 policyholder reimbursement obligations as set forth in an
26 endorsement to a policy or in a program agreement. This section
27 shall not apply to first party claims, or to claims funded by a
28 guaranty association net of the deductible unless subsection (e)
29 applies. The term "non covered claims" shall mean a claim that
30 is subject to a deductible agreement, may be secured by

~~collateral and is not covered by a guaranty association.~~

(M) (1) FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"COLLATERAL" SHALL MEAN COLLATERAL HELD BY, FOR THE BENEFIT
OF OR ASSIGNED TO THE INSURER OR SUBSEQUENTLY TO THE RECEIVER IN
ORDER TO SECURE THE OBLIGATIONS OF A POLICYHOLDER UNDER A
DEDUCTIBLE AGREEMENT AND ALSO ANY COLLATERAL RECOVERED OR HELD
BY THE RECEIVER THAT SECURED THE OBLIGATIONS OF A POLICYHOLDER
UNDER A DEDUCTIBLE REIMBURSEMENT POLICY.

"DEDUCTIBLE AGREEMENT" SHALL INCLUDE ANY COMBINATION OF ONE
OR MORE POLICIES, ENDORSEMENTS, CONTRACTS OR SECURITY AGREEMENTS
WHICH PROVIDE FOR THE POLICYHOLDER TO BEAR THE RISK OF LOSS
WITHIN A SPECIFIED AMOUNT PER EACH CLAIM OR OCCURRENCE COVERED
UNDER A POLICY OF INSURANCE AND MAY BE SUBJECT TO AGGREGATE
LIMIT OF POLICYHOLDER REIMBURSEMENT OBLIGATIONS AS SET FORTH IN
AN ENDORSEMENT TO A POLICY OR IN A PROGRAM AGREEMENT.

"DEDUCTIBLE REIMBURSEMENT POLICY" SHALL MEAN A POLICY OTHER
THAN ONE REFERRED TO IN SUBSECTION (F)(2), PURCHASED BY THE
POLICYHOLDER TO SECURE THE POLICYHOLDER'S OBLIGATION TO
REIMBURSE THE INSURER FOR DEDUCTIBLES UNDER THE DEDUCTIBLE
AGREEMENT.

"NON-COVERED CLAIMS" SHALL MEAN A CLAIM THAT IS SUBJECT TO A
DEDUCTIBLE AGREEMENT, MAY BE SECURED BY COLLATERAL AND IS NOT
COVERED BY A GUARANTY ASSOCIATION.

(2) THIS SUBSECTION SHALL NOT APPLY TO FIRST PARTY CLAIMS,
OR TO CLAIMS FUNDED BY A GUARANTY ASSOCIATION NET OF THE
DEDUCTIBLE UNLESS SUBSECTION (E) APPLIES.

Section 2. This act shall take effect immediately.