

H.B. 340

INSURER RECEIVERSHIP ACT

Representative **James A. Dunnigan** proposes the following amendments:

1. *Page 3, Lines 65 through 67:*

- 65 • provisions for third party claims, disputed claims, codebtors, and secured
66 creditors' claims; {~~and~~}
67 • qualified financial contracts; and
 • loss reimbursement policies;

2. *Page 195, Line 6030 through Page 203, Line 6277:* Delete lines 6030 through 6277 and insert:

31A-27a-612. Administration of loss reimbursement policies

(1) As used in this section:

(a) (i) "Loss reimbursement" means a payment made by the insured to or on behalf of the insurer for a loss or loss adjustment expense pursuant to the terms of a loss reimbursement policy, to the extent that the insurer is responsible for payment regardless of whether the insured meets the insured's obligations.

(ii) "Loss reimbursement" includes a voluntary or involuntary application of loss reimbursement collateral to the loss reimbursement obligations of the insured.

(iii) "Loss reimbursement" does not include:

(A) a payment made by the insured pursuant to:

(I) a deductible arrangement under which the insurer has no obligation to pay or advance the amount of the deductible on behalf of the insured; or

(II) a self-insurance arrangement under which the insurer has no payment obligation for the obligation of the self-insured;

(B) a retrospectively rated premium payment; or

(C) a reinsurance claim payment made by a captive reinsurer or other reinsurer:

(I) affiliated with or funded by the insured; or

(II) affiliated with the insurer.

(b) (i) "Loss reimbursement claim" means a claim on a loss reimbursement policy to the extent that it is subject to an insured's loss reimbursement obligation that:

(A) has been made against the estate; or

(B) was previously paid by the insurer.

(ii) "Loss reimbursement claim" includes a loss adjustment expense that is subject to reimbursement by the terms of the loss reimbursement policy.

(c) "Loss reimbursement collateral" means cash, a letter of credit, a surety bond, or any other form

of security provided by the insured to secure the insured's loss reimbursement obligations, regardless of whether the collateral:

(i) is held by, for the benefit of, or assigned to the insurer; or

(ii) secures other obligations of the insured.

(d) (i) "Loss reimbursement policy" means any combination of one or more policies, endorsements, contracts, or security agreements under which:

(A) the insured agrees with the insurer to:

(I) pay directly any portion of a loss or loss adjustment expense owed by the insurer under the policy, endorsement, contract, or agreement up to a specified dollar amount; or

(II) reimburse the insurer for the insurer's payment of loss and loss adjustment expense under the policy, endorsement, contract, or agreement up to a specified dollar amount; and

(B) the insurer remains liable for payment of loss and loss adjustment expense under the policy, endorsement, contract, or agreement regardless of whether the insured meets the insured's obligations.

(ii) A loss reimbursement policy may provide for:

(A) a specific dollar amount of loss reimbursement applicable to each claim;

(B) an aggregate dollar amount applicable to all claims under the policy, endorsement, contract, or agreement; or

(C) both Subsection (1)(d)(ii)(A) and (B).

(e) "Other secured obligation" means an obligation, such as a reinsurance or retrospective premium obligation, that is:

(i) payable by the insured to the insurer; and

(ii) secured by collateral that also secures a loss reimbursement obligation.

(f) "Uncovered loss reimbursement claim" means a loss reimbursement claim that is not defined as a covered claim under the relevant guaranty association statute.

(2) (a) Unless otherwise prohibited by law, the receiver may enter into an agreement allowing the insured to fund or pay loss reimbursement claims directly or through a third party administrator.

(b) Unless otherwise prohibited by law, if the insurer allows the insured to fund or pay loss reimbursement claims directly or through a third party administrator:

(i) the insured shall fulfill the insured's obligations notwithstanding a delinquency proceeding; and

(ii) the receiver may enforce the funding or payment agreements.

(c) (i) The insured's payment of a loss reimbursement claim in whole or part, including any payment made by a third party administrator on behalf of the insured, extinguishes the obligation, if any, of the receiver or an affected guaranty association to pay that claim or that portion of the claim.

(ii) Acceptance of the insured's payment by a claimant in full or final settlement of a claim bars the assertion of that claim in the delinquency proceeding.

(d) An agreement entered into or reaffirmed under this Subsection (2) may be terminated in the manner specified in the agreement.

(3) A loss reimbursement owed by an insured shall be administered as follows:

(a) (i) The receiver shall bill an insured for reimbursement of a loss reimbursement claim when:

- (A) the insurer pays the claim before the day on which the delinquency proceeding commences;
(B) the receiver is notified that an affected guaranty association pays a loss reimbursement claim;
(C) the receiver pays a loss reimbursement claim; or
(D) a loss reimbursement claim is allowed in a liquidation proceeding.
- (ii) Notwithstanding this Subsection (3)(a), an affected guaranty association that pays a loss reimbursement subject to recovery from the insured under statutory net worth provisions shall:
- (A) bill the insured directly; and
(B) provide notice to the receiver of:
(I) the billing under this Subsection (3)(a)(ii); and
(II) any reimbursement collected.
- (iii) A recovery by an affected guaranty association under Subsection (3)(a)(ii) pursuant to statutory net worth provisions may not be general assets of the estate.
- (b) All loss reimbursements paid to the receiver are general assets of the estate.
(c) A loss reimbursement paid to the receiver that is allocable to a claim paid by an affected guaranty association shall be immediately distributed to the affected guaranty association as an early access payment in accordance with Section 31A-27a-704, except that, notwithstanding Section 31A-27a-704, receivership court approval is not required for an early access distribution made pursuant to this section.
- (d) The receiver may take all commercially reasonable actions necessary to collect a reimbursement owed if the insured does not make payment within:
- (i) the time specified in the loss reimbursement policy; or
(ii) 60 days after the day on which the insured receives the billing, if no time is specified in the loss reimbursement policy.
- (e) The following is not a defense to the insured's reimbursement obligation under a loss reimbursement policy:
- (i) the insolvency of the insurer;
(ii) the receiver's inability to perform any of the insurer's obligations under the loss reimbursement policy; or
(iii) an allegation of improper handling or payment of a loss reimbursement claim by:
(A) the receiver;
(B) an affected guaranty association; or
(C) both the receiver and an affected guaranty association.
- (4) Any collateral held under a loss reimbursement policy issued by an insurer subject to a delinquency proceeding under this chapter shall be maintained and administered in accordance with the loss reimbursement policy, except where the loss reimbursement policy conflicts with this section.
- (5) Loss reimbursement collateral shall be applied first to fully meet all early access obligations to affected guaranty associations under Subsection (3)(c) if the loss reimbursement collateral, when combined with loss reimbursement payments that have been made by the insured, is insufficient to:
- (a) reimburse loss reimbursement claims already paid by:

- (i) the insurer;
(ii) the receiver; and
(iii) any affected guaranty association; and
(b) discharge all currently and past due loss reimbursement claims and other secured obligations.
(6) (a) If the receiver declines to seek or is unsuccessful in obtaining reimbursement from the insured for a loss reimbursement claim and there is no available collateral, an affected guaranty association:
(i) may, after notice to the receiver, seek to collect reimbursement due from the insured:
(A) on the same basis as the receiver; and
(B) with the same rights and remedies including the right to recover reasonable costs of collection from the insured; and
(ii) shall report any amounts collected under this Subsection (6)(a) from each insured to the receiver.
(b) The receiver shall provide an affected guaranty association with available information needed to collect a reimbursement due from the insured.
(c) When an affected guaranty association undertakes to collect a reimbursement from an insured, the affected guaranty association shall notify all other guaranty associations that have paid loss reimbursement claims on behalf of the same insured.
(d) Amounts collected by an affected guaranty association pursuant to this Subsection (6) shall be treated as in accordance with Subsection (3)(c).
(e) (i) An expense incurred by an affected guaranty association in pursuing reimbursement may not be permitted as a claim in the delinquency proceeding at any priority.
(ii) Notwithstanding Subsection (6)(e)(i), an affected guaranty association may net an expense incurred in collecting a reimbursement against that reimbursement.
(7) (a) The receiver may recover through billings to the insured or from loss reimbursement collateral all reasonable expenses that the receiver or an affected guaranty association incurs in fulfilling its responsibilities under this section.
(b) A deduction or charge allowed by Subsection (7)(a):
(i) shall be in addition to the insured's obligation to reimburse claims and related expenses; and
(ii) may not diminish the rights of claimants.