

Act No. 137  
Public Acts of 1990  
Approved by the Governor  
June 25, 1990  
Filed with the Secretary of State  
June 26, 1990

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1990**

Introduced by Reps. Ciaramitaro and Brown

# **ENROLLED HOUSE BILL No. 5751**

AN ACT to amend sections 2236, 2312, 7911, 7921, and 7941 of Act No. 218 of the Public Acts of 1956, entitled as amended "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability, and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state, and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance, and with respect to certain claims against uninsured or self-insured persons; and to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; and to provide penalties for the violation of this act," section 2236 as amended by Act No. 52 of the Public Acts of 1987, section 2312 as added by Act No. 8 of the Public Acts of 1982, sections 7911 and 7941 as amended by Act No. 502 of the Public Acts of 1982, and section 7921 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.2236, 500.2312, 500.7911, 500.7921, and 500.7941 of the Michigan Compiled Laws; and to add section 2400a.

*The People of the State of Michigan enact:*

Section 1. Sections 2236, 2312, 7911, 7921, and 7941 of Act No. 218 of the Public Acts of 1956, section 2236 as amended by Act No. 52 of the Public Acts of 1987, section 2312 as added by Act No. 8 of the Public Acts of 1982,

sections 7911 and 7941 as amended by Act No. 502 of the Public Acts of 1982, and section 7921 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.2236, 500.2312, 500.7911, 500.7921, and 500.7941 of the Michigan Compiled Laws, are amended and section 2400a is added to read as follows:

Sec. 2236. (1) A basic insurance policy form or annuity contract form shall not be issued or delivered to any person in this state, and an application form where a written application is required and is to be made a part of such policy or contract, a printed rider or indorsement form or form of renewal certificate, and a group certificate in connection with any such policy or contract, shall not be issued or delivered to any person in this state, until a copy of the form is filed with the insurance bureau and approved by the commissioner as conforming with the requirements of this code and not inconsistent with the law. Failure of the commissioner to act within 30 days after submittal shall constitute approval. All such forms, except policies of disability insurance as defined in section 3400, shall be plainly printed with type size not less than 8-point unless the commissioner determines that portions of such a form printed with type less than 8-point is not deceptive or misleading. An insurance policy form submitted for approval by the state accident fund shall include on the first page of the form in a separate paragraph in 10-point type a statement that the Michigan state accident fund is an agency of state government and is not a member of the property and casualty guaranty association. Neither the state nor the association is liable if the state accident fund is declared insolvent during the effective period of the policy.

(2) An insurer may satisfy its obligations to make form filings by becoming a member of, or a subscriber to, a rating organization, licensed under section 2436 or 2630, which makes such filings and by filing with the commissioner a copy of its authorization of the rating organization to make the filings on its behalf. Every member of or subscriber to a rating organization shall adhere to the form filings made on its behalf by the organization except that any insurer may file with the commissioner a substitute form, and thereafter if a subsequent form filing by the rating organization affects the use of the substitute form, the insurer shall review its use and notify the commissioner to withdraw its substitute form.

(3) Upon written notice to the insurer, the commissioner may disapprove, withdraw approval or prohibit the issuance, advertising or delivery of any form to any person in this state if it violates any provisions of this code, or contains inconsistent, ambiguous or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. The notice shall specify the objectionable provisions or conditions and state the reasons for the commissioner's decision. If the form is legally in use by the insurer in this state, the notice shall give the effective date of the commissioner's disapproval, which shall not be less than 30 days subsequent to the mailing or delivery of such notice to the insurer. If the form is not legally in use, then disapproval shall be effective forthwith.

(4) Whenever a form is disapproved, or approval is withdrawn under the provisions of this code, the insurer shall be entitled upon demand to a hearing before the commissioner or a deputy commissioner within 30 days after notice of disapproval or of withdrawal of approval; and after the hearing, the commissioner shall make findings of fact and law, and either affirm, modify or withdraw his or her original order or decision.

(5) Any issuance, use or delivery by an insurer of any form without the prior approval of the commissioner as required by subsection (1) or after withdrawal of approval as provided by subsection (3) constitutes a separate violation for which the commissioner may order the imposition of a civil penalty of \$25.00 for each offense, but not to exceed the maximum penalty of \$500.00 for any 1 series of offenses relating to any 1 basic policy form, which penalty may be recovered by the attorney general as provided in section 230.

(6) The filing requirements of this section shall not apply to:

(a) Insurance against loss of or damage to:

(i) Imports, exports, or domestic shipments.

(ii) Bridges, tunnels, or other instrumentalities of transportation and communication.

(iii) Aircraft and attached equipment.

(iv) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(b) Insurance against loss resulting from liability, other than worker's compensation or employers' liability arising out of the ownership, maintenance, or use of:

(i) Imports, exports, or domestic shipments.

(ii) Aircraft and attached equipment.

(iii) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(c) Surety bonds other than fidelity bonds.

(d) Policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder or certificate holder. Beginning September 1, 1968, the commissioner by order may exempt from the filing requirements of this section and sections 2242, 3606, and 4430 for so long as he or she considers proper any insurance document or form, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section 3109a, as specified in the order to which this section practicably may not be applied, or the filing and approval of which are considered unnecessary for the protection of the public. Insurance documents or forms providing medical payments or income replacement benefits, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section 3109a, exempt by order of the commissioner from the filing requirements of this section and sections 2242 and 3606 are considered approved by the commissioner for purposes of section 3430.

(7) Every order made by the commissioner under the provisions of this section shall be subject to court review as provided in section 244.

Sec. 2312. (1) A plan of operation of the facility shall be prepared by the board of governors and shall be subject to the approval of the commissioner. The commissioner shall review the plan of operation on an ongoing basis, and the plan shall be subject to revision at the request of the commissioner at any time.

(2) The plan of operation shall provide for all of the following:

(a) Appointment by the board of governors of 1 or more servicing carriers, subject to the approval of the commissioner. Appointments may be rescinded for cause by either the board subject to the approval of the commissioner, or by the commissioner.

(b) Creation of servicing carrier performance standards including all of the following:

(i) Sufficient personnel to provide support for safety management services offered by the plan.

(ii) Providing for sufficient personnel for claims adjustment.

(c) Agreements among the state accident fund and all insurers authorized to write worker's compensation insurance in this state with respect to the equitable apportionment among them of worker's compensation insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure such insurance through ordinary methods.

(d) Payment of commissions to producing agents not to exceed 5% of a total premium.

(e) Creation of 3 rating plans as follows:

(i) Rating plan "A" which shall provide coverage for insureds who have a demonstrated accident frequency problem, who have a measurably adverse loss ratio over a period of years, or who have demonstrated an attitude of noncompliance with safety requirements. The commissioner shall approve rates for rating plan A which shall be adequate to cover losses and which shall not be excessive, inadequate, or unfairly discriminatory. This plan shall contain a system of surcharges established by the board of governors and approved by the commissioner.

(ii) Rating plan "B" which shall provide coverage to those employers who apply for worker's compensation insurance in the facility and are either self-insured or a member of a self-insurance group. This plan shall be established by the board of governors of the facility and approved by the commissioner. The commissioner shall convene and consult with an advisory organization including representatives of self-insureds and group self-insureds prior to approving rating plan "B". The recommendations of the advisory organization shall be given reasonable consideration by the commissioner. The commissioner shall approve rates for rating plan B which shall be adequate to cover losses and which shall not be excessive, inadequate, or unfairly discriminatory.

(iii) Rating plan "C" which shall provide coverage to all other insureds of the facility. Rating plan "C" shall not contain any surcharge system. The commissioner shall approve rates for rating plan C that are set through the lower of either of the following methods:

(A) By using 20% of the loss experience of insurers from employers while participants in rating plan C and 80% of the statewide loss experience of all insurers writing worker's compensation insurance in this state.

(B) Through the use of rates adequate to cover losses and which shall not be excessive, inadequate, or unfairly discriminatory.

(f) Prompt and fair hearings for purposes of section 2350.

(3) The application of the plans created under subsection (2)(e) to insureds shall be as determined by the commissioner. The plans shall be applied to insureds regardless of the number of employees or amount of payroll of the insured.

(4) Retrospective evaluation of premiums and loss and expense experience of insureds within each rating plan under subsection (2)(e) shall be performed by the board of governors, in a manner approved by the commissioner. If this evaluation indicates that a return of a portion of premiums is in order, then such a return shall be accomplished, subject to the approval of the commissioner.

Sec. 2400a. The general provisions of this act pertaining to all insurers and the specific provisions relating to worker's compensation insurance and employer's liability insurance shall apply to the state accident fund except as otherwise specifically provided in this act and the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

Sec. 7911. (1) To implement this chapter, there shall be maintained within this state, by all insurers authorized to transact in this state insurance other than life or disability insurance, except the Michigan basic property insurance association created pursuant to section 2920, the Brown-McNeely insurance fund created in section 2502(1), and on and after the effective date of this 1990 amendatory act, the accident fund created in the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, an association of those insurers to be known as the property and casualty guaranty association, hereafter referred to as the "association". Each insurer shall be a member of the association, as a condition of its authority to continue to transact insurance in this state.

(2) An insurer from which insurance has been or may be procured in this state solely by virtue of sections 1901 to 1955 shall not be considered to be an insurer authorized to transact insurance in this state, for the purposes of this chapter.

(3) The association shall be subject to the requirements of this chapter and of chapter 78, but shall not be subject to the other chapters of this act. The association shall be subject to other laws of this state to the extent that it would be subject to those laws if it were an insurer organized and operating under chapter 50, to the extent that those other laws are consistent with this chapter.

Sec. 7921. As used in this chapter:

(a) "Insolvent insurer" means an insurer for which a domiciliary receiver has been appointed by a final order in this state or in a reciprocal state, as defined in section 8103 for the liquidation of the insurer and which has been a member insurer. The date on which the order becomes final shall be the date on which the receiver is appointed for purposes of this chapter. On and after the effective date of this 1990 amendatory act, the state accident fund created in the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, shall not be considered an insolvent insurer.

(b) "Member insurer" means an insurer required to be a member of the association pursuant to section 7911.

Sec. 7941. (1) To the extent necessary to secure funds for the association for payment of covered claims and for payment of reasonable costs of administering the association, including the cost of indemnifying members of the board of governors, other member insurers, officers, employees, and other persons acting on behalf of the association to the extent permitted by law and the plan of the operation, the association shall levy assessments upon all member insurers. The association shall allocate its claim payments and costs to the following 5 categories:

(a) Worker's compensation insurance.

(b) Automobile insurance.

(c) Title insurance.

(d) Fire, allied lines, farm owner's multiple peril, homeowner's multiple peril, inland marine, earthquake, and credit insurance.

(e) All other kinds of insurance except life and disability insurance.

(2) Separate assessments shall be made for each category prescribed in subsection (1). The assessment for each category shall be used to pay the claim payments and costs allocated to that category. The assessment for each category shall be in proportion to the net direct premiums written, after deducting dividends paid or credited to policyholders, by each member insurer in this state for kinds of insurance included within each category, as reported in the most recent annual statement available at the time of assessment. The rate of assessment shall be a uniform percentage of the premiums for all member insurers. The assessments shall be remitted to and administered by the association in accordance with the plan of operation. Each member insurer assessed shall have not less than 30 days' advance written notice of the date the assessment is due and payable.

(3) A member insurer shall not be assessed during a calendar year for more than 1% of its net direct premiums written in this state during the previous calendar year. The commissioner may exempt a member

insurer from all or part of an assessment or may defer, in whole or in part, the assessment of a member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of exemption or deferment, dividends shall not be declared or paid to shareholders or policyholders. If a member insurer is exempted from all or part of an assessment, or if an assessment against a member insurer is deferred in whole or in part, the amount of the exemption or deferred assessment may be assessed against the other member insurers in a manner consistent with the basis for assessments prescribed in this section. The commissioner may impose conditions on an exemption or deferral which he or she considers reasonable and necessary. The state accident fund shall not be liable for any assessment based on premiums written after the effective date of this 1990 amendatory act including any assessment for an insolvency occurring before the date of termination of its membership in the association.

(4) The assessments shall be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized. Unused assessments and reimbursements from the receiver remaining in a category in excess of covered claims and expenses allocated to that category shall be refunded by the association to each member insurer who paid the assessments for that category in proportion to its assessments paid. An insurer which ceases to be a member of the association shall not have a right to a refund of an assessment previously remitted to the association. The commissioner may revoke the certificate of authority to transact business in this state of a member insurer which fails to pay an assessment when due as provided in this act and after a demand has been made.

Section 2. This amendatory act shall not take effect unless the following bills of the 85th Legislature are enacted into law:

- (a) Senate Bill No. 145.
- (b) Senate Bill No. 885.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.