

HOUSE BILL No. 5729

May 8, 1990, Introduced by Reps. Stallworth, Brown, Palamara and Wartner and referred to the Committee on Insurance.

A bill to amend Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, by adding chapter 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 218 of the Public Acts of 1956, as
2 amended, being sections 500.100 to 500.8302 of the Michigan
3 Compiled Laws, is amended by adding chapter 14 to read as
4 follows:

CHAPTER 14. MANAGING GENERAL AGENTS

6 SEC. 1401. AS USED IN THIS CHAPTER:

7 (A) "ACTUARY" MEANS A PERSON WHO IS A MEMBER IN GOOD
8 STANDING OF THE AMERICAN ACADEMY OF ACTUARIES.

1 (B) "MANAGING GENERAL AGENT" OR "MGA" MEANS A PERSON WHO IS
2 NOT LISTED UNDER SECTION 1403 AND MEETS BOTH OF THE FOLLOWING:

3 (i) NEGOTIATES AND BINDS CEDING REINSURANCE CONTRACTS ON
4 BEHALF OF AN INSURER OR MANAGES ALL OR PART OF THE INSURANCE
5 BUSINESS OF AN INSURER, INCLUDING THE MANAGEMENT OF A SEPARATE
6 DIVISION, DEPARTMENT, OR UNDERWRITING OFFICE.

7 (ii) ACTS AS AN AGENT FOR SUCH INSURER WHETHER KNOWN AS A
8 MANAGING GENERAL AGENT OR OTHER SIMILAR TERM, WHO, WITH OR WITH-
9 OUT THE AUTHORITY, EITHER SEPARATELY OR TOGETHER WITH AFFILIATES,
10 PRODUCES, DIRECTLY OR INDIRECTLY, AND UNDERWRITES AN AMOUNT OF
11 GROSS DIRECT WRITTEN PREMIUM OF NOT LESS THAN 5% OF THE POLICY-
12 HOLDER SURPLUS AS REPORTED IN THE LAST ANNUAL STATEMENT OF THE
13 INSURER IN ANY 1 QUARTER OR YEAR AND ADJUSTS OR PAYS CLAIMS IN
14 EXCESS OF AN AMOUNT DETERMINED BY THE COMMISSIONER OR NEGOTIATES
15 REINSURANCE ON BEHALF OF THE INSURER.

16 (C) "GUARANTY ASSOCIATION" MEANS THE PROPERTY AND CASUALTY
17 GUARANTY ASSOCIATION CREATED IN CHAPTER 79 AND THE LIFE AND
18 HEALTH INSURANCE GUARANTY ASSOCIATION CREATED IN CHAPTER 77.

19 (D) "UNDERWRITE" MEANS THE AUTHORITY TO ACCEPT OR REJECT
20 RISK ON BEHALF OF THE INSURER.

21 SEC. 1403. FOR THE PURPOSES OF THE CHAPTER, THE FOLLOWING
22 PERSONS ARE NOT CONSIDERED MANAGING GENERAL AGENTS:

23 (A) AN EMPLOYEE OF THE INSURER.

24 (B) A UNITED STATES MANAGER OF THE UNITED STATES BRANCH OF
25 AN ALIEN INSURER.

26 (C) AN UNDERWRITING MANAGER WHO PURSUANT TO CONTRACT MANAGES
27 ALL THE INSURER'S INSURANCE OPERATIONS, IS UNDER COMMON CONTROL

1 WITH THE INSURER, IS SUBJECT TO CHAPTER 13, AND WHOSE
2 COMPENSATION IS NOT BASED ON THE VOLUME OF PREMIUMS WRITTEN.

3 SEC. 1405. (1) A PERSON SHALL NOT ACT IN THE CAPACITY OF A
4 MANAGING GENERAL AGENT WITH RESPECT TO RISKS LOCATED IN THIS
5 STATE FOR AN INSURER AUTHORIZED IN THIS STATE UNLESS THAT PERSON
6 IS LICENSED AS AN AGENT IN THIS STATE.

7 (2) A PERSON SHALL NOT ACT IN THE CAPACITY OF A MANAGING
8 GENERAL AGENT REPRESENTING AN INSURER DOMICILED IN THIS STATE
9 WITH RESPECT TO RISKS LOCATED OUTSIDE THIS STATE UNLESS THAT
10 PERSON IS LICENSED AS AN AGENT IN THIS STATE PURSUANT TO THE PRO-
11 VISIONS OF THIS CHAPTER.

12 SEC. 1407. THE COMMISSIONER MAY REQUIRE A MANAGING GENERAL
13 AGENT TO DO BOTH OF THE FOLLOWING:

14 (A) MAINTAIN A BOND IN AN AMOUNT ACCEPTABLE TO THE COMMIS-
15 SIONER FOR THE PROTECTION OF THE INSURER.

16 (B) MAINTAIN AN ERRORS AND OMISSIONS POLICY.

17 SEC. 1409. NO PERSON ACTING IN THE CAPACITY OF A MANAGING
18 GENERAL AGENT SHALL PLACE BUSINESS WITH AN INSURER UNLESS THERE
19 IS A WRITTEN CONTRACT BETWEEN THE PARTIES THAT SETS FORTH THE
20 RESPONSIBILITIES OF EACH PARTY, AND IF BOTH PARTIES SHARE RESPON-
21 SIBILITY FOR A PARTICULAR FUNCTION, SPECIFIES THE DIVISION OF THE
22 RESPONSIBILITIES, AND THAT CONTAINS THE FOLLOWING PROVISIONS:

23 (A) THAT THE INSURER MAY TERMINATE THE CONTRACT UPON WRITTEN
24 NOTICE TO THE MANAGING GENERAL AGENT. THE INSURER MAY SUSPEND
25 THE UNDERWRITING AUTHORITY OF THE MANAGING GENERAL AGENT DURING
26 THE PENDENCY OF ANY DISPUTE REGARDING THE CAUSE FOR TERMINATION.

1 (B) THAT THE MANAGING GENERAL AGENT SHALL RENDER ACCOUNTS TO
2 THE INSURER DETAILING ALL TRANSACTIONS AND SHALL REMIT ALL FUNDS
3 DUE TO THE INSURER ON NOT LESS THAN A MONTHLY BASIS.

4 (C) THAT FUNDS COLLECTED FOR THE ACCOUNT OF THE INSURER
5 SHALL BE HELD BY THE MANAGING GENERAL AGENT IN A FIDUCIARY CAPAC-
6 ITY IN A FEDERALLY INSURED FINANCIAL INSTITUTION. THIS ACCOUNT
7 SHALL BE USED FOR ALL PAYMENTS ON BEHALF OF THE INSURER. THE
8 MANAGING GENERAL AGENT MAY RETAIN NO MORE THAN 3 MONTHS' ESTI-
9 MATED CLAIMS PAYMENTS AND ALLOCATED LOSS ADJUSTMENT EXPENSES.

10 (D) THAT SEPARATE RECORDS OF BUSINESS WRITTEN BY THE MANAG-
11 ING GENERAL AGENT SHALL BE MAINTAINED BY THE MANAGING GENERAL
12 AGENT FOR THE PERIOD BETWEEN EACH EXAMINATION OF THE INSURER AND
13 UNTIL 1 YEAR AFTER EACH EXAMINATION OF THE INSURER BY THE COMMIS-
14 SIONER OR LICENSING AUTHORITY. THE INSURER SHALL HAVE ACCESS TO
15 AND THE RIGHT TO COPY ALL BOOKS, ACCOUNTS, AND RECORDS RELATED TO
16 ITS BUSINESS IN A FORM USABLE BY THE INSURER AND THE COMMISSIONER
17 SHALL HAVE ACCESS TO AND THE RIGHT TO COPY ALL BOOKS, ACCOUNTS,
18 AND RECORDS OF THE MANAGING GENERAL AGENT IN A FORM USABLE TO THE
19 COMMISSIONER.

20 (E) THAT THE CONTRACT SHALL NOT BE ASSIGNED IN WHOLE OR IN
21 PART BY THE MANAGING GENERAL AGENT.

22 (F) THAT THE MANAGING GENERAL AGENT IS SUBJECT TO APPROPRI-
23 ATE UNDERWRITING GUIDELINES THAT INCLUDE, BUT ARE NOT LIMITED TO,
24 THE FOLLOWING:

25 (i) THE MAXIMUM ANNUAL PREMIUM VOLUME.

26 (ii) THE BASIS OF THE RATES TO BE CHARGED.

1 (iii) THE TYPES OF RISKS THAT MAY BE WRITTEN.

2 (iv) MAXIMUM LIMITS OF LIABILITY.

3 (v) APPLICABLE EXCLUSIONS.

4 (vi) TERRITORIAL LIMITATIONS.

5 (vii) POLICY CANCELLATION PROVISIONS.

6 (viii) THE MAXIMUM POLICY PERIOD.

7 (G) IF THE CONTRACT PERMITS THE MANAGING GENERAL AGENT TO
8 SETTLE CLAIMS ON BEHALF OF THE INSURER, ALL OF THE FOLLOWING
9 APPLY:

10 (i) ALL CLAIMS MUST BE REPORTED TO THE INSURER IN A TIMELY
11 MANNER.

12 (ii) A COPY OF THE CLAIM FILE SHALL BE SENT TO THE INSURER
13 AT ITS REQUEST OR AS SOON AS IT BECOMES KNOWN THAT THE CLAIM
14 MEETS ANY OF THE FOLLOWING:

15 (A) HAS THE POTENTIAL TO EXCEED AN AMOUNT DETERMINED BY THE
16 COMMISSIONER OR EXCEEDS THE LIMIT SET BY THE INSURER, WHICHEVER
17 IS LESS.

18 (B) INVOLVES A COVERAGE DISPUTE.

19 (C) MAY EXCEED THE MANAGING GENERAL AGENT'S CLAIMS SETTLE-
20 MENT AUTHORITY.

21 (D) IS OPEN FOR MORE THAN 6 MONTHS.

22 (E) IS CLOSED BY PAYMENT OF AN AMOUNT SET BY THE COMMIS-
23 SIONER OR AN AMOUNT SET BY THE INSURER, WHICHEVER IS LESS.

24 (iii) ALL CLAIMS FILES ARE THE JOINT PROPERTY OF THE INSURER
25 AND THE MANAGING GENERAL AGENT.

26 (iv) ANY SETTLEMENT AUTHORITY GRANTED TO THE MANAGING
27 GENERAL AGENT MAY BE TERMINATED UPON THE INSURER'S WRITTEN NOTICE

1 TO THE MANAGING GENERAL AGENT OR UPON THE TERMINATION OF THE
2 CONTRACT. THE INSURER MAY SUSPEND ANY SETTLEMENT AUTHORITY
3 GRANTED TO THE MANAGING GENERAL AGENT DURING THE PENDENCY OF ANY
4 DISPUTE REGARDING THE CAUSE FOR TERMINATION.

5 (H) IF THE CONTRACT PROVIDES FOR A SHARING OF INTERIM PROF-
6 ITS BY THE MANAGING GENERAL AGENT AND THE MANAGING GENERAL AGENT
7 HAS THE AUTHORITY TO DETERMINE THE AMOUNT OF THE INTERIM PROFITS
8 BY ESTABLISHING LOSS RESERVES, CONTROLLING CLAIM PAYMENTS, OR IN
9 ANY OTHER MANNER, THAT INTERIM PROFITS SHALL NOT BE PAID TO THE
10 MANAGING GENERAL AGENT UNTIL 1 YEAR AFTER THEY ARE EARNED FOR
11 PROPERTY INSURANCE BUSINESS AND 5 YEARS AFTER THEY ARE EARNED FOR
12 CASUALTY INSURANCE BUSINESS AND NOT UNTIL SECTION 1411(A) AND (B)
13 HAS BEEN MET.

14 (I) THAT THE MANAGING GENERAL AGENT SHALL NOT DO ANY OF THE
15 FOLLOWING:

16 (i) BIND REINSURANCE OR RETROCESSIONS ON BEHALF OF THE
17 INSURER, EXCEPT THAT THE MANAGING GENERAL AGENT MAY BIND FACULTA-
18 TIVE REINSURANCE CONTRACTS PURSUANT TO OBLIGATORY FACULTATIVE
19 AGREEMENTS IF THE CONTRACT WITH THE INSURER CONTAINS REINSURANCE
20 UNDERWRITING GUIDELINES INCLUDING, FOR BOTH REINSURANCE ASSUMED
21 AND CEDED, A LIST OF REINSURERS WITH WHICH SUCH AUTOMATIC AGREE-
22 MENTS ARE IN EFFECT, THE COVERAGES AND AMOUNTS OR PERCENTAGES
23 THAT MAY BE REINSURED, AND COMMISSION SCHEDULES.

24 (ii) COMMIT THE INSURER TO PARTICIPATE IN INSURANCE OR REIN-
25 SURANCE SYNDICATES.

1 (iii) APPOINT ANY AGENT WITHOUT ASSURING THAT THE AGENT IS
2 LAWFULLY LICENSED TO TRANSACT THE TYPE OF INSURANCE FOR WHICH HE
3 OR SHE IS APPOINTED.

4 (iv) WITHOUT PRIOR APPROVAL OF THE INSURER PAY OR COMMIT THE
5 INSURER TO PAY A CLAIM OVER A SPECIFIED AMOUNT, NET OF REINSUR-
6 ANCE, THAT SHALL NOT EXCEED 1% OF THE INSURER'S POLICYHOLDER'S
7 SURPLUS AS OF DECEMBER 31 OF THE LAST COMPLETED CALENDAR YEAR.

8 (v) COLLECT ANY PAYMENT FROM A REINSURER OR COMMIT THE
9 INSURER TO ANY CLAIM SETTLEMENT WITH A REINSURER, WITHOUT PRIOR
10 APPROVAL OF THE INSURER. IF PRIOR APPROVAL IS GIVEN, A REPORT
11 SHALL BE PROMPTLY FORWARDED TO THE INSURER.

12 (vi) PERMIT ITS AGENT TO SERVE ON THE INSURER'S BOARD OF
13 DIRECTORS.

14 (vii) JOINTLY EMPLOY AN INDIVIDUAL WHO IS EMPLOYED WITH THE
15 INSURER.

16 (viii) APPOINT ANOTHER MANAGING GENERAL AGENT TO PERFORM ITS
17 DUTIES UNDER THIS CHAPTER.

18 SEC. 1411. AN INSURER SHALL COMPLY WITH ALL OF THE
19 FOLLOWING:

20 (A) HAVE ON FILE AN INDEPENDENT FINANCIAL EXAMINATION, IN A
21 FORM ACCEPTABLE TO THE COMMISSIONER, OF EACH MANAGING GENERAL
22 AGENT WITH WHICH IT HAS DONE BUSINESS.

23 (B) IF A MANAGING GENERAL AGENT ESTABLISHES LOSS RESERVES
24 FOR THE INSURER, ANNUALLY OBTAIN THE OPINION OF AN ACTUARY
25 ATTESTING TO THE ADEQUACY OF LOSS RESERVES ESTABLISHED FOR LOSSES
26 INCURRED AND OUTSTANDING ON BUSINESS PRODUCED BY THE MANAGING

1 GENERAL AGENT. THIS SUBDIVISION IS IN ADDITION TO ANY OTHER
2 REQUIRED LOSS RESERVE CERTIFICATION.

3 (C) PERIODICALLY, AND NOT LESS THAN SEMIANNUALLY, CONDUCT AN
4 ON-SITE REVIEW OF THE UNDERWRITING AND CLAIMS PROCESSING OPERA-
5 TIONS OF THE MANAGING GENERAL AGENT.

6 (D) PROVIDE THAT BINDING AUTHORITY FOR ALL REINSURANCE CON-
7 TRACTS OR PARTICIPATION IN INSURANCE OR REINSURANCE SYNDICATES
8 RESTS WITH AN OFFICER OF THE INSURER WHO IS NOT AFFILIATED WITH
9 THE MANAGING GENERAL AGENT.

10 (E) WITHIN 30 DAYS OF ENTERING INTO OR TERMINATING A CON-
11 TRACT WITH A MANAGING GENERAL AGENT, PROVIDE WRITTEN NOTIFICATION
12 OF THE APPOINTMENT OR TERMINATION TO THE COMMISSIONER. NOTICES
13 OF APPOINTMENT OF A MANAGING GENERAL AGENT SHALL INCLUDE A STATE-
14 MENT OF DUTIES THAT THE APPLICANT IS A LICENSED AGENT, IS
15 EXPECTED TO PERFORM ON BEHALF OF THE INSURER, THE LINES OF INSUR-
16 ANCE FOR WHICH THE APPLICANT IS TO BE AUTHORIZED TO ACT, AND ANY
17 OTHER INFORMATION THE COMMISSIONER MAY REQUEST.

18 (F) REVIEW EACH QUARTER ITS BOOKS AND RECORDS TO DETERMINE
19 IF AN AGENT HAS BECOME A MANAGING GENERAL AGENT. IF THE INSURER
20 DETERMINES THAT AN AGENT HAS BECOME A MANAGING GENERAL AGENT, THE
21 INSURER SHALL PROMPTLY NOTIFY THE AGENT AND THE COMMISSIONER OF
22 THIS DETERMINATION AND THE INSURER AND AGENT SHALL FULLY COMPLY
23 WITH THE PROVISIONS OF THIS CHAPTER WITHIN 30 DAYS.

24 (G) EXCEPT AS TO RELATIONSHIPS GOVERNED BY CHAPTER 13, SHALL
25 NOT APPOINT TO THE BOARD OF DIRECTORS AN OFFICER, DIRECTOR,
26 EMPLOYEE, AGENT, OR CONTROLLING SHAREHOLDER OF THE INSURER'S
27 MANAGING GENERAL AGENTS.

1 SEC. 1413. THE ACTS OF THE MANAGING GENERAL AGENT ARE
2 CONSIDERED TO BE THE ACTS OF THE INSURER ON WHOSE BEHALF IT IS
3 ACTING. A MANAGING GENERAL AGENT MAY BE EXAMINED AS IF IT WERE
4 THE INSURER.

5 SEC. 1415. (1) IF THE COMMISSIONER FINDS AFTER A HEARING
6 CONDUCTED IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT OF
7 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING
8 SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, THAT ANY
9 PERSON HAS VIOLATED ANY PROVISION OF THIS CHAPTER, THE COMMIS-
10 SIONER MAY ORDER THE FOLLOWING:

11 (A) FOR EACH SEPARATE VIOLATION, A CIVIL FINE IN AN AMOUNT
12 THAT DOES NOT EXCEED \$25,000.00.

13 (B) REVOCATION OR SUSPENSION OF THE AGENT'S LICENSE.

14 (C) RESTITUTION BY THE MANAGING GENERAL AGENT TO REIMBURSE
15 THE INSURER, THE REHABILITATOR, LIQUIDATOR OF THE INSURER, OR THE
16 GUARANTY ASSOCIATIONS FOR ANY LOSSES INCURRED BY THE INSURER OR
17 THE GUARANTY ASSOCIATIONS BECAUSE OF A VIOLATION OF THIS
18 CHAPTER.

19 (2) THE DECISION, DETERMINATION, OR ORDER OF THE COMMIS-
20 SIONER PURSUANT TO SUBSECTION (1) SHALL BE SUBJECT TO JUDICIAL
21 REVIEW PURSUANT TO ACT NO. 306 OF THE PUBLIC ACTS OF 1969.

22 (3) NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE RIGHT
23 OF THE COMMISSIONER TO IMPOSE ANY OTHER PENALTIES PROVIDED FOR IN
24 THIS ACT.

25 (4) NOTHING CONTAINED IN THIS CHAPTER IS INTENDED TO OR
26 SHALL IN ANY MANNER LIMIT OR RESTRICT THE RIGHTS OF
27 POLICYHOLDERS, CLAIMANTS, AND AUDITORS.

1 SEC. 1417. THE COMMISSIONER MAY ADOPT REASONABLE RULES AND
2 REGULATIONS FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE PRO-
3 VISIONS OF THIS CHAPTER.

4 SEC. 1419. THIS CHAPTER SHALL TAKE EFFECT ON JUNE 1, 1991.
5 AN INSURER SHALL NOT USE THE SERVICES OF A MANAGING GENERAL AGENT
6 ON AND AFTER JUNE 1, 1991, UNLESS SUCH USE IS IN COMPLIANCE WITH
7 THIS CHAPTER.