

HOUSE BILL No. 5751

May 10, 1990, Introduced by Reps. Ciaramitaro and Brown and referred to the Committee on Insurance.

A bill to amend sections 2312, 7911, and 7941 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 2312 as added by Act No. 8 of the Public Acts of 1982 and sections 7911 and 7941 as amended by Act No. 502 of the Public Acts of 1982, being sections 500.2312, 500.7911, and 500.7941 of the Michigan Compiled Laws; and to add section 2400a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2312, 7911, and 7941 of Act No. 218 of
2 the Public Acts of 1956, section 2312 as added by Act No. 8 of
3 the Public Acts of 1982 and sections 7911 and 7941 as amended by
4 Act No. 502 of the Public Acts of 1982, being sections 500.2312,
5 500.7911, and 500.7941 of the Michigan Compiled Laws, are amended
6 and section 2400a is added to read as follows:

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

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

9 (a) Appointment by the board of governors of 1 or more serv-
10 icing carriers, subject to the approval of the commissioner.
11 Appointments may be rescinded for cause by either the board
12 subject to the approval of the commissioner, or by the
13 commissioner.

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

16 (i) Sufficient personnel to provide support for safety man-
17 agement services offered by the plan.

18 (ii) Providing for sufficient personnel for claims
19 adjustment.

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

26 (d) Payment of commissions to producing agents not to exceed
27 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

1 FOR RATING PLAN C THAT ARE SET THROUGH THE LOWER OF EITHER OF THE
2 FOLLOWING METHODS:

3 (A) BY USING 20% OF THE LOSS EXPERIENCE OF INSURERS FROM
4 EMPLOYERS WHILE PARTICIPANTS IN RATING PLAN C AND 80% OF THE
5 STATEWIDE LOSS EXPERIENCE OF ALL INSURERS WRITING WORKER'S COM-
6 PENSATION INSURANCE IN THIS STATE.

7 (B) THROUGH THE USE OF RATES ADEQUATE TO COVER LOSSES AND
8 WHICH SHALL NOT BE EXCESSIVE, INADEQUATE, OR UNFAIRLY
9 DISCRIMINATORY.

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

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

15 (4) Retrospective evaluation of premiums and loss and
16 expense experience of insureds within each rating plan under sub-
17 section (2)(e) shall be performed by the board of governors, in a
18 manner approved by the commissioner. If this evaluation indi-
19 cates that a return of a portion of premiums is in order, then
20 such a return shall be accomplished, subject to the approval of
21 the commissioner.

22 SEC. 2400A. THE GENERAL PROVISIONS OF THIS ACT PERTAINING
23 TO ALL INSURERS AND THE SPECIFIC PROVISIONS RELATING TO WORKER'S
24 COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE SHALL
25 APPLY TO THE STATE ACCIDENT FUND EXCEPT AS OTHERWISE SPECIFICALLY
26 PROVIDED IN THIS ACT.

1 Sec. 7911. (1) To implement this chapter, there shall be
2 maintained within this state, by all insurers authorized to
3 transact in this state insurance other than life or disability
4 insurance, except the Michigan basic property insurance associa-
5 tion created pursuant to section 2920, ~~and~~ the Brown-McNeely
6 insurance fund created in section 2502(1), ~~but including~~ AND ON
7 AND AFTER THE EFFECTIVE DATE OF THIS 1990 AMENDATORY ACT, the
8 accident fund created ~~by section 701 of~~ IN THE WORKER'S DIS-
9 ABILITY COMPENSATION ACT OF 1969, Act No. 317 of the Public Acts
10 of 1969, being ~~section 418.701~~ SECTIONS 418.101 TO 418.941 of
11 the Michigan Compiled Laws, an association of those insurers to
12 be known as the property and casualty guaranty association, here-
13 after referred to as the "association". Each insurer shall be a
14 member of the association, as a condition of its authority to
15 continue to transact insurance in this state.

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

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

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

10 (a) Worker's compensation insurance.

11 (b) Automobile insurance.

12 (c) Title insurance.

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

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

18 (2) Separate assessments shall be made for each category
19 prescribed in subsection (1). The assessment for each category
20 shall be used to pay the claim payments and costs allocated to
21 that category. The assessment for each category shall be in pro-
22 portion to the net direct premiums written, after deducting divi-
23 dends paid or credited to policyholders, by each member insurer
24 in this state for kinds of insurance included within each catego-
25 ry, as reported in the most recent annual statement available at
26 the time of assessment. The rate of assessment shall be a
27 uniform percentage of the premiums for all member insurers. The

1 assessments shall be remitted to and administered by the
2 association in accordance with the plan of operation. Each
3 member insurer assessed shall have not less than 30 days' advance
4 written notice of the date the assessment is due and payable.

5 (3) A member insurer shall not be assessed during a calendar
6 year for more than 1% of its net direct premiums written in this
7 state during the previous calendar year. The commissioner may
8 exempt a member insurer from all or part of an assessment or may
9 defer, in whole or in part, the assessment of a member insurer,
10 if the assessment would cause the member insurer's financial
11 statement to reflect amounts of capital or surplus less than the
12 minimum amounts required for a certificate of authority by any
13 jurisdiction in which the member insurer is authorized to trans-
14 act insurance. However, during the period of exemption or defer-
15 ment, dividends shall not be declared or paid to shareholders or
16 policyholders. If a member insurer is exempted from all or part
17 of an assessment, or if an assessment against a member insurer is
18 deferred in whole or in part, the amount of the exemption or
19 deferred assessment may be assessed against the other member
20 insurers in a manner consistent with the basis for assessments
21 prescribed in this section. The commissioner may impose condi-
22 tions on an exemption or deferral which he or she considers rea-
23 sonable and necessary. THE STATE ACCIDENT FUND SHALL NOT BE
24 LIABLE FOR ANY ASSESSMENT BASED ON AN INSOLVENCY OCCURRING BEFORE
25 THE DATE OF TERMINATION OF ITS MEMBERSHIP IN THE ASSOCIATION.

26 (4) The assessments shall be recognized in the rate-making
27 procedures for insurance rates in the same manner that expenses

1 and premium taxes are recognized. Unused assessments and
2 reimbursements from the receiver remaining in a category in
3 excess of covered claims and expenses allocated to that category
4 shall be refunded by the association to each member insurer who
5 paid the assessments for that category in proportion to its
6 assessments paid. An insurer which ceases to be a member of the
7 association shall not have a right to a refund of an assessment
8 previously remitted to the association. The commissioner may
9 revoke the certificate of authority to transact business in this
10 state of a member insurer which fails to pay an assessment when
11 due as provided in this act and after a demand has been made.

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

15 (a) Senate Bill No. 145.

16 (b) Senate Bill No. 885.