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STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992

Introduced by Reps. Hoekman and Brown

ENROLLED HOUSE BILL No. 5213

AN ACT to amend sections 411, 830, and 901 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; 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; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act," section 411 as amended by Act No. 321 of the Public Acts of 1986, section 830 as amended by Act No. 261 of the Public Acts of 1987, and section 901 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.411, 500.830, and 500.901 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 411, 830, and 901 of Act No. 218 of the Public Acts of 1956, section 411 as amended by Act No. 321 of the Public Acts of 1986, section 830 as amended by Act No. 261 of the Public Acts of 1987, and section 901 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.411, 500.830, and 500.901 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 411. (1) To qualify for authority to transact insurance in this state a domestic insurer shall maintain a deposit with the state treasurer of $300,000.00. If a domestic insurer doing business on January 3, 1973 has assets of less than $750,000.00, the commissioner may approve a smaller deposit appropriate to the size of the insurer and the character of its business but not less than $50,000.00. The deposit shall consist of cash or securities at market value, exclusive of interest, of the kinds described in section 912. The deposit shall be held by the state treasurer for the benefit of the policyholders of the insurer and shall be administered as directed in section 464. A policyholder of an insurer includes any person having a legal or equitable right arising out of an insurance or annuity contract issued by the insurer.

(2) To qualify for authority to transact insurance in this state a foreign insurer shall maintain a deposit of $300,000.00 with the state treasurer or with the treasurer or other state officer of the state in which the insurer is incorporated of the same kinds and for the same purpose as required in subsection (1) for domestic insurers.

(3) To qualify for authority to transact insurance in this state an alien insurer entering through this state to transact insurance in the United States shall maintain a deposit of $300,000.00 with the state treasurer and an alien insurer entering through a state other than this state to transact insurance in the United States shall maintain a deposit of $300,000.00 with the state treasurer or with the treasurer or other state officer of the state through which the insurer entered of the same kinds and for the same purpose as required in subsection (1) for domestic insurers.

(4) To qualify for authority to transact insurance in this state an alien insurer shall maintain deposits, including those required in subsection (3), with the state treasurer, with officers of states other than this state or with trustees resident in the United States or with any combination of such persons, under trust indentures approved by the commissioner. The insurer shall cause the persons holding the deposits to make to the insurance regulatory authority of the state through which the insurer entered to transact insurance in the United States, a report, under oath on or before March 1 of each year, of the insurer's deposits as of December 31 of the preceding year. The deposits shall be in cash or in securities of the kinds described in sections 910 to 947, shall not include any securities issued by the insurer or by a person affiliated with the insurer unless the person is at least 51% controlled and is an authorized subsidiary organized and formed within the boundaries of the United States or Canada, and shall satisfy the following conditions:

(a) The deposits shall be not less than the amount of liabilities with respect to the insurer's business in the United States.

(b) The deposits, if the insurer is a life insurer, shall be held for the benefit of policyholders who were residents of the United States on the date of issuance of the policy and for the benefit of creditors of the insurer within the United States.

(c) The deposits, if the insurer is not a life insurer, shall be held for the benefit of policyholders and creditors within the United States.

(d) The value of the securities deposited by an alien insurer that is an insurer authorized to transact the business of life insurance issued by an affiliate shall not exceed the following:

(*i*) Not more than 5% of the total assets of the insurer for securities of each affiliate that holds a certificate of authority to transact the business of life insurance, subject to an aggregate limit of not more than 35% of trusteed assets for investments in all affiliates described in this subparagraph.

(*ii*) Not more than 5% of the total assets of the insurer for securities of each affiliate that does not hold a certificate of authority to transact the business of life insurance, subject to an aggregate limit of 15% of trusteed assets for investments in all affiliates described in this subparagraph.

(e) The value of the securities deposited by an alien insurer that is not an insurer authorized to transact the business of life insurance, issued by an affiliate shall be limited to 2% of trusteed assets except that, with the prior approval of the commissioner, the maximum may be 4% of trusteed assets.

(f) The value of the securities deposited under this subsection shall be determined in accordance with section 901.

Sec. 830. (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, except that for an alien insurer, the valuation shall be limited to its

United States' business, and may certify the amount of the reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net level premium method or other, used in the calculation of the reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction, if the valuation complies with the minimum standard provided in this section, and if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner, which certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(2) The insurer shall pay to the commissioner, as compensation for the valuation, 1 cent for each thousand dollars insured, under policies insuring residents of these United States, or issued by an insurer organized under the laws of this state. For annual valuations on or after January 1, 1988, the valuation fee imposed under this section shall not apply to contracts of reinsurance. A valuation fee under this subsection shall not apply to an annual valuation of a domestic insurer on or after January 1, 1988.

(3) An insurer that at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this section.

(4) Every foreign cooperative or assessment insurer shall have its business valued and shall maintain reserves in accordance with the standards currently required of domestic insurers transacting similar insurance by this act.

Sec. 901. (1) Each insurer authorized to transact the business of insurance in this state, and each person approved for placement of business by a surplus lines agent pursuant to chapter 19, may loan or invest its funds in any investment, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure, and deal with respect to its investments, property, and money to the same extent as any other person or corporation under the laws of this state or of the United States if the insurer has assets in cash, computers, or as defined in this chapter in a total amount at least equal to the sum of its liabilities including its reserves as required by this act, plus an amount for contingencies as defined in subsection (7), plus an amount equal to the minimum capital or minimum surplus required to be maintained by sections 408 and 410. However, the value of all computers shall not exceed 2% of the assets required by this subsection and the value of each computer shall not exceed the original cost of the computer amortized over a period not to exceed 10 years. For purposes of this section, "computer" means an electronic data processing system, composed of 1 or more components, that utilizes storage and processing mechanization and has a direct automatic means of input and output, including, but not limited to, central processing units, data input/output channels, main storage or memory, and peripheral devices for systems control, data input, output, or temporary or permanent storage of information, and associated reusable media required by these devices and operating systems software. Title insurers may include their net investment in their title plant. Assets described in sections 946 and 947 shall not be used to satisfy more than 20% of this requirement. The sum of the liabilities and reserves may be reduced by 1 or more of the following:

(a) A reinsurance balance recoverable or other credit due from a reinsurer that complies with rule 402 of the general rules of the insurance bureau, being R 500.402 of the Michigan administrative code, or other applicable rule promulgated by the commissioner, to the extent that the balance recoverable or other credit due may be used to offset a liability as authorized in an insurer's annual statement concerning its affairs filed pursuant to section 438.

(b) Policy loans secured by policies included in the liabilities and reserves but not in excess of the cash surrender value of the policies.

(c) Premium notes secured by letters of credit, security trust funds, or unearned premium reserves.

(d) The net amount of life insurance premiums and annuity considerations deferred and uncollected. Reduction under this subdivision shall not be allowed for credit life and credit accident and health premiums deferred and uncollected, whether individual or group, except as allowed pursuant to subdivision (e).

(e) Agents' balances or uncollected premiums owed directly to the insurer or owed indirectly to the insurer through an affiliated or controlled person, including credit insurance premiums, whether individual or group, other than amounts by which liabilities may be reduced in accordance with subdivision (d), from an agent, agency, policyholder, or other person, subject to the following conditions:

(*i*) This reduction shall only be allowed for agents' balances or uncollected premiums not due from an agent, agency, policyholder, or other person for more than 3 months.

(*ii*) This reduction shall only be allowed as to the amount due from each agent, agency, policyholder, or other person to the extent that the balance or uncollected premium does not exceed 10% of the sum of the insurer's liabilities and minimum capital or minimum surplus.

(*iii*) The total amount by which the receivable from all agents, agencies, single policyholders, or other persons, net of ceded balances payable, exceeds 40% of the insurer's surplus as regards policyholders shall not be used to reduce liabilities under this subdivision. Premiums, agents' balances, and installments booked but deferred and not yet due are excluded from the 40% limitation.

(f) Amounts receivable from a person to the extent the amounts offset liabilities or amounts payable to that person. Receivables and payables with respect to reinsurance may be allowed so long as the reinsurance contract has a right of offset provision. A reduction under this subdivision shall not be allowed for agents' balances or uncollected premiums as defined by subdivision (e).

(2) Assets, liabilities, and reserves under subsection (1) shall exclude assets, liabilities, and reserves included in separate accounts established in accordance with section 925. The value of income due and accrued in respect to these assets may be included in the total amount. The assets shall not be valued at more than the actual value as ascertained in a manner approved by the commissioner, except those assets described in sections 912, 914, 918, 934, 938, and 942 that have a fixed term and rate, if amply secured and not in default as to principal and interest may be valued as follows: if purchased at par, the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made. The purchase price shall not be taken at a higher figure than the actual market value at the time of purchase.

(3) The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to permit other assets not specifically described in this section to be used as qualified assets for purposes of subsection (1), as long as the assets are financially equivalent to those assets described in sections 910 to 947.

(4) The assets required by subsection (1) shall not include more than 5% of the assets invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with 1 person or invested in 1 parcel of real estate. For purposes of this section, assets invested in separate legal entities shall be considered as investments with 1 person if the underlying security consists of residential mortgage pools and the collateralized mortgage obligations are rated investment grade by a securities rating organization approved by the commissioner. This restriction does not apply to mortgage-related securities issued by the federal home loan mortgage corporation or the federal national mortgage association. This restriction does not apply to funds deposited with or cash in banks, savings and loan institutions, or credit unions, or obligations of the United States or any state, or agencies or instrumentalities of the United States or any state, if the principal and interest are fully guaranteed by the United States or any state. This restriction does not apply to cash or cash equivalent, including certificates of deposit in chartered banks. For an alien insurer that is an insurer authorized to transact the business of life insurance, for purposes of this subsection the term "assets" means the total assets of the insurer, excluding assets included in separate accounts, as reported in the total business annual statement filed by the insurer with its domiciliary authority.

(5) The assets referred to in subsection (1) may include assets invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with a person that is, directly or indirectly, owned or controlled by the insurer or that, directly or indirectly, owns, controls, or is affiliated with the insurer. Two persons shall be considered to be affiliated if they are both owned or controlled, directly or indirectly, by the same person or by the same group of persons. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies, representing 10% or more of the voting securities of any other person, or in the case of a mutual insurer, owns 10% or more of the mutual insurer's policyholders' surplus through surplus notes, guarantee fund certificates, or other evidences of indebtedness issued by the mutual insurer.

(6) The value of controlled, owned, or affiliated entities, for purposes of subsection (1), shall be calculated in accordance with the following conditions and limitations:

(a) If the owned, affiliated, or controlled entity is an insurer, the entity will be permitted as an asset only if the entity is licensed to transact the business of insurance in this state or, if not licensed to transact the business of insurance in this state, if it possesses the qualifications to become licensed in this state. The value of an affiliated or controlled insurance subsidiary shall be the value of assets in excess of liabilities as determined pursuant to this section prorated to reflect the extent of the insurer's ownership or equity participation with the entity.

(b) If the owned, affiliated, or controlled entity is not an insurer, the value of the entity shall be assets in excess of all liabilities to the extent that the assets comply with sections 910 to 947. The value shall be prorated to reflect the insurer's ownership or equity participation in the entity. However, if an insurer can demonstrate

to the satisfaction of the commissioner that other assets of this owned, affiliated, or controlled entity are at least as secure as assets that comply with sections 910 to 947, the assets may be included in calculating the value of the entity.

(7) The amount for contingencies required by subsection (1) shall be calculated in accordance with the following:

(a) The amount for contingencies required by subsection (1) for insurers, other than an insurer authorized to transact life insurance and an insurer transacting only title insurance, shall equal the net premiums written in excess of 3.5 times the insurer's surplus as regards policyholders reported by the insurer in its current statement of financial condition filed with the commissioner.

(b) For purposes of this section, net premiums written shall equal gross premiums less return premiums, including policy and membership fees written during the year, plus all premiums assumed through reinsurance, less premiums ceded through reinsurance.

(c) The 3.5 to 1 limitation, for those insurers required to file financial statements other than on an annual basis, shall be calculated by annualizing the net premiums as reported for interim statements. An even premium volume shall be assumed unless the insurer demonstrates to the satisfaction of the commissioner that another method will more accurately reflect the insurer's projected annual premium volume. However, an alternative projection method that utilizes a projection factor for surplus as regards policyholders is not acceptable.

(d) The amount for contingencies referred to in this section for insurers authorized to transact life insurance and insurers transacting only title insurance shall equal zero.

(e) Two or more insurers authorized to transact insurance in this state may compute the amount for contingencies referred to in this section on a consolidated basis and prorate the total amount for contingencies to each insurer in proportion to the premiums earned by each insurer, if either of the following conditions exists:

(*i*) The insurers are affiliated through ownership, where each insurer is wholly owned by or wholly owns 1 or more of the other insurers in the group.

(*ii*) The insurers pool substantially all their business with each other and the commissioner certifies that the computation on a consolidated basis will more accurately reflect the financial condition and affairs of the insurers.

(f) An insurer may write premiums in excess of the ratio prescribed in subdivision (c) without incurring a contingency reserve penalty if the insurer elects to deposit funds or securities of the kind described in section 912, registered in the name of the state treasurer of Michigan, designated as exclusively held and deposited for the sole benefit of Michigan policyholders, claimants, and creditors pursuant to section 8141a, in an amount, at market value, equal to the greater of $1,000,000.00 or the aggregate sum of 100% of Michigan direct unpaid losses and unpaid loss adjustment expense plus 100% of Michigan direct unearned premiums. Direct unpaid losses and unpaid loss adjustment expenses shall include a provision for incurred but not reported losses and associated loss adjustment expense. The deposit shall be a special deposit and shall be subject to special deposit claims for the benefit of Michigan policyholders and claimants pursuant to section 8141a. The deposit of funds required by this subdivision shall be increased by adjustment each quarter. A decrease to the deposited fund may be made annually only upon a satisfactory showing by the insurer to the commissioner that a decrease in the deposit is justified. The commissioner may require the special deposits set forth in this subsection as a condition for any insurer to transact insurance in this state if the commissioner finds that a special deposit is necessary for the protection of Michigan policyholders and claimants.

(8) Compliance with subsection (1) is the obligation of each insurer, fund, or fraternal benefit society authorized to transact the business of insurance in this state. Failure to comply shall limit the insurer, fund, or fraternal benefit society under the remainder of this act. If, at any time following compliance with the requirements of this section, an insurer, fund, or fraternal benefit society fails to maintain compliance, the commissioner shall notify the insurer, fund, or fraternal benefit society that it has failed to maintain compliance with this section. Within 30 business days after notification by the commissioner of noncompliance with the provisions of this section, an insurer shall file a plan to restore compliance with this section. Failure of the insurer to file a plan shall create a presumption that the insurer does not meet the requirements of this act concerning surplus and assets. The commissioner, upon written request by the insurer, may grant a period of time within which to restore compliance. The period of time may be granted only if the commissioner is satisfied the insurer is safe, reliable, and entitled to public confidence; is satisfied the insurer would suffer a material financial loss from an immediate forced conversion of its assets; and approves the plan filed by the insurer for restoring compliance within the time granted. If the plan is not approved by the commissioner, or if the plan is approved, and, at the end of 1 year the insurer still does not comply with the requirements of this section, the commissioner may grant additional time to comply, or the commissioner may suspend, revoke, or limit the certificate of authority of the insurer pursuant to section 436.