

SENATE BILL No. 648

December 5, 1991, Introduced by Senator FAXON and referred to the Committee on Commerce.

A bill to amend the title and section 124 of Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," section 124 as amended by Act No. 1 of the Public Acts of 1990, being section 500.124 of the Michigan Compiled Laws; and to add chapter 45.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 124 of Act No. 218 of the
2 Public Acts of 1956, section 124 as amended by Act No. 1 of the
3 Public Acts of 1990, being section 500.124 of the Michigan
4 Compiled Laws, are amended and chapter 45 is added to read as
5 follows:

1

TITLE

2 An act to revise, consolidate, and classify the laws relat-
3 ing to the insurance and surety business; to regulate the incor-
4 poration or formation of domestic insurance and surety companies
5 and associations and the admission of foreign and alien companies
6 and associations; to provide their rights, powers, and immunities
7 and to prescribe the conditions on which companies and associa-
8 tions organized, existing, or authorized under this act may exer-
9 cise their powers; to provide the rights, powers, and immunities
10 and to prescribe the conditions on which other persons, firms,
11 corporations, associations, risk retention groups, and purchasing
12 groups engaged in an insurance or surety business may exercise
13 their powers; to provide for the imposition of a privilege fee on
14 domestic insurance companies and associations and the state acci-
15 dent fund; to provide for the imposition of a tax on the business
16 of foreign and alien companies and associations; to provide for
17 the imposition of a tax on risk retention groups and purchasing
18 groups; to provide for the imposition of a tax on the business of
19 surplus line agents; to modify tort liability arising out of cer-
20 tain accidents; to provide for limited actions with respect to
21 that modified tort liability and to prescribe certain procedures
22 for maintaining those actions; to require security for losses
23 arising out of certain accidents; to provide for the continued
24 availability and affordability of automobile insurance and home-
25 owners insurance in this state, and to facilitate the purchase of
26 that insurance by all residents of this state at fair and
27 reasonable rates; to provide for certain reporting with respect

1 to insurance and with respect to certain claims against uninsured
2 or self-insured persons; to prescribe duties for certain state
3 departments and officers with respect to that reporting; to pro-
4 vide for certain assessments; to establish and continue certain
5 state insurance funds; to modify and clarify the status, rights,
6 powers, duties, and operations of the nonprofit malpractice
7 insurance fund; TO PROVIDE FOR A PHYSICIAN'S LIABILITY
8 ASSOCIATION; to provide for the departmental supervision and reg-
9 ulation of the insurance and surety business within this state;
10 to provide for the conservation, rehabilitation, or liquidation
11 of unsound or insolvent insurers; to provide for the protection
12 of policyholders, claimants, and creditors of unsound or insol-
13 vent insurers; to provide for associations of insurers to protect
14 policyholders and claimants in the event of insurer insolvencies;
15 to prescribe educational requirements for insurance agents and
16 solicitors; to provide for the regulation of multiple employer
17 welfare arrangements; to create an automobile theft prevention
18 authority to reduce the number of automobile thefts in this
19 state; to prescribe the powers and duties of the automobile theft
20 prevention authority; to provide certain powers and duties upon
21 certain officials, departments, and authorities of this state; to
22 repeal certain acts and parts of acts; to repeal certain acts and
23 parts of acts on specific dates; to repeal certain parts of this
24 act on specific dates; and to provide penalties for the violation
25 of this act.

26 Sec. 124. This ~~code shall~~ ACT DOES not apply to:

1 (a) Domestic farmers' and other special risk mutual property
2 insurers, as identified in chapter 68, except as stated in
3 chapter 68.

4 (b) Fraternal benefit societies, except as stated in chapter
5 81a.

6 (c) A multiple employer welfare arrangement regulated under
7 chapter 70, except as provided in chapter 70.

8 (D) THE PHYSICIAN'S LIABILITY ASSOCIATION, EXCEPT AS PRO-
9 VIDED IN CHAPTER 45.

10 CHAPTER 45

11 PHYSICIAN'S LIABILITY ASSOCIATION

12 SEC. 4501. AS USED IN THIS CHAPTER:

13 (A) "ASSOCIATION" MEANS THE PHYSICIAN'S LIABILITY
14 ASSOCIATION.

15 (B) "BOARD" MEANS THE ASSOCIATION'S BOARD OF DIRECTORS.

16 (C) "PHYSICIAN" MEANS THAT TERM AS DEFINED IN SECTION 17001
17 OR 17501 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC
18 ACTS OF 1978, BEING SECTIONS 333.17001 AND 333.17501 OF THE
19 MICHIGAN COMPILED LAWS.

20 SEC. 4504. (1) AN UNINCORPORATED, NONPROFIT ASSOCIATION TO
21 BE KNOWN AS THE PHYSICIAN'S LIABILITY ASSOCIATION IS CREATED.
22 EACH PHYSICIAN IN THIS STATE, AS A CONDITION OF LICENSURE, SHALL
23 BE A MEMBER OF THE ASSOCIATION AND SHALL BE BOUND BY THE
24 ASSOCIATION'S PLAN OF OPERATION. THE ASSOCIATION SHALL NOT BE
25 SUBJECT TO THE OTHER CHAPTERS OF THIS ACT, BUT SHALL BE SUBJECT
26 TO THE OTHER LAWS OF THIS STATE TO THE EXTENT THAT THE

1 ASSOCIATION WOULD BE WERE IT AN INSURER ORGANIZED AND OPERATING
2 UNDER CHAPTER 50.

3 (2) THE ASSOCIATION SHALL PROVIDE AND EACH MEMBER SHALL
4 ACCEPT INDEMNIFICATION FOR 100% OF THE AMOUNT OF ULTIMATE LOSS
5 SUSTAINED FOR PROFESSION LIABILITY OR MALPRACTICE CLAIMS IN
6 EXCESS OF \$100,000.00 IN EACH LOSS OCCURRENCE. AS USED IN THIS
7 SECTION, "ULTIMATE LOSS" MEANS THE ACTUAL LOSS AMOUNTS AS A
8 RESULT OF AN INJURY OR DAMAGE FOR WHICH A MEMBER IS LEGALLY OBLI-
9 GATED TO PAY. AN ULTIMATE LOSS IS INCURRED BY THE ASSOCIATION ON
10 THE DATE THAT THE LOSS OCCURS.

11 (3) A PHYSICIAN MAY WITHDRAW FROM THE ASSOCIATION ONLY UPON
12 CEASING TO BE A LICENSED PHYSICIAN IN THIS STATE.

13 (4) A PHYSICIAN WHOSE MEMBERSHIP IN THE ASSOCIATION HAS BEEN
14 TERMINATED BY WITHDRAWAL SHALL CONTINUE TO BE BOUND BY THE PLAN
15 OF OPERATION, AND UPON WITHDRAWAL, ALL UNPAID PREMIUMS THAT HAVE
16 BEEN CHARGED TO THE WITHDRAWING MEMBER SHALL BE PAYABLE AS OF THE
17 EFFECTIVE DATE OF THE WITHDRAWAL.

18 (5) AN UNSATISFIED NET LIABILITY TO THE ASSOCIATION OF AN
19 INSOLVENT MEMBER SHALL BE ASSUMED BY AND APPORTIONED AMONG THE
20 ASSOCIATION'S REMAINING MEMBERS AS PROVIDED IN THE PLAN OF
21 OPERATION. THE ASSOCIATION SHALL HAVE ALL RIGHTS ALLOWED BY LAW
22 ON BEHALF OF THE REMAINING MEMBERS AGAINST THE ESTATE OR FUNDS OF
23 THE INSOLVENT MEMBER FOR SUMS DUE THE ASSOCIATION.

24 SEC. 4508. THE ASSOCIATION SHALL DO ALL OF THE FOLLOWING ON
25 BEHALF OF THE ASSOCIATION'S MEMBERS:

26 (A) ASSUME 100% OF ALL LIABILITY AS PROVIDED IN SECTION
27 4504.

1 (B) ESTABLISH PROCEDURES BY WHICH MEMBERS SHALL PROMPTLY
2 REPORT TO THE ASSOCIATION EACH INCIDENT THAT, ON THE BASIS OF THE
3 INJURIES OR DAMAGES SUSTAINED, MAY REASONABLY BE ANTICIPATED TO
4 INVOLVE THE ASSOCIATION IF THE MEMBER IS ULTIMATELY HELD LEGALLY
5 LIABLE FOR THE INJURIES OR DAMAGES. THE MEMBER SHALL ALSO ADVISE
6 THE ASSOCIATION OF SUBSEQUENT DEVELOPMENTS LIKELY TO MATERIALLY
7 AFFECT THE ASSOCIATION'S INTEREST IN THE INCIDENT.

8 (C) MAINTAIN RELEVANT LOSS AND EXPENSE DATA RELATIVE TO ALL
9 ASSOCIATION LIABILITIES AND REQUIRE EACH MEMBER TO FURNISH STA-
10 TISTICS, IN CONNECTION WITH ASSOCIATION LIABILITIES, AT THE TIMES
11 AND IN THE FORM AND DETAIL AS MAY BE REQUIRED BY THE PLAN OF
12 OPERATION.

13 (D) IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION, CAL-
14 CULATE AND CHARGE TO ASSOCIATION MEMBERS A TOTAL PREMIUM SUFFI-
15 CIENT TO COVER THE EXPECTED LOSSES AND EXPENSES OF THE ASSOCIA-
16 TION THAT THE ASSOCIATION WILL LIKELY INCUR DURING THE PERIOD FOR
17 WHICH THE PREMIUM IS APPLICABLE. THE PREMIUM SHALL INCLUDE AN
18 AMOUNT TO COVER INCURRED BUT NOT REPORTED LOSSES FOR THE PERIOD
19 AND MAY BE ADJUSTED FOR ANY EXCESS OR DEFICIENT PREMIUMS FROM
20 PREVIOUS PERIODS. EXCESSES OR DEFICIENCIES FROM PREVIOUS PERIODS
21 MAY BE FULLY ADJUSTED IN A SINGLE PERIOD OR MAY BE ADJUSTED OVER
22 SEVERAL PERIODS IN A MANNER PROVIDED FOR IN THE PLAN OF
23 OPERATION.

24 (E) REQUIRE AND ACCEPT THE PAYMENT OF PREMIUMS FROM ASSOCIA-
25 TION MEMBERS AS PROVIDED FOR IN THE PLAN OF OPERATION. THE ASSO-
26 CIATION SHALL DO EITHER OF THE FOLLOWING:

1 (i) REQUIRE PAYMENT OF THE PREMIUM IN FULL WITHIN 45 DAYS
2 AFTER THE PREMIUM CHARGE.

3 (ii) REQUIRE PAYMENT OF THE PREMIUMS TO BE MADE PERIODICALLY
4 TO COVER THE ASSOCIATION'S ACTUAL CASH OBLIGATIONS.

5 (F) RECEIVE AND DISTRIBUTE ALL SUMS REQUIRED BY THE
6 ASSOCIATION'S OPERATION.

7 (G) ESTABLISH PROCEDURES FOR REVIEWING INCIDENT REPORTING
8 PROCEDURES AND PRACTICES OF ASSOCIATION MEMBERS. IF THE INCIDENT
9 REPORTING PROCEDURES OR PRACTICES OF A MEMBER ARE CONSIDERED
10 INADEQUATE TO PROPERLY SERVICE THE ASSOCIATION'S LIABILITIES, THE
11 ASSOCIATION MAY UNDERTAKE OR MAY CONTRACT WITH ANOTHER PERSON TO
12 ADJUST OR ASSIST IN THE ADJUSTMENT OF INCIDENT REPORTS FOR THE
13 MEMBER ON INCIDENTS THAT CREATE A POTENTIAL LIABILITY TO THE
14 ASSOCIATION AND MAY CHARGE THE COST OF THE ADJUSTMENT TO THE
15 MEMBER.

16 SEC. 4510. THE ASSOCIATION MAY DO ALL OF THE FOLLOWING:

17 (A) SUE AND BE SUED IN THE NAME OF THE ASSOCIATION. A JUDG-
18 MENT AGAINST THE ASSOCIATION SHALL NOT CREATE ANY DIRECT LIABIL-
19 ITY AGAINST THE INDIVIDUAL ASSOCIATION MEMBERS. THE ASSOCIATION
20 MAY PROVIDE FOR THE INDEMNIFICATION OF ITS MEMBERS, MEMBERS OF
21 THE ASSOCIATION'S BOARD OF DIRECTORS, AND OFFICERS, EMPLOYEES,
22 AND OTHER PERSONS LAWFULLY ACTING ON THE ASSOCIATION'S BEHALF.

23 (B) REINSURE ALL OR ANY PORTION OF ITS POTENTIAL LIABILITY
24 WITH REINSURERS LICENSED TO TRANSACT INSURANCE IN THIS STATE OR
25 APPROVED BY THE COMMISSIONER.

1 (C) PROVIDE FOR APPROPRIATE HOUSING, EQUIPMENT, AND
2 PERSONNEL AS MAY BE NECESSARY TO ASSURE THE ASSOCIATION'S
3 EFFICIENT OPERATION.

4 (D) PURSUANT TO THE PLAN OF OPERATION, ADOPT REASONABLE
5 RULES FOR THE ASSOCIATION'S ADMINISTRATION, ENFORCE THOSE RULES,
6 AND DELEGATE AUTHORITY, AS THE BOARD CONSIDERS NECESSARY TO
7 ASSURE THE PROPER ADMINISTRATION AND OPERATION OF THE ASSOCIATION
8 CONSISTENT WITH THE PLAN OF OPERATION.

9 (E) CONTRACT FOR GOODS AND SERVICES, INCLUDING INDEPENDENT
10 CLAIMS MANAGEMENT, ACTUARIAL, INVESTMENT, AND LEGAL SERVICES,
11 FROM OTHERS WITHIN OR WITHOUT THIS STATE TO ASSURE THE
12 ASSOCIATION'S EFFICIENT OPERATION.

13 (F) HEAR AND DETERMINE COMPLAINTS CONCERNING THE
14 ASSOCIATION'S OPERATION.

15 (G) PERFORM OTHER ACTS NOT SPECIFICALLY ENUMERATED IN THIS
16 SECTION THAT ARE NECESSARY OR PROPER TO ACCOMPLISH THE
17 ASSOCIATION'S PURPOSES AND THAT ARE NOT INCONSISTENT WITH THIS
18 ACT OR THE PLAN OF OPERATION.

19 SEC. 4515. (1) A BOARD OF DIRECTORS IS CREATED THAT SHALL
20 BE RESPONSIBLE FOR THE ASSOCIATION'S OPERATION CONSISTENT WITH
21 THE PLAN OF OPERATION AND THIS CHAPTER.

22 (2) NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS
23 CHAPTER, THE COMMISSIONER SHALL CONVENE AN ORGANIZATIONAL MEETING
24 OF THE BOARD. THE INITIAL BOARD SHALL BE COMPOSED OF 5 MEMBERS
25 OF THE ASSOCIATION APPOINTED BY THE COMMISSIONER TO SERVE AS
26 DIRECTORS, AND THE COMMISSIONER OR A DESIGNATED REPRESENTATIVE OF
27 THE COMMISSIONER SERVING AS AN EX OFFICIO MEMBER OF THE BOARD

1 WITHOUT VOTE. EACH DIRECTOR SHALL BE ENTITLED TO 1 VOTE. THE
2 INITIAL TERM OF OFFICE OF A DIRECTOR SHALL BE 2 YEARS.

3 (3) AS PART OF THE PLAN OF OPERATION, THE BOARD SHALL ADOPT
4 RULES PROVIDING FOR THE COMPOSITION AND TERM OF SUCCESSOR BOARDS
5 TO THE INITIAL BOARD, CONSISTENT WITH THE MEMBERSHIP COMPOSITION
6 REQUIREMENTS IN SUBSECTION (2). TERMS OF THE DIRECTORS OF SUC-
7 CESSOR BOARDS SHALL BE STAGGERED SO THAT THE TERMS OF ALL THE
8 DIRECTORS DO NOT EXPIRE AT THE SAME TIME AND SO THAT A DIRECTOR
9 DOES NOT SERVE A TERM OF MORE THAN 4 YEARS.

10 (4) EACH DIRECTOR OF SUCCESSOR BOARDS SHALL BE APPOINTED BY
11 THE COMMISSIONER AND SHALL SERVE UNTIL THAT DIRECTOR'S SUCCESSOR
12 IS SELECTED AND QUALIFIED. THE CHAIRPERSON OF THE BOARD SHALL BE
13 ELECTED BY THE BOARD. A VACANCY ON THE BOARD SHALL BE FILLED BY
14 THE COMMISSIONER CONSISTENT WITH THE PLAN OF OPERATION.

15 (5) AFTER THE BOARD IS APPOINTED, THE BOARD SHALL MEET AS
16 OFTEN AS THE CHAIRPERSON, THE COMMISSIONER, OR THE PLAN OF OPERA-
17 TION SHALL REQUIRE, OR AT THE REQUEST OF ANY 3 DIRECTORS OF THE
18 BOARD. THE CHAIRPERSON SHALL RETAIN THE RIGHT TO VOTE ON ALL
19 ISSUES. FOUR DIRECTORS OF THE BOARD SHALL CONSTITUTE A QUORUM.

20 (6) AN ANNUAL REPORT OF THE ASSOCIATION'S OPERATIONS IN A
21 FORM AND DETAIL AS MAY BE DETERMINED BY THE BOARD SHALL BE FUR-
22 NISHED TO EACH MEMBER.

23 SEC. 4520. (1) NOT MORE THAN 60 DAYS AFTER THE INITIAL
24 ORGANIZATIONAL MEETING OF THE BOARD, THE BOARD SHALL SUBMIT TO
25 THE COMMISSIONER FOR APPROVAL A PROPOSED PLAN OF OPERATION CON-
26 SISTENT WITH THE OBJECTIVES AND PROVISIONS OF THIS CHAPTER, WHICH
27 SHALL PROVIDE FOR THE ECONOMICAL, FAIR, AND NONDISCRIMINATORY

1 ADMINISTRATION OF THE ASSOCIATION AND FOR THE PROMPT AND
2 EFFICIENT PROVISION OF INDEMNITY. IF A PLAN IS NOT SUBMITTED
3 WITHIN THIS 60-DAY PERIOD, THEN THE COMMISSIONER, AFTER CONSULTA-
4 TION WITH THE BOARD, SHALL FORMULATE AND PLACE INTO EFFECT A PLAN
5 CONSISTENT WITH THIS CHAPTER.

6 (2) THE PLAN OF OPERATION, UNLESS APPROVED SOONER IN WRIT-
7 ING, SHALL BE CONSIDERED TO MEET THE REQUIREMENTS OF THIS ACT IF
8 IT IS NOT DISAPPROVED BY THE COMMISSIONER'S WRITTEN ORDER WITHIN
9 30 DAYS AFTER THE DATE OF ITS SUBMISSION. BEFORE DISAPPROVAL OF
10 ALL OR ANY PART OF THE PROPOSED PLAN OF OPERATION, THE COMMIS-
11 SIONER SHALL NOTIFY THE BOARD IN WHAT RESPECT THE PLAN OF OPERA-
12 TION FAILS TO MEET THE REQUIREMENTS AND OBJECTIVES OF THIS
13 CHAPTER. IF THE BOARD FAILS TO SUBMIT A REVISED PLAN OF OPERA-
14 TION THAT MEETS THE REQUIREMENTS AND OBJECTIVES OF THIS ACT
15 WITHIN THE 30-DAY PERIOD, THE COMMISSIONER SHALL ENTER AN ORDER
16 ACCORDINGLY AND SHALL IMMEDIATELY FORMULATE AND PLACE INTO EFFECT
17 A PLAN CONSISTENT WITH THE REQUIREMENTS AND OBJECTIVES OF THIS
18 CHAPTER.

19 (3) THE PROPOSED PLAN OF OPERATION OR AMENDMENTS TO THE PLAN
20 OF OPERATION SHALL BE SUBJECT TO MAJORITY APPROVAL BY THE BOARD,
21 RATIFIED BY A MAJORITY OF THE MEMBERSHIP HAVING A VOTE, WITH
22 VOTING RIGHTS BEING APPORTIONED ACCORDING TO THE PREMIUMS CHARGED
23 IN SECTION 4525(D) AND SHALL BE SUBJECT TO THE COMMISSIONER'S
24 APPROVAL.

25 SEC. 4522. UPON THE COMMISSIONER'S APPROVAL AND RATIFICA-
26 TION BY THE MEMBERS OF THE PLAN SUBMITTED, OR UPON THE
27 PROMULGATION OF A PLAN BY THE COMMISSIONER, EACH PHYSICIAN SHALL

1 BE BOUND BY AND SHALL FORMALLY SUBSCRIBE TO AND PARTICIPATE IN
2 THE PLAN APPROVED AS A CONDITION OF MAINTAINING HIS OR HER
3 LICENSE.

4 SEC. 4525. THE PLAN OF OPERATION SHALL PROVIDE FOR ALL OF
5 THE FOLLOWING:

6 (A) THE ESTABLISHMENT OF NECESSARY FACILITIES.

7 (B) THE MANAGEMENT AND OPERATION OF THE ASSOCIATION.

8 (C) A PRELIMINARY PREMIUM, PAYABLE BY EACH MEMBER IN PROPOR-
9 TION TO ITS TOTAL FIRST-YEAR PREMIUM, FOR INITIAL EXPENSES NECES-
10 SARY TO COMMENCE OPERATION OF THE ASSOCIATION.

11 (D) PROCEDURES AND CRITERIA TO BE UTILIZED IN CALCULATING
12 AND CHARGING PREMIUMS OF EACH MEMBER, INCLUDING ADJUSTMENTS FROM
13 EXCESS OR DEFICIENT PREMIUMS FROM PRIOR PERIODS.

14 (E) PROCEDURES GOVERNING THE ACTUAL PAYMENT OF PREMIUMS TO
15 THE ASSOCIATION.

16 (F) REIMBURSEMENT OF EACH MEMBER OF THE BOARD BY THE ASSOCI-
17 ATION FOR ACTUAL AND NECESSARY EXPENSES INCURRED ON ASSOCIATION
18 BUSINESS.

19 (G) THE ASSOCIATION'S INVESTMENT POLICY.

20 (H) ANY OTHER MATTERS REQUIRED BY OR NECESSARY TO EFFEC-
21 TIVELY IMPLEMENT THIS CHAPTER.

22 SEC. 4530. (1) THE ASSOCIATION IS SUBJECT TO ALL THE
23 REPORTING, LOSS RESERVE, AND INVESTMENT REQUIREMENTS OF THE COM-
24 MISSIONER TO THE SAME EXTENT AS AN INSURER.

25 (2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE
26 COMMISSIONER MAY VISIT THE ASSOCIATION AT ANY TIME AND EXAMINE
27 ANY AND ALL THE ASSOCIATION'S AFFAIRS.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. 647
3 of the 86th Legislature is enacted into law.