

Act No. 443
Public Acts of 1994
Approved by the Governor
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Martin and Brown

ENROLLED HOUSE BILL No. 5309

AN ACT to amend sections 222 408 410 834 1103 1341 1343 8110 and 8141a 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 provide for the imposition of regulatory fees on certain insurers 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 sections 222 408 410 and 834 as amended and section 1103 as added by Act No 226 of the Public Acts of 1994 sections 1341 and 1343 as amended by Act No 227 of the Public Acts of 1994 and sections 8110 and 8141a as added by Act No 302 of the Public Acts of 1989 being sections 500 222 500 408 500 410 500 834 500 1103 500 1341 500 1343 500 8110 and 500 8141a of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Sections 222 408 410 834 1103 1341 1343 8110 and 8141a of Act No 218 of the Public Acts of 1956 sections 222 408 410 and 834 as amended and section 1103 as added by Act No 226 of the Public Acts of 1994 sections 1341 and 1343 as amended by Act No 227 of the Public Acts of 1994 and sections 8110 and 8141a as added by Act

No 302 of the Public Acts of 1989 being sections 500 222 500 408 500 410 500 834 500 1103 500 1341 500 1343 500 8110 and 500 8141a of the Michigan Compiled Laws are amended to read as follows

Sec 222 (1) The commissioner in person or by any of his or her authorized deputies or examiners may examine any or all of the books records documents and papers of any insurer at any time after its articles of incorporation have been executed and filed or after it has been authorized to do business in this state The commissioner in his or her discretion may examine the affairs of any domestic insurer and if he or she considers it expedient to do to examine the affairs of any foreign or alien insurer doing business in this state

(2) Instead of an examination under this act of any foreign or alien insurer authorized to do business in this state the commissioner may accept an examination report on the insurer as prepared by the insurance regulator for the insurer s state of domicile or port of entry state if that state accepts examination reports prepared by the commissioner This subsection applies only as follows

(a) Until this state becomes accredited by the national association of insurance commissioners financial regulation standards and accreditation program

(b) If this state loses accreditation by the national association of insurance commissioners financial regulation standards and accreditation program

(3) Instead of an examination under this act of any foreign or alien insurer authorized to do business in this state the commissioner may accept an examination report on the insurer as prepared by the insurance regulator for the insurer s state of domicile or port of entry state if that state accepts examination reports prepared by the commissioner and if the insurance regulatory agency of the state of domicile or port of entry state was accredited by the national association of insurance commissioners financial regulation standards and accreditation program at the time of the examination or if the examination is performed under the supervision of an accredited insurance regulatory agency or with the participation of 1 or more examiners who are employed by an accredited insurance regulatory agency and who after a review of the examination work papers and report state under oath that the examination was prepared in a manner consistent with the standards and procedures required by their accredited regulatory agency This subsection only applies during the time this state is accredited by the national association of insurance commissioners financial regulation standards and accreditation program

(4) The commissioner in person or by any of his or her authorized deputies or examiners shall once every 5 years examine the books records documents and papers of each authorized insurer The commissioner may examine an insurer more frequently and upon its request shall examine a domestic insurer that has not been examined for the 3 years immediately preceding the request This section does not authorize the examination of books records documents or papers if those items involve matters that are a subject of a currently pending administrative or judicial proceeding against the insurer from whom the information is sought unless the commissioner or judge specifically finds on the record of the proceeding that the examination is reasonably necessary to protect the interests of policyholders creditors or the public or to make a determination of whether an insurer is safe reliable and entitled to public confidence

(5) The business affairs assets and contingent liabilities of insurers shall be subject to examination by the commissioner at any time The commissioner may supervise and make the same examination of the business and affairs of every foreign or alien insurer doing business in this state as of domestic insurers doing the same kind of business and of its assets books accounts and general condition Every foreign or alien insurer and its agents and officers are subject to the same obligations and are subject to the same examinations and in case of default therein to the same penalties and liabilities as domestic insurers doing the same kind of business or any of the agents or officers thereof are or may be liable to under the laws of this state or the regulations of the insurance bureau of the department of commerce The commissioner may whenever he or she considers it expedient to do so either in person or by a proper person appointed by him or her repair to the general office or other offices of the foreign or alien insurer wherever the same may be and make an investigation and examination of its affairs and condition

(6) Upon an examination under this section the commissioner his or her deputy or any examiner authorized by him or her may examine in person by writing and if appropriate under oath the officers or agents of the insurer or all persons considered to have material information regarding the insurer s property assets business or affairs The commissioner may compel the attendance and testimony of witnesses and the production of any books accounts papers records documents and files relating to the insurer s business or affairs and may sign subpoenas administer oaths and affirmations examine witnesses and receive evidence for this purpose The insurer and its officers and agents shall produce its books and records and all papers in its or their possession relating to its business or affairs and any other person may be required to produce any books records or papers considered relevant to the examination for the inspection of the commissioner or his or her deputy or examiners whenever required The insurer s officers or agents shall facilitate the examination and aid in making the same so far as it is in their power to do so If the commissioner s order or subpoena is not followed the commissioner may request the Ingham county circuit court to issue an order requiring compliance with the commissioner s order or subpoena

(7) Not later than 60 days following completion of the examination the deputy or examiners shall make a full and true report and furnish the insurer a copy of the examination report that shall comprise only facts appearing on the

insurer's books records or documents or ascertained from examination of its officers or agents or other persons concerning its affairs and the conclusions and recommendations as may be reasonably warranted from the facts disclosed. An insurer examined upon its request shall be granted a hearing before the commissioner or his or her designee before the report is filed. Upon request of the insurer the hearing shall be closed to the public. A hearing under this subsection is not subject 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. Each examination report shall be withheld from public inspection until the report is final and filed with the commissioner. In addition the commissioner may withhold any examination report or any analysis of an insurer's financial condition from public inspection for such time as he or she may consider proper. In any event all information and testimony furnished to the insurance bureau and the insurance bureau's work papers correspondence memoranda reports records and other written or oral information related to an examination report or an investigation shall be withheld from public inspection shall be confidential shall not be subject to subpoena and shall not be divulged to any person except as provided in this section. If assurances are provided that the information will be kept confidential the commissioner may disclose confidential work papers correspondence memoranda reports records or other information as follows:

- (a) To the governor or the attorney general
- (b) To any relevant regulatory agency including regulatory agencies of other states or the federal government
- (c) In connection with an enforcement action brought pursuant to this or another applicable act
- (d) To law enforcement officials
- (e) To persons authorized by the Ingham county circuit court to receive the information
- (f) To persons entitled to receive such information in order to discharge duties specifically provided for in this act

(8) The confidentiality requirements of subsection (7) do not apply in any proceeding or action brought against or by the insurer under this act or any other applicable act of this state any other state or the United States.

(9) Notwithstanding the other provisions of this section the commissioner is not required to finalize and file an examination report for an insurer for a year in which an examination report was not finalized and filed if the insurer is currently undergoing an examination subsequent to the year for which an examination report was not finalized and filed. Nothing contained in this section shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(10) The examination of an alien insurer is limited to its United States business except as otherwise required by the commissioner.

Sec. 408 (1) To qualify for authority to transact insurance in this state a domestic foreign or alien insurer shall possess and thereafter maintain paid in capital or surplus or assets in amounts that are not less than those shown by the applicable portion of the following schedule:

Kind of insurance	Domestic foreign stock insurers CAPITAL	Domestic foreign mutual life insurers SURPLUS	Domestic foreign mutual insurers other than life ASSETS	Alien insurers United States ASSETS
Life	\$200 000 00	\$200 000 00	not applicable	\$200 000 00
Life and disability	300 000 00	300 000 00	not applicable	300 000 00
Disability except as provided in subsection (2) (3) or (4)	200 000 00	not applicable	\$ 50 000 00	200 000 00
Property & marine	200 000 00	not applicable	50 000 00	200 000 00
Automobile	200 000 00	not applicable	50 000 00	200 000 00
Casualty	200 000 00	not applicable	50 000 00	200 000 00
Surety & fidelity	250 000 00	not applicable	250 000 00	250 000 00
Surety fidelity casualty	450 000 00	not applicable	250 000 00	450 000 00
Kind of insurance	Reciprocal insurers ASSETS			
Disability except as provided in subsection (2) (3) or (4)	\$50 000 00			
Property & marine	50 000 00			
Automobile	50 000 00			
Casualty	50 000 00			
Surety & fidelity	50 000 00			
Surety fidelity casualty	50 000 00			

Multiple lines Any insurer may reinsure risks of every kind or description and write any and all kinds of insurance other than life insurance for which it is authorized while it maintains paid up capital and surplus of not less than \$500 000 00

(2) An insurer authorized to transact casualty insurance shall also have authority to transact disability insurance without additional capital surplus or assets as the case may be

(3) A domestic stock insurer organized to insure on the monthly or weekly premium payment plan any person against bodily injury or death by accident or against disability on account of sickness or to provide a cash funeral benefit not exceeding \$500 00 shall have paid in capital stock of not less than \$25 000 00

(4) As to a reciprocal insurer the authority to transact disability insurance either alone or in combination with other insuring powers does not include authority to transact health insurance

(5) Financial requirements as to cooperative assessment life disability and loss of position insurers as identified in chapter 64 shall be as provided in that chapter Financial requirements as to domestic stock insurers formed to insure railway employees against loss of position to transact disability and life insurance and to make annuities as identified in section 6604 shall be as provided in section 6608

(6) This section applies to domestic insurers organized prior to July 21 1965 and to foreign and alien insurers not subject to the provisions of section 410 However domestic insurers organized prior to July 21 1965 and any foreign and alien insurers not subject to the provisions of section 410 that subsequently attain the level of capital or surplus required by section 410 are required thereafter to maintain compliance with section 410 unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus

(7) Notwithstanding the specific requirements of this section domestic foreign and alien insurers shall also comply with the standard set forth in section 403

Sec 410 (1) To qualify for and maintain authority to transact insurance in this state after July 21 1965 a domestic foreign or alien insurer shall possess and thereafter maintain unimpaired capital and surplus in an amount determined adequate by the commissioner to continue to comply with section 403 but not less than \$1 000 000 00 The commissioner shall take into account the risk based capital requirements as developed by the national association of insurance commissioners in order to determine adequate compliance with section 403

(2) In addition to the minimum capital and surplus specified in subsection (1) an insurer applying for an initial certificate of authority after July 21 1965 in this state shall possess and maintain surplus or additional surplus in an amount determined by the commissioner adequate to comply with section 403 for the kind or kinds of insurance it writes or proposes to write but in no event less than \$500 000 00

(3) Except as provided by section 407 every insurer authorized to transact insurance in this state may transact life insurance or property insurance but not both unless it was authorized to transact such other kind or kinds of insurance in this state immediately prior to January 1 1965 For the purpose of this section life insurance includes any 1 or more of the insurances described in sections 602 and 606 property insurance includes any 1 or more of the insurances described in chapter 6 excepting only section 602 and those provisions of section 632 that apply to insurances described in section 602 Nothing in this section shall be construed to broaden the authority of reciprocal insurers

(4) Except as provided in subsection (5) an insurer authorized to transact insurance prior to July 21 1965 may continue to transact insurance so long as it maintains the minimum financial requirements of section 408 However an insurer authorized to transact insurance prior to July 21 1965 that subsequently attains the level of minimum capital or surplus required by subsection (1) shall maintain compliance with this section unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus

(5) An insurer shall not be authorized to transact legal expense insurance unless it meets the capital and surplus requirements of subsections (1) and (2)

(6) Notwithstanding the specific requirements of this section domestic foreign and alien insurers shall also comply with the standard set forth in section 403

Sec 834 (1) Except as otherwise provided in sections 835 836 and 837 the minimum standard for the valuation of policies and contracts described in subsection (8) shall be the commissioner's reserve valuation methods defined in subsections (2) (3) and (6) 5% interest for group annuity and pure endowment contracts provided that prior notice of any revaluation of reserves with respect to these group annuity and pure endowment contracts is given to the commissioner in the same manner as is required before a revaluation of reserves under section 832(2) and 3 1/2% interest for all other of these policies and contracts or in the case of policies and contracts other than annuity and pure endowment contracts issued on or after October 21 1974 4% interest for those policies issued before October 1 1980 and 4 1/2% interest for those policies issued on or after October 1 1980 or in the case of life insurance contracts other than annuity and pure endowment contracts issued after December 31 1994 5 1/2% interest for single premium life insurance policies and 4 1/2% interest for all other policies and the following tables

(I) For all ordinary policies of life insurance issued on the standard basis excluding any disability and accidental death benefits in these policies the commissioner's 1941 standard ordinary mortality table for these policies issued before the operative date of paragraph 5 of section 4060(5) and the commissioner's 1958 standard ordinary mortality table for these policies issued on or after that operative date and before the operative date of paragraphs 9 to 19 of section 4060(5) For any category of these policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than 6 years younger than the actual age of the insured and for such policies issued on or after the operative date of paragraphs 9 to 19 of section 4060(5) the commissioner's 1980 standard ordinary mortality table or at the election of the company for any 1 or more specified plans of life insurance the commissioner's 1980 standard ordinary mortality table with 10 year select mortality factors or any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies

(II) For all industrial life insurance policies issued on the standard basis excluding any disability and accidental death benefits in these policies the 1941 standard industrial mortality table for these policies issued before the operative date of paragraph 7 of section 4060(5) and for these policies issued on or after that operative date the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies

(III) For individual annuity and pure endowment contracts excluding any disability and accidental death benefits in these policies the 1937 standard annuity mortality table or at the option of the company the annuity mortality table for 1949 ultimate or any modification of either of these tables approved by the commissioner

(IV) For group annuity and pure endowment contracts excluding any disability and accidental death benefits in these policies the group annuity mortality table for 1951 any modification of that table approved by the commissioner or at the option of the company any of the tables or modifications of tables specified for individual annuity and pure endowment contracts

(V) For total and permanent disability benefits in or supplementary to ordinary policies or contracts for policies or contracts issued on or after January 1 1966 the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies for policies or contracts issued on or after January 1 1961 and before January 1 1966 either these tables or at the option of the company the class (3) disability table 1926 and for policies issued before January 1 1961 the class (3) disability table 1926 For active lives a table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies

(VI) For accidental death benefits in or supplementary to policies for policies issued on or after January 1 1966 the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies for policies issued on or after January 1 1961 and before January 1 1966 1 of the above tables or at the option of the insurer the intercompany double indemnity mortality table A table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies

(VII) For group life insurance life insurance issued on the substandard basis and other special benefits any table approved by the commissioner

(2) Except as otherwise provided in subsections (3) and (6) reserves according to the commissioner's reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess if any of the present value at the date of valuation of the future guaranteed benefits provided for by these policies over the then present value of any future modified net premiums for the policies The modified net premiums for such a policy shall be a uniform percentage of the respective contract premiums for the future guaranteed benefits so that the present value of all modified net premiums equals at the date of issue of the policy the sum of the then present value of these benefits provided for by the policy and the excess of (g) over (h) as follows

(g) A net level annual premium equal to the present value at the date of issue of the future guaranteed benefits provided for after the first policy year divided by the present value at the date of issue of an annuity of 1 per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due However the net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of the policy

(h) A net 1 year term premium for the future guaranteed benefits provided for in the first policy year

However for any life insurance policy issued on or after January 1 1986 for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year

for that excess and that provides an endowment benefit or a cash surrender value or a combination of them in an amount greater than the excess premium the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium shall be except as otherwise provided in subsection (6) the greater of the reserve as of that policy anniversary calculated as described in paragraph 1 of this subsection and the reserve as of that policy anniversary calculated as described in that paragraph but with the value defined in (g) being reduced by 15% of the amount of the excess first year premium all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date the policy being assumed to mature on that date as an endowment and the cash surrender value provided on that date being considered as an endowment benefit In making the above comparison the mortality and interest bases stated in subsection (1) and section 836 shall be used

Reserves according to the commissioner's reserve valuation method for (I) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums (II) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer including a partnership or sole proprietorship or by an employee organization or by both other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code (III) disability and accidental death benefits in all policies and contracts and (IV) all other benefits except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts shall be calculated by a method consistent with the principles of this subsection

(3) This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer including a partnership or sole proprietorship or by an employee organization or by both other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts excluding any disability and accidental death benefits in these contracts shall be the greatest of the respective excesses of the present values at the date of valuation of the future guaranteed benefits including guaranteed nonforfeiture benefits provided for by these contracts at the end of each respective contract year over the present value at the date of valuation of any future valuation considerations derived from future gross considerations required by the terms of the contract that become payable before the end of that respective contract year The future guaranteed benefits shall be determined by using the mortality table if any and the interest rate specified in these contracts for determining guaranteed benefits The valuation considerations are the portions of the respective gross considerations applied under the terms of these contracts to determine nonforfeiture values

(4) An insurer's aggregate reserves for all life insurance policies excluding disability and accidental death benefits shall not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (2) (3) (6) and (7) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies The aggregate reserves for all policies contracts and benefits shall not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 830a

(5) Reserves for all policies and contracts issued prior to June 27 1994 may be calculated at the option of the insurer according to any standards that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately before June 27 1994 Reserves for a category of policies contracts or benefits as established by the commissioner issued on or after June 27 1994 may be calculated at the option of the insurer according to any standards that produce greater aggregate reserves than those calculated according to the minimum standard provided in this act However the rate or rates of interest used for policies and contracts other than annuity and pure endowment contracts shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for in those policies and contracts Any insurer that had previously adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section and section 835 may with the commissioner's approval adopt any lower standard of valuation but not lower than the minimum standard provided by this section and section 835 However for the purposes of this section the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by section 830a shall not be considered to be the adoption of a higher standard of valuation

(6) If in any contract year the gross premium charged by a life insurer on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but for any policy or contract issued before January 1 1996 at the option of the insurer using the minimum valuation standards of mortality either at the time of issue or the time of valuation of such policy or contract and the minimum valuation rate of interest at time of issue or the time of valuation of such policy or contract and for any policy or contract issued on or after January 1 1996 using the minimum valuation standards of mortality and rates of interest the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table rate of interest and method actually used for the policy or contract or the reserve calculated by the method actually used for the policy or contract using the minimum valuation standards of mortality and rate of

interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. However, for any policy or contract issued before January 1, 1996, for which gross premiums vary by duration, including renewable term plans where renewal premiums beyond the current term period are guaranteed in the policy, the valuation net premiums shall be calculated as a uniform percentage of all the respective gross premiums or premiums guaranteed in the policy or contract. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsection (1) and section 836. However, for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for that excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, the provisions of this subsection shall be applied as if the method actually used in calculating the reserve for that policy were the method described in subsection (2), ignoring paragraph 2 of that subsection. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (2), including paragraph 2 of that subsection, and the minimum reserve calculated in accordance with this subsection.

(7) In the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on their estimates of future experience, or, in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (2), (3), and (6), the reserves that are held under those plans must be appropriate in relation to the benefits and the pattern of premiums for that plan and computed by a method that is consistent with the principles of this standard valuation law, as determined by rules promulgated by the commissioner.

(8) This section applies to only life insurance policies and contracts issued on and after the operative date of section 4060, the standard nonforfeiture law, except as otherwise provided in sections 835 and 836 for group annuity and pure endowment contracts issued on or after the operative date of section 4060 and except as otherwise provided in section 837 for universal life contracts.

Sec. 1103. (1) A ceding insurer shall be allowed credit for reinsurance as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurance is ceded to an assuming insurer that is authorized to transact insurance in this state or that meets the requirements of subsection (2) or (3). Credit for reinsurance shall be allowed only to the extent that the amounts recoverable are verified by the assuming insurer in statements filed with the commissioner pursuant to section 438.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest, and submits to the commissioner's authority to examine its books and records and bears the expense of the examination. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported by authorized insurers pursuant to section 438 to enable the commissioner to determine the sufficiency of the trust fund.

(a) The trust fund shall consist of the following:

(i) In the case of a single assuming insurer, the trust shall consist of a trust account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trust surplus of an amount sufficient in the opinion of the commissioner to maintain compliance with section 403 as respects business written in the United States but not less than \$20,000,000.00.

(ii) In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trust account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trust surplus of which an amount sufficient in the opinion of the commissioner to maintain compliance with section 403 as respects business written in the United States but not less than \$100,000,000.00 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountant.

(iii) In the case of a group of incorporated insurers under common administration which complies with the reporting requirements contained in this section and which has continuously transacted an insurance business outside the United States for at least 3 years and which has aggregate policyholders' surplus of \$10,000,000,000.00, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group. In addition, the group shall maintain a joint trust surplus of which an amount sufficient in the opinion of the commissioner to maintain compliance with section 403 as respects business written in the United States but not less than \$100,000,000.00 shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any

liabilities and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant

(b) The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust shall be subject to examination as determined by the commissioner, and the expense of the examination shall be borne by the assuming insurer. The trust described herein must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(c) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(3) Credit shall be allowed if reinsurance is ceded to an assuming insurer not meeting the requirements of this section but only for the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(4) If the assuming insurer is not authorized to transact insurance or reinsurance in this state, the credit permitted by subsection (2) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal.

(b) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(5) The provisions of subsection (4) are not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(6) The commissioner may allow credit for reinsurance that does not otherwise meet the requirements of this section if all of the following are met:

(a) The amount is not material to the ceding insurer's ability to meet the standards of section 901.

(b) The commissioner is satisfied that the assuming insurers meet the requirements of section 403.

(c) The amounts are substantially confirmed in statements filed with the commissioner pursuant to section 438 or in similar statements filed in the assuming insurer's domiciliary jurisdiction and available to the commissioner.

Sec. 1341. (1) Transactions within a holding company system to which an insurer domiciled in this state or any foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years is a party or with respect to which the assets or liabilities of these insurers are affected are subject to all of the following standards:

(a) The terms shall be fair and reasonable.

(b) The charges or fees for services performed shall be reasonable.

(c) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs so that the insurer continues to comply with section 403.

(2) The commissioner's prior approval shall be required for sales, purchases, exchanges, loans, extensions of credit or investments involving 5% or more of the insurer's assets at the immediately preceding year's end between a domestic controlled insurer and any person in its holding company system.

(3) A domestic insurer and any person in its holding company system shall not enter into the following transactions with each other unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days or a shorter period as the commissioner allows prior to entering into the transaction and the commissioner has not disapproved it within that period.

(a) Sales purchases exchanges loans extensions of credit or investments provided the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year

(b) Loans or extensions of credit to any person who is not an affiliate where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions in whole or in substantial part are to be used to make loans or extensions of credit to to purchase assets of or to make investments in any affiliate of the insurer making the loans or extensions of credit provided the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year

(c) Reinsurance treaties or agreements

(d) Rendering of services on a regular systematic basis

(e) Any material transactions specified by regulation that the commissioner determines may adversely affect the interests of the insurer's policyholders

(4) Nothing contained in subsection (3) shall be considered to authorize or permit any transactions that in the case of an insurer not a member of the same holding company system would be otherwise contrary to law

(5) A domestic insurer shall not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any relevant period for that purpose he or she may exercise his or her authority under section 1371

(6) In reviewing a transaction pursuant to subsection (2) the commissioner shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may otherwise adversely affect the interests of policyholders creditors or the public

(7) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any 1 corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities

Sec 1343 (1) Each year the commissioner shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following such dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination the commissioner shall consider the following factors in addition to the provisions of section 436a

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items such as surplus relief reinsurance transactions and reserve strengthening

(c) The quality and liquidity of investments in subsidiaries. The commissioner may discount any such investment or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants

(2) If the commissioner determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403 the commissioner shall limit or disallow the payment of shareholder dividends

(3) Shareholder dividends shall be declared or paid only from earned surplus unless the commissioner approves the dividend prior to payment. The commissioner shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer or the insurer's net income if the insurer is not a life insurer for the 12 month period ending December 31 of the immediately preceding year. For purposes of this subsection earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets

(4) Any domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the commissioner within 5 business days after declaring the dividend and at least 10 business days beginning from the date of receipt by the commissioner before the payment. If the commissioner applying the criteria in subsection (1) determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403 the commissioner may prior to the expiration of the 10 day period described in this subsection enter an order prohibiting the payment of the dividend

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration and has not disapproved or has approved the payment within that period

(6) An extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds

the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year or the net gain from operations of the insurer if the insurer is a life insurer or the net income if the insurer is not a life insurer not including realized capital gains for the 12 month period ending December 31 of the immediately preceding year but shall not include pro rata distributions of any class of the insurer's own securities

(7) Notwithstanding any other provision of law an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration shall confer no rights upon shareholders until the commissioner has approved or has not disapproved the payment of the dividend or distribution within the 30 day period

(8) Notwithstanding subsections (5) through (7) a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards set forth in section 403

(9) An insurer aggrieved by the commissioner's determination or order under this section is entitled to a contested case hearing 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 be held no later than 10 days after receipt of the insurer's request. The commissioner's determination or order shall remain in effect except as modified by the commissioner during the pendency of the hearing and until a final decision by the commissioner. The commissioner shall render a final decision within 30 days after the conclusion of the hearing

Sec 8110 (1) The commissioner may file in the circuit court for Ingham county a petition alleging with respect to a domestic insurer

(a) That there exists grounds justifying a court order for a formal delinquency proceeding against an insurer under this chapter

(b) That the interests of policyholders creditors or the public will be endangered by delay

(c) The contents of an order considered necessary by the commissioner

(2) Upon a filing under subsection (1) the court may issue immediately and without a hearing the requested order directing the commissioner to take possession and control of all or a part of the property books accounts documents and other records of an insurer and of the premises occupied by the insurer for the transaction of its business and until further order of the court enjoin the insurer and its officers managers agents and employees from disposition of its property and from the transaction of its business except with the commissioner's written consent

(3) The court shall specify in the order the duration of the order which shall be such time as the court considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or in its own discretion the court may hold hearings from time to time as it considers desirable after such notice as it considers appropriate and may extend shorten or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this act shall vacate the seizure order

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any insurer contract

(5) An insurer subject to an ex parte order under this section may petition the circuit court for Ingham county at any time after the order is issued for a hearing and review of the order. The court shall hold a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers and shall be held privately in chambers if so requested by the insurer proceeded against

(6) If at any time after the issuance of an ex parte order it appears to the court that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served the court may order that notice be given. An order that notice be given shall not stay the effect of an order previously issued by the court

(7) If a visiting or retired judge is assigned to the circuit court for Ingham county in any proceeding filed under this section or in any formal delinquency proceeding brought under this chapter because the estate of the insurer against which the proceeding has been brought is of such size or complexity that additional judicial resources are necessary to conduct the proceeding expeditiously so as to protect to the fullest extent possible the interests of the insurer its policyholders and creditors and the public the expense of the assigned judge shall be an expense of administration of the proceeding and shall be reimbursable from the estate of the insurer against which the proceeding has been brought

Sec 8141a (1) Special deposit claims shall be paid pursuant to the following order of priority

(a) To the receiver for the costs and expenses of the receivership

(b) To the guaranty association for the costs and expenses of administration with respect to the payment of claims

(c) To claims of Michigan policyholders of the insurer and to claimants of those Michigan policyholders

(d) To Michigan beneficiaries of insurance contracts owned by non Michigan residents

(e) To other Michigan claimants of the insurer

(f) To claims of non Michigan policyholders of the insurer and to claimants of those non Michigan policyholders

(g) To non Michigan beneficiaries of insurance contracts owned by non Michigan residents

(h) To the stockholders or owners of the insurer

(2) Upon request of a guaranty association of this state to which the insurer is a member special deposits made by the insurer shall be transferred to that guaranty association for the payment of claims pursuant to this section

Section 2 Section 8141a of Act No 218 of the Public Acts of 1956 being section 500 8141a of the Michigan Compiled Laws as amended by this amendatory act is curative reflects the original intent of the legislature is retroactive and is effective beginning January 3 1990

This act is ordered to take immediate effect

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor