

Act No. 226  
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June 27, 1994  
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**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

Introduced by Reps Brown and Martin

# **ENROLLED HOUSE BILL No. 5311**

AN ACT to amend sections 413 438 1311 1325 1332 1341 1343 2210 8103 8109 8118 and 8121 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 to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates and to provide for certain powers and duties upon certain persons as they affect the continued availability and affordability of that insurance 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 persons to provide certain powers and duties upon certain officials departments and authorities of this state to provide an appropriation 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 413 as added by Act No 92 of the Public Acts of 1989 sections 438 1311 1325 1341 1343 and 8109 as amended by Act No 182 of the Public Acts of 1992 section 2210 as added by Act No 349 of the Public Acts of 1990 and sections 8103 8118 and 8121 as added by Act No 302 of the Public Acts of 1989 being sections 500 413 500 438 500 1311 500 1325 500 1332 500 1341 500 1343 500 2210 500 8103 500 8109 500 8118 and 500 8121 of the Michigan Compiled Laws and to add sections 431 431a 431b 431c 432 432a 433 and 8118a and chapter 14a

*The People of the State of Michigan enact*

Section 1 Sections 413 438 1311 1325 1332 1341 1343 2210 8103 8109 8118 and 8121 of Act No 218 of the Public Acts of 1956 section 413 as added by Act No 92 of the Public Acts of 1989 sections 438 1311 1325 1341 1343 and 8109 as amended by Act No 182 of the Public Acts of 1992 section 2210 as added by Act No 349 of the Public Acts of 1990 and sections 8103 8118 and 8121 as added by Act No 302 of the Public Acts of 1989 being sections 500 413 500 438 500 1311 500 1325 500 1332 500 1341 500 1343 500 2210 500 8103 500 8109 500 8118 and 500 8121 of the Michigan Compiled Laws are amended and sections 431 431a 431b 431c 432 432a 433 and 8118a and chapter 14a are added to read as follows

Sec 413 (1) Upon the approval of the commissioner a domestic insurer may transfer its domicile to any other state in which it is admitted to transact the business of insurance and upon the transfer shall cease to be a domestic insurer but shall be admitted to this state if qualified as a foreign insurer The commissioner shall approve a proposed transfer unless he or she determines the transfer is not in the interest of the policyholders of this state For purposes of this section an alien insurer using this state as a state of entry to transact insurance in the United States through a U S branch is considered to be a domestic insurer

(2) As used in this section U S branch means that term as defined in section 431

Sec 431 As used in sections 432 through 434

(a) Claimant means any person or entity supervisor receiver liquidator rehabilitator or conservator appointed for an alien insurer and any guaranty association responsible for the payment of claims against the insurer who has claims for costs and expenses of investigation or supervision pursuant to section 8109(11) or for receivership liquidation or payments of policyholders claims

(b) Policy means either of the following

(i) Any contract of insurance or any agreement containing a covenant to insure that an alien insurer may be authorized to issue in any state and that is made by an alien insurer and delivered in or issued for delivery in the United States to any person resident in the United States at the time of issue including any life insurance contract annuity contract disability insurance contract guaranteed investment contract reinsurance contract and any contract issued on the maturity of and pursuant to any of the previously listed contracts but excluding any contract agreement or portion of a contract or agreement either not guaranteed by an alien insurer or under which the risk is borne by the policyholder or claimant or where the recourse of policyholders or claimants for claims is limited to separate accounts

(ii) For separate accounts any group annuity or deposit contract or any other contract that an alien insurer is authorized to issue in any state made by an alien insurer and delivered in or issued for delivery in the United States to any person resident in the United States at the time of issue that provides the right to allocate amounts to a particular trust as a separate account including any contract issued on the maturity of and pursuant to a group annuity or deposit contract or any other contract that an alien insurer is authorized to issue in any state

(c) Policyholder means the owner of the certificate holder under or the beneficiary under a policy including any other insurer if an alien insurer has issued to that insurer a reinsurance contract and any pledgee assignee or other creditor having a security interest in the obligation arising out of a policy

(d) Qualified United States financial institution means a state or nationally chartered bank or trust company organized under the laws of any state or of the United States that has been granted authority to operate with fiduciary powers

(e) U S branch means the business unit through which insurance is transacted within the United States by an alien insurer and the assets and liabilities of the insurer within the United States

Sec 431a (1) An alien insurer may use this state as a state of entry to transact insurance in the United States through a U S branch by qualifying as an insurer licensed to do business in this state and establishing a trust account pursuant to a trust agreement approved by the commissioner with a qualified United States financial institution approved by the commissioner in an amount at least equal to the amount required by section 431c With the prior approval of the commissioner an alien insurer may establish more than 1 trust account pursuant to 1 or more trust agreements provided that the aggregate of all amounts held in such trust accounts is at least equal to the amount required by section 431c

(2) Before authorizing the entry through this state of a U S branch of an alien insurer the commissioner shall require the alien insurer to do all of the following

(a) Submit a copy of the proposed trust indenture for the commissioner s approval

(b) Submit a copy of its charter any current bylaws and any other documents necessary to show the kinds of business that it is authorized to do in its domiciliary jurisdiction attested to as accurate and complete by the insurance supervisory official in its domiciliary jurisdiction

(c) Submit a full statement subscribed and affirmed as true under the penalties of perjury by 2 officers or equivalent responsible representatives in such manner as the commissioner prescribes of its financial condition as of the close of its latest fiscal year showing its assets liabilities income disbursements business transacted and other facts required to be shown in its annual statement as reported to the insurance supervisory official in its domiciliary jurisdiction together with an English language translation as necessary of any of the documents required

(d) Submit to an examination of the insurer's affairs at its principal office within the United States unless the commissioner instead accepts a report of the insurance supervisory official of the insurer's domiciliary jurisdiction

Sec 431b A U S branch using this state as a state of entry to transact insurance in the United States is subject to all laws applicable to an insurer domiciled in this state except as otherwise provided A U S branch using this state as a state of entry to transact insurance in the United States shall comply with all of the following requirements

(a) Provide the commissioner at intervals and in such form as the commissioner may require having stated the reason for the requirement with complete and accurate copies current to within 10 days of any of its books records and files requested by the commissioner including all of the following

(i) Corporate accounting records

(ii) Records of its securities notes mortgages and other evidences of indebtedness representing investment of funds

(iii) Minutes of meetings and resolutions of the board of directors any committee of the board of directors and the audit committee

(iv) Records of current premium billing and collection processing and active claims inventory

(v) Records of all policies held by policyholders of the U S branch including policy type amount of reserve riders dividend accumulation unit values endowment and policy loan balances

(b) Upon the commissioner's request provide the commissioner for the commissioner's regulatory use with appropriate waivers for the commissioner concerning rights in the information including copyright or goodwill information manuals and documentation sufficient for regulatory purposes concerning the computer system and software through which the insurer maintains its books records and files for its business in the United States

(c) Upon the commissioner's request obtain for the commissioner the right to use at no additional charge the computer software employed to maintain the books records and files listed in subdivision (a) This right of use shall be irrevocable and unconditional and shall include all revisions and upgrades notwithstanding the insolvency or reorganization of the insurer

(d) Arrange for testing to the commissioner's reasonable satisfaction of the processing of copies of the books records and files of the insurer listed in subdivision (a) This testing shall be performed annually or more frequently if requested by the commissioner at the office of the commissioner or at a business office of the insurer where such testing may take place at reasonable cost to the insurer

Sec 431c The assets in the trust accounts shall be known as trustee assets The total value of trustee assets shall at all times be at least equal to the sum of the U S branch's reserves and other liabilities the minimum capital and surplus required to be maintained by section 410 and any additional amounts considered necessary by the commissioner The trustee assets shall be valued and limited in accordance with section 901

Sec 432 (1) The trust agreement and all amendments to the trust agreement shall be authenticated in a form and manner prescribed by the commissioner and shall not be effective unless approved by the commissioner upon a finding of all of the following

(a) That the trust agreement or its amendments are sufficient in form and in conformity with law

(b) That the trustee or trustees are eligible to be trustees

(c) That the trust agreement is adequate to protect the interests of the beneficiaries of the trust

(2) If at any time the commissioner finds after reasonable notice and hearing that the trust agreement no longer meets the requirements of subsection (1) the commissioner may withdraw approval of the trust agreement The withdrawal of approval shall be in the form of a final order or decision and shall clearly set forth the findings and the reasons for the withdrawal of approval 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

(3) The commissioner may from time to time approve modifications of or variations in any trust agreement that in the commissioner's judgment are not prejudicial to the interests of the people of this state or the United States and of policyholders and claimants of the U S branch

(4) The trust agreement shall contain all of the following

(a) The vesting of legal title to trustee assets in a trustee and its lawfully appointed successors

(b) A requirement that except with the approval of the commissioner for assets held in custodial or similar accounts all assets deposited in the trust shall be continuously kept within the United States

(c) Provisions for substitution of a new trustee in case of a vacancy subject to the commissioner's approval

(d) A requirement that the trustee shall continuously maintain a record at all times sufficient to identify the trust's assets

(e) A requirement that the trustee's assets shall consist of cash or investments eligible for investment of the funds of domestic insurers and accrued interest on those assets if collectible by the trustee

(f) A requirement that the trust shall be for the exclusive benefit, security, and protection of the policyholders and claimants of the U.S. branch and that it shall be maintained as long as there is outstanding any liability of the alien insurer arising out of its insurance transactions in the United States

(g) A provision that no withdrawals of assets other than income as specified in subsection (5) shall be made or permitted by the trustee without the commissioner's approval except to do the following:

(i) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn upon the specific written direction of the United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors. Substituted assets are of the same quality if for securities they are rated BBB or above by Moody's or Standard & Poor's or are rated category 1 or 2 by the national association of insurance commissioners or for other assets are not in arrears, were acquired by the alien insurer in an arm's length transaction from an unaffiliated third party within 30 days prior to the substitution and for interests in mortgages the mortgages comply with section 942.

(ii) If the income of the trust is not paid over as specified in subsection (5), pay liabilities of the insurer to a policyholder or in satisfaction of a contractual provision in a policy provided that the total trustee's assets are not thereby less than the amount required to be maintained pursuant to section 431c.

(iii) Transfer assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(h) A provision that withdrawals of assets shall be made or permitted by the trustee only with the commissioner's approval and only if a deposit is required by law in any state for the security or benefit of all policyholders or policyholders and claimants of the U.S. branch in the United States.

(5) The trust agreement may provide that income, earnings, dividends, or interest accumulations of the trust's assets may be paid over to the United States manager of the U.S. branch upon request provided that the total trustee's assets are not thereby less than the amount required to be maintained pursuant to section 431c.

(6) Upon withdrawal of trustee's assets deposited in another state in which the insurer is authorized to do business, it is sufficient if the trust agreement requires similar written approval of the insurance supervising official of that state in lieu of approval by the commissioner provided that the total trustee's assets are not thereby less than the amount required to be maintained pursuant to section 431c.

(7) For all withdrawals, the U.S. branch shall give the commissioner at least 15 days prior notice in writing of the nature and extent of the proposed withdrawal. For a withdrawal due to overfunding, it shall be considered that the commissioner has approved the withdrawal in either of the following cases:

(a) The commissioner has not responded to the request in any manner within 15 days after receipt of the notice.

(b) After the U.S. branch has replied to any request by the commissioner for further information concerning the proposed withdrawal, the commissioner does not respond further in any manner within 15 days after receipt of the reply.

(8) The commissioner may make examinations from time to time of the trustee's assets of any authorized U.S. branch and may require the trustee to file a statement in such form as the commissioner may prescribe certifying the trust's assets and amount.

(9) Refusal or neglect of any trustee to comply with the requirements of subsection (8) is grounds for injunctive relief and other remedies including suspension, limitation, or revocation of the insurer's license, liquidation of its U.S. branch, or the trustee's removal. If removal occurs prior to the appointment of a new trustee, the trustee's assets shall be deposited with the commissioner or as the commissioner directs. Failure of any trustee to comply with the other requirements of this section is grounds for suspension, limitation, or revocation of the insurer's license or the liquidation of its U.S. branch.

(10) Within 90 days after the effective date of this section, the commissioner shall inform each U.S. branch that the trust agreement in force on that date to which the U.S. branch is party is subject to review by the commissioner and the approximate date of the review. Following the review, the commissioner shall inform the relevant U.S. branch in a written notice of any deficiencies in its trust agreements. The U.S. branch shall amend or replace its trust agreement in accordance with this amendatory act within 30 days after receiving the notice from the commissioner.

Sec. 432a. (1) Before issuing or amending a certificate of authority to do business to any U.S. branch, the commissioner may require satisfactory proof either in the alien insurer's charter or by an agreement evidenced by a

duly certified resolution of its board of directors or otherwise as the commissioner requires that the insurer will not engage in any insurance business that violates this act or that is not authorized by its charter

(2) A U S branch that does outside of this state any kind or combination of kinds of insurance business not permitted to be done in this state by similar domestic insurers hereafter organized shall not be or continue to be authorized to do any insurance business in this state unless in the commissioner's judgment the doing of those kinds of insurance outside of this state will not be prejudicial to the best interests of the residents of this state

(3) Except as otherwise specifically provided a U S branch entering through this state or another state shall not be or continue to be authorized to do the business of insurance in this state if it fails to comply substantially with any requirement or limitation of this act applicable to similar domestic insurers hereafter organized that in the judgment of the commissioner is reasonably necessary to protect the interest of the policyholders

Sec 433 If it appears to the commissioner from any annual or quarterly statement or any other report that a U S branch's trusted assets are below the minimum required to be maintained pursuant to section 431c the commissioner may proceed against the alien insurer pursuant to the provisions of chapter 81 as an insurer whose condition no longer meets the requirements of section 403

Sec 438 (1) Each insurer foreign alien U S branch or domestic transacting business within this state shall annually on or before March 1 prepare under oath and deposit with the commissioner a statement concerning its affairs in a form and manner as prescribed by the commissioner The annual statement shall be filed on or before March 1 of the year following that covered by the statement Upon request and for good cause shown the commissioner may grant to any company reasonable extensions of the March 1 filing date for periods not to exceed 30 days The insurer shall pay the filing fee prescribed in section 240(1)(b)

(2) The commissioner shall prescribe the format and content of statements that are suitable and adaptable to each kind of insurer authorized by this act The commissioner shall include requests for information upon any and all important elements of an insurer's business including any matter condition or requirement regulated by this act An annual statement filed by an insurer under this section shall be prepared in accordance with instructions provided by and accounting practices and procedures designated by the commissioner

(3) The commissioner may address inquiries to any insurer in relation to the insurer's activities or conditions or any matter connected with the insurer's transactions An insurer so addressed shall promptly reply in writing to each inquiry by the commissioner

(4) Each report filed with the commissioner pursuant to this section shall be made available to the public in compliance with the freedom of information act Act No 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

(5) Each authorized insurer that fails to make or deposit the annual statement required by this section or fails to reply within 30 days to an inquiry of the commissioner is subject to a civil penalty of not less than \$1 000 00 or more than \$5 000 00 and an additional \$50 00 for every day that the insurer fails to make and deposit the annual statement or reply to the inquiry In addition each insurer that fails to make and deposit an annual statement or fails to make a satisfactory reply to an inquiry of the commissioner concerning the insurer's affairs shall be subject to proceedings under section 436

(6) The annual statement of an alien insurer shall relate only to the insurer's assets transactions and affairs in the United States unless the commissioner requires otherwise

(7) As used in this section U S branch means that term as defined in section 431

Sec 1311 (1) A person other than the issuer shall not make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for seek to acquire or acquire in the open market or otherwise any voting security of a domestic insurer if after the consummation thereof the person directly or indirectly or by conversion or by exercise of any right to acquire would be in control of the insurer A person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time an offer request or invitation is made or an agreement is entered into or prior to the acquisition of the securities if no offer or agreement is involved the person has filed with the commissioner and has sent to the insurer which has sent to its shareholders a statement containing the information required by this chapter and the offer request invitation agreement or acquisition has been approved by the commissioner in the manner prescribed in this chapter

(2) The person who proposes to enter into an agreement to merge with or otherwise acquire control of a domestic insurer shall file a notification with the commissioner in such form and containing the information prescribed by applicable rule promulgated or order issued by the commissioner

(3) For purposes of this section through section 1319 a domestic insurer shall include any person controlling a domestic insurer and 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

Sec 1325 (1) An insurer subject to registration shall file a registration statement on a form provided by the commissioner containing the following current information

(a) The capital structure comprehensive financial condition ownership and management of the insurer and any person controlling the insurer

(b) The identity and relationship of every member of the insurance holding company system

(c) The following agreements in force relationships subsisting and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates

(i) Loans other investments or purchases sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates

(ii) Purchases sales or exchanges of assets

(iii) Transactions not in the ordinary course of business

(iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability other than insurance contracts entered into in the ordinary course of the insurer's business

(v) All management and service contracts and all cost sharing arrangements

(vi) Reinsurance agreements

(vii) Dividends and other distributions to shareholders

(viii) Consolidated tax allocation agreements

(d) Any pledge of the insurer's stock including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding system

(e) A summary outlining all items in the current registration statement representing changes from the prior registration statement

(f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner

(2) If a person ultimately controlling the insurer or intermediately controlling the insurer is registered on a national stock exchange or is otherwise required to make periodic reports to the United States securities and exchange commission or other instrumentality of a state or the government of the United States or of any foreign nation or jurisdiction regulating the financial conduct of that person the insurer shall file such reports with the commissioner in addition to other information required by the commissioner

(3) If the person or persons ultimately controlling the insurer is an individual or group of individuals or is a person not required to make reports described in subsection (2) that person shall be required to file under oath with the commissioner on a form provided by the commissioner information disclosing the financial position of that person A person who knowingly misrepresents the financial information provided to the commissioner shall be guilty of a felony and upon conviction shall be punished by a fine not to exceed \$5 000 00 or by imprisonment for a term not to exceed 5 years or by both such fine and imprisonment in the discretion of the court The ultimate controlling person or persons shall not be required to file a financial position form if either

(a) There has not been a change of control of the insurer for a minimum of 5 years and the insurer maintains a minimum surplus amount of \$25 000 000 00 if the insurer has achieved at least an A rating by the A M Best company or maintains a minimum surplus of \$75 000 000 00 if the insurer has achieved at least an A rating by the A M Best company

(b) The commissioner accepts the filing made by the ultimate controlling person of the periodic reports that are filed by a person who is an intermediary member within the insurance holding company system between the insurer and the individual or group of individuals controlling the insurer with the United States securities and exchange commission or other instrumentality of a state or the government of the United States or any foreign nation or jurisdiction regulating the financial conduct of that person

Sec 1332 Any person may file with the commissioner a petition for disclaimer of affiliation with an authorized insurer or an insurer or any member of an insurance holding company system may file such a petition for disclaimer The petition for disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and shall be subject to approval by the commissioner The burden of proof for establishing that an affiliation does not exist shall rest with the petitioner After a petition for disclaimer is filed with and approved by the commissioner the insurer is relieved of any duty to register or report under this chapter that may arise out of the insurer's relationship with the person unless the commissioner subsequently disallows the disclaimer The commissioner may disallow a disclaimer that has been previously approved only after

furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance

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 or 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 or 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) Reinsurance treaties or agreements

(c) Rendering of services on a regular systematic basis

(d) 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

(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 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 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

## CHAPTER 14a

### PRODUCER CONTROLLED INSURERS

Sec 1451 As used in this chapter producer means an insurance agent or any other person firm association or corporation when for any compensation commission or other thing of value the person firm association or corporation acts or aids in any manner in soliciting negotiating or procuring the making of an insurance contract on behalf of an insured other than the person firm association or corporation

Sec 1453 The provisions of this chapter do not apply to the following

(a) Risk retention groups as defined in section 1801

(b) Captive insurers owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or in the case of groups and associations owned by the insureds whose exclusive purpose is to insure risks of member organizations or group members and their affiliates

Sec 1455 (1) Except as provided in subsection (2) this section applies if in any calendar year the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer as reported in the controlled insurer's quarterly financial statement filed as of September 30 of the prior year

(2) This section does not apply if the controlling producer places insurance only with the controlled insurer or only with the controlled insurer and a member or members of the controlled insurer's holding company system or the



controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance and accepts insurance placements only from nonaffiliated subproducers and not directly from insureds and the controlled insurer except for insurance business written through a residual market facility accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(3) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) That the controlled insurer may terminate the contract for cause upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) That the controlling producer shall render accounts to the controlled insurer detailing all material transactions including information necessary to support all commissions, charges, and other fees received by or owing to the controlled producer.

(c) That the controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that the premiums or installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(d) That all funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity in 1 or more appropriately identified bank accounts in banks that are members of the federal reserve system in accordance with the provisions of the applicable insurance law.

(e) That the controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) That the contract shall not be assigned in whole or in part by the controlling producer.

(g) That the controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) That the rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees shall be specified. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision (g), examples of comparable business include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) That if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least 5 years after the premiums on policies that include liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified as required by subsection (5).

(j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings shall be set. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) That the controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(4) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall meet annually with management, the insurer's independent public accountants as defined in section 1001, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(5) Every controlled insurer shall file the following reports:

(a) In addition to any other required loss reserve certification the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary or such other independent loss reserve specialist acceptable to the commissioner reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year end including provisions for incurred but not reported losses on business placed by the controlling producer

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the controlling producer the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance

(6) A foreign controlled insurer is not required to file the reports with the commissioner required by subsection (5) if the insurer is subject to reporting requirements adopted by statute or regulation in its state of domicile that the commissioner has determined are substantially similar to those required under this chapter

(7) This section applies 60 days after the effective date of this chapter

Sec 1457 (1) The controlling producer prior to the effective date of the policy shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer except that if the business is placed through a subproducer who is not a controlling producer the controlling producer shall retain a record of a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured

(2) This section applies to all policies written or renewed on or after 60 days after the effective date of this chapter

Sec 1459 (1) If the commissioner believes that the controlling producer or any other person has not materially complied with this chapter or any regulation or order promulgated under this act the commissioner may after notice and opportunity to be heard do either or all of the following

(a) Order the controlling producer to cease placing business with the controlled insurer

(b) If it was found that because of such material noncompliance that the controlled insurer or any policyholder of the insurer has suffered any loss or damage maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 81 and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter or any regulation or order promulgated under this act and the insurer suffered any loss or damage as a result the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer

(3) This section shall not affect the right of the commissioner to impose any other penalties provided for in this act

(4) This section is not intended to or shall in any manner alter or affect the rights of policyholders claimants creditors or other third parties

Sec 2210 (1) As used in this section

(a) Employee welfare benefit plan means that term as defined by the employee retirement income security act of 1974 Public Law 93 406 88 Stat 829

(b) Employer means an individual sole proprietorship partnership firm corporation association or any other legal entity which has 1 or more employees and is legally doing business in this state

(c) Trust means a trust established by an employer and maintained for the sole purpose of providing for the cost of benefits under an employee welfare benefit plan maintained for employees or retired employees including a sole proprietor or a partner of the employer and their qualified dependents and beneficiaries

(2) Notwithstanding any other section of this act an employer has an insurable interest in and may with the written consent of the insured insure on an individual or group basis for its benefit the lives of its directors officers managers nonmanagement employees and its retired employees An employer may insure the lives of its nonmanagement employees and its retired employees only if those persons give written consent to be insured and the coverage is limited to an amount reasonably commensurate with the employer's projected unfunded liabilities to nonmanagement and retired employees for employee welfare benefit plans calculated according to accepted actuarial principles An employer shall not retaliate in any manner against an employee or a retired employee for refusing consent to be insured

(3) Notwithstanding any other section of this act a trustee of a trust has an insurable interest in and may with the acquiescence of the insured insure on an individual or group basis the lives of the employer's directors officers managers nonmanagement employees and its retired employees A trustee of a trust may insure the life of a nonmanagement employee and a retired employee only if that person is given written notice of the coverage he or she has not notified either the employer or the trustee in writing that he or she does not want to be insured for the

coverage and the coverage is limited to an amount reasonably commensurate with the employer's projected unfunded liabilities to nonmanagement and retired employees for employee welfare benefit plans calculated according to accepted actuarial principles. An employer or a trustee shall not retaliate in any manner against an employee or a retired employee for providing the written notice that he or she does not want to be insured for the coverage.

(4) The proceeds of any policy or certificate issued pursuant to subsection (2) or (3) is exempt from the claims of any creditor or dependent of the insured.

Sec 8103 As used in this chapter

(a) Ancillary state means any state other than a domiciliary state

(b) Creditor is a person having a claim against the insurer whether matured or unmatured liquidated or unliquidated secured or unsecured absolute fixed or contingent

(c) Delinquency proceeding means a proceeding instituted against an insurer for the purpose of liquidating rehabilitating reorganizing or conserving such insurer and a summary proceeding under section 8109 or 8110. Formal delinquency proceeding means any liquidation or rehabilitation proceeding.

(d) Domiciliary state means the state in which an insurer is incorporated or organized or in the case of an alien insurer its state of entry

(e) Fair consideration is given for property or an obligation pursuant to either of the following

(i) If in exchange for the property or obligation as a fair equivalent of the property or obligation and in good faith property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied

(ii) If the property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained

(f) Foreign country means any other jurisdiction not in any state

(g) General assets means all property real personal or otherwise not specifically mortgaged pledged deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property general assets includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors in more than a single state shall be treated as general assets. Amounts due an insolvent insurer as indemnification from the catastrophic claims association created in section 3104 shall not be considered to be assets of the receivership but shall be paid directly to the property and casualty guaranty association under section 7935.

(h) Guaranty association means the Michigan property and casualty guaranty association the workers compensation self insurance security fund the Michigan life and health insurance guaranty association and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers.

Foreign guaranty association means any similar entities now in existence or hereafter created by the legislature of any other state

(i) Insolvency or insolvent means

(i) For an insurer issuing only assessable fire insurance policies

(A) The inability to pay an obligation within 30 days after it becomes payable

(B) If an assessment is made within 30 days after the date in subparagraph (i)(A) the inability to pay an obligation 30 days following the date specified in the first assessment notice issued after the date of loss

(ii) For an insurer other than an insurer under subparagraph (i) the inability to pay its obligations when they are due or when admitted assets do not exceed liabilities plus the greater of either of the following

(A) Any capital and surplus required by law for its organization

(B) The total par or stated value of its authorized and issued capital stock

(iii) For purposes of this subdivision liabilities shall include but not be limited to reserves required by statute or by rule or specific requirements imposed by the commissioner upon an insurer at the time of admission or subsequent to admission

(j) Preferred claim means a claim that receives priority of payment from the general assets of the insurer under this chapter

(k) Receiver means receiver liquidator rehabilitator or conservator as the context requires

(l) Reciprocal state means a state other than this state in which all of the following occurs

(i) In substance and effect sections 8118(1) 8152 8153 8155 8156 and 8157 are in force

(ii) Provisions requiring that the commissioner or equivalent official be the receiver of a delinquent insurer are in force

(m) Some provision for the avoidance of fraudulent conveyances and preferential transfers are in force

(n) Secured claim means a claim secured by mortgage trust deed pledge deposit as security escrow or otherwise but not including a special deposit claim or claim against general assets The term also includes claims that have become liens upon specific assets by reason of judicial process

(o) Special deposit claim means a claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but not including a claim secured by general assets

(p) State means a state district or territory of the United States

(q) Transacting business includes any of the following acts whether effected by mail or otherwise

(r) The issuance or delivery of contracts of insurance to persons resident in this state

(s) The solicitation of applications for insurance contracts or other negotiations preliminary to the execution of insurance contracts

(t) The collection of premiums membership fees assessments or other consideration for insurance contracts

(u) The transaction of matters subsequent to execution of insurance contracts and arising out of them

(v) Operating under a certificate of authority as an insurer issued by the commissioner

(w) Transfer shall include the sale and every other and different mode direct or indirect of disposing of or of parting with property or with an interest in property or with the possession of property or of fixing a lien upon property or upon an interest in property absolutely or conditionally voluntarily by or without judicial proceedings The retention of a security title to property delivered to a debtor shall be considered a transfer suffered by the debtor

(x) Trusteed assets means the assets of an alien insurer and U S branch domiciled in this state and maintained in trust pursuant to section 411(4)

Sec 8109 (1) If the commissioner has reasonable cause to believe and determines after a hearing held under subsection (5) that a domestic insurer has committed or engaged in or is about to commit or engage in an act practice or transaction that would subject it to delinquency proceedings under this chapter the commissioner may make and serve upon the insurer and any other persons involved any order as is reasonably necessary to correct eliminate or remedy the conduct condition or ground

(2) If upon examination or at any other time the commissioner has reasonable cause to believe that a domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if the domestic insurer gives its consent then the commissioner shall upon his or her determination

(a) Notify the insurer of his or her determination

(b) Furnish to the insurer a written list of the commissioner's requirements to abate his or her determination

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2) the commissioner shall notify the insurer that it is under the supervision of the commissioner During the period of supervision the commissioner may appoint a supervisor to supervise the insurer The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require the following

(a) That the insurer shall not do any of the following things during the period of supervision without the prior approval of the commissioner or his or her supervisor

(i) Dispose of convey or encumber any of its assets or its business in force including disposing conveying or encumbering its assets or business to affiliated companies either domestic foreign or alien

(ii) Withdraw from any of its bank accounts

(iii) Lend any of its funds

(iv) Invest any of its funds

(v) Transfer any of its property

(vi) Incur any debt obligation or liability

(vii) Merge or consolidate with another company

(viii) Enter into any new reinsurance contract or treaty or cancel any existing reinsurance contract or treaty

(ix) Engage in any other activity that the commissioner or his or her supervisor considers hazardous to the insurer

(b) That upon the written instruction of the commissioner or his or her supervisor the insurer shall do the following during the period of supervision

(i) Produce all books accounts and records of affiliated companies as required to be maintained by section 1341(1)(d) including affiliated foreign or alien insurers for review by the commissioner or his or her supervisor

(ii) Dispose of convey or encumber any of its assets or its business in force

- (iii) Deposit any funds or assets in any of its bank accounts or depositories
  - (iv) Collect or enforce provisions of any of its loans security agreements mortgages hypothecations contracts or like obligations
  - (v) Invest any of its funds
  - (vi) Transfer any of its property
  - (vii) Incur any debt obligation or liability
  - (viii) Enter into any new reinsurance contract or treaty
  - (ix) Engage in any other activity that the commissioner or his or her supervisor after review by the commissioner considers reasonably necessary to insuring compliance by the insurer with the supervision order
- (4) An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and his or her supervisor and if placed under supervision shall have 60 days from the date the supervision order is served within which to comply with the commissioner's requirements. If the insurer fails to comply within that time the commissioner may institute proceedings to have a rehabilitator or liquidator appointed under section 8112 or 8117 to extend the period of supervision pursuant to the commissioner's written order or to suspend revoke or limit the insurer's certificate of authority to do business in accordance with section 437.
- (5) The notice of hearing under subsection (1) and an order issued pursuant to subsection (1) shall be served upon the insurer pursuant to the applicable rules of 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. The notice of hearing shall state the time and place of hearing and the conduct condition or ground upon which the commissioner would base his or her order. Unless mutually agreed between the commissioner and the insurer the hearing shall occur not less than 10 days or more than 30 days after notice is served and shall be either in Ingham county or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing in which case the hearing shall be public.
- (6) An insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5) but the request for a hearing shall not stay the effect of the order. If the commissioner issues an order under subsection (2) the insurer at any time may waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing a party to the proceedings whose interests are substantially affected shall be entitled to judicial review of an order issued by the commissioner.
- (7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor specifying wherein the action complained of is believed not to be in the best interest of the insurer.
- (8) If a person has violated a supervision order issued under this section which as to him or her was then still in effect he or she may be sentenced by the court to pay a fine not exceeding \$10 000 00.
- (9) The commissioner may apply for and the circuit court may grant a restraining order preliminary injunction permanent injunction and any other order as may be considered necessary and proper to enforce a supervision order including an order precluding a person or domestic insurer from transferring business to or writing new business with an affiliated domestic foreign or alien insurer so as to avoid the effects of a supervision as provided in subsections (3) and (4).
- (10) If a person subject to the provisions of this chapter including those persons described in section 8106(1) knowingly violates a valid order of the commissioner issued under the provisions of this section and as a result of the violation the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered that person is personally liable to the insurer for the amount of the reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the circuit court for Ingham county to recover the amount of the reduction or loss together with cost.
- (11) Reasonable costs and expenses incurred by the commissioner in conducting a supervision of an alien insurer or any investigation preliminary to that supervision under this chapter are an expense of administering a delinquency proceeding and are payable from the assets of the trust established pursuant to section 411(4).

Sec 8118 (1) An order to liquidate the business of a domestic insurer shall appoint the commissioner and his or her successors in office as liquidator and shall direct the liquidator to take possession immediately of the insurer's assets and to administer them under the court's general supervision. The liquidator shall be vested by operation of law with the title to all of the property contracts and rights of action and all of the books and records of the insurer ordered liquidated wherever located as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the circuit court and the register of deeds of the county in which its principal office or place of business is located or in the case of real estate with the register of deeds of the county where the property is located shall impart

the same notice as a deed bill of sale or other evidence of title duly filed or recorded which the register of deeds would have imparted

(2) Upon issuance of the order the rights and liabilities of the insurer and of its creditors policyholders shareholders members and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation except as provided in sections 8119 and 8137

(3) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer except that the court is vested by operation of law with titles to the trustee assets of the alien insurer and that the assets and business of the insurer in the United States shall be the only assets and business included in the order The liquidator shall administer the trustee assets in accordance with this chapter subject at all times to the court's direction and supervision

(4) At the time of petitioning for an order of liquidation or at any time thereafter the commissioner after making appropriate findings of an insurer's insolvency may petition the court for a judicial declaration of insolvency After providing notice and hearing as it considers proper the court may make the declaration

(5) An order issued under this section shall require accounting to the court by the liquidator Accountings shall be at intervals as the court specifies in its order

Sec 8118a (1) For an alien insurer domiciled in this state at any time after the court grants an order pursuant to section 8118 any person having an interest in the trustee assets of the insurer or in their due administration or in the due administration of the insurer's estate and seeking to have all or part of the trustee assets transferred to that person shall do so by petitioning the court for an order directing that title to and possession of all or part of the trustee assets be transferred to that person

(2) After providing notice and hearing as it considers proper the court may grant deny or suspend a petition made pursuant to subsection (1) on terms and conditions or make such other order as the court considers appropriate considering the following

(a) The interests of policyholders other claimants and creditors of the insurer and the public

(b) Whether the order requested and any governing legislation upon which it is based is conducive to or contrary to the objectives of this chapter

(c) Whether the order requested is consistent with the terms conditions and objectives of the trust agreement or agreements referred to in section 411(4)

(d) The effect the order requested would have or could reasonably be expected to have on the ability of the liquidator to use assets of the insurer's estate under the liquidation order to transfer policy obligations to a solvent assuming insurer

(e) Any agreements with a receiver or commissioner or like official of another state in which the insurer was doing business or of the country under the laws of which the insurer was formed relating to the rehabilitation liquidation conservation or dissolution of the insurer

(f) The adequacy of information available to the court upon which to make a determination

(g) The costs that could reasonably be expected to be incurred as a result of the order

Sec 8121 (1) The liquidator shall have the power to do the following

(a) To appoint a special deputy including but not limited to the Michigan life and health insurance guaranty association with its consent or the Michigan property and casualty guaranty association with its consent to act for him or her under this chapter and to determine the special deputy's reasonable compensation The special deputy shall have all powers of the liquidator granted by this chapter and shall serve at the pleasure of the liquidator

(b) To employ employees and agents legal counsel actuaries accountants appraisers consultants and such other personnel as he or she considers necessary to assist in the liquidation

(c) To fix the reasonable compensation of employees and agents legal counsel actuaries accountants court's appraisers and consultants with the court's approval

(d) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of conserving conducting liquidating disposing of or otherwise dealing with the insurer's business and property If the insurer's property does not contain sufficient cash or liquid assets to defray the costs incurred the commissioner may advance the incurred costs out of an appropriation for the maintenance of the insurance bureau Amounts advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance bureau out of the first available money of the insurer

(e) To hold hearings to subpoena witnesses to compel their attendance to administer oaths to examine a person under oath and to compel a person to subscribe to his or her testimony after it has been correctly reduced to writing and in connection with these powers to require the production of books papers records or other documents that he or she considers relevant to the inquiry

(f) To collect all debts and money due and claims belonging to the insurer wherever located and for the following purposes

(i) To institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts

(ii) To do other acts as are necessary or expedient to collect conserve or protect the assets or property including the power to sell compound compromise or assign debts for purposes of collection upon terms and conditions as he or she considers best

(iii) To pursue a creditor's remedies available to enforce the creditor's claims

(g) To conduct public and private sales of the insurer's property

(h) To use assets of the insurer's estate under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under section 8142

(i) To acquire hypothecate encumber lease improve sell transfer abandon or otherwise dispose of or deal with insurer property at its market value or upon terms and conditions as are fair and reasonable He or she shall also have power to execute acknowledge and deliver any and all deeds assignments releases and other instruments necessary or proper to effectuate the sale of property or other transaction in connection with the liquidation except that for trusted assets any instruments necessary or proper shall be executed only pursuant to court order

(j) To borrow money on the security of the insurer's assets or to borrow money without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation

(k) To enter into contracts necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party

(l) To continue to prosecute and to institute in the name of the insurer or in his or her own name suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she considers unprofitable to pursue further If the insurer is dissolved under section 8120 he or she shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff

(m) To prosecute an action that may exist on behalf of the creditors members policyholders or shareholders of the insurer against an officer of the insurer or another person

(n) To remove records and property of the insurer to the commissioner's offices or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations

(o) To deposit in 1 or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions

(p) To invest all sums not currently needed unless the court orders otherwise

(q) To file any necessary documents for recording in the office of any register of deeds in this state or elsewhere where property of the insurer is located

(r) To assert all defenses available to the insurer as against third persons including statutes of limitation statutes of frauds and the defense of usury A waiver of a defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator If a guaranty association or foreign guaranty association has an obligation to defend a suit the liquidator shall give precedence to that obligation and may defend only in the absence of a defense by the guaranty associations

(s) To exercise and enforce all the rights remedies and powers of a creditor shareholder policyholder or member including the power to avoid a transfer or lien that may be given by the general law and that is not included in sections 8126 to 8128

(t) To intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered

(u) To enter into agreements with a receiver or commissioner of another state relating to the rehabilitation liquidation conservation or dissolution of an insurer doing business in both states

(v) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this chapter

(2) If a company placed in liquidation issued liability policies on a claims made basis which provided an option to purchase an extended period to report claims then the liquidator may make available to holders of those policies for a charge an extended period to report claims as stated in this chapter The extended reporting period shall be made available only to those insureds who have not secured substitute coverage The extended period made available by the liquidator shall begin upon termination of an extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or 18 months from the order of liquidation

(3) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available the extended period within 60 days after the order of liquidation at a charge to be determined by the liquidator subject to the court's approval. The offer shall be considered rejected unless the offer is accepted in writing and the charge is paid within 90 days after the order of liquidation. Commissions, premium taxes, assessments, or other fees shall not be due on the charge pertaining to the extended period to report claims.

(4) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her, and it shall not exclude in any manner his or her right to do other acts not specifically enumerated in this section or otherwise provided for if necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(5) The liquidator may delay the sale of the assets of the company if the liquidator determines a delay in the sale would be prudent in order to obtain a more favorable rate of return on the sale of the assets.

This act is ordered to take immediate effect.

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

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Governor