



HOUSE BILL No. 4405

March 2, 1993, Introduced by Reps. Saunders, Murphy, Points, Kilpatrick, Scott, Wetters, Harrison, DeMars, Bennane, Stallworth, Wallace, Dobronski, Baade, Harder, Olshove, Clack, Schroer, Pitoniak, Gire, Leland, Jondahl, Owen, Berman, O'Neill, Hood, Richard A. Young, Barns, Agee and Hollister and referred to the Committee on Judiciary.

A bill to amend sections 2403 and 2404 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 2403 as amended and section 2404 as added by Act No. 173 of the Public Acts of 1986, being sections 500.2403 and 500.2404 of the Michigan Compiled Laws; and to add sections 2403a, 2403b, 2404a, and 2404b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2403 and 2404 of Act No. 218 of the
2 Public Acts of 1956, section 2403 as amended and section 2404 as
3 added by Act No. 173 of the Public Acts of 1986, being sections
4 500.2403 and 500.2404 of the Michigan Compiled Laws, are amended
5 and sections 2403a, 2403b, 2404a, and 2404b are added to read as
6 follows:

1 Sec. 2403. (1) All rates shall be made in accordance with
2 this section and all of the following:

3 (a) Due consideration shall be given to past and prospective
4 loss experience within and outside this state; to catastrophe
5 hazards; to a reasonable margin for underwriting profit and con-
6 tingencies; to dividends, savings, or unabsorbed premium deposits
7 allowed or returned by insurers to their policyholders, members,
8 or subscribers; to past and prospective expenses, both country-
9 wide and those specially applicable to this state; to underwrit-
10 ing practice, judgment, and to all other relevant factors within
11 and outside this state. With respect to worker's compensation
12 insurance, in determining the reasonableness of the margin for
13 underwriting profit and contingencies, consideration shall be
14 given to all after-tax investment profit or loss from unearned
15 premium and loss reserves attributable to worker's compensation
16 insurance, as well as the factors used to determine the amount of
17 reserves. WITH RESPECT TO MEDICAL MALPRACTICE INSURANCE, IN
18 DETERMINING THE REASONABLENESS OF THE MARGIN FOR UNDERWRITING
19 PROFIT AND CONTINGENCIES CONSIDERATION SHALL BE GIVEN TO ALL
20 RESERVES ATTRIBUTABLE TO MEDICAL MALPRACTICE INSURANCE, AS WELL
21 AS THE FACTORS USED TO DETERMINE THE AMOUNT OF THE RESERVES;
22 ADMINISTRATIVE COSTS, OTHER OVERHEAD COSTS, AND LOSS ADJUSTMENT
23 COSTS OTHER THAN DEFENSE COSTS SHALL NOT BE MORE THAN 5% OF PRE-
24 MIUM; AND RATES SHALL BE REASONABLY EXPECTED TO PRODUCE A PURE
25 PREMIUM LOSS RATIO, FOR PAID LOSSES TO EARNED PREMIUMS, OF NOT
26 LESS THAN 85%. With respect to all other kinds of insurance to
27 which this chapter applies, all factors to which due

1 consideration is given under this subdivision shall be treated in
2 a manner consistent with the laws of this state ~~which~~ THAT
3 existed on December 28, 1981.

4 (b) The systems of expense provisions included in the rates
5 for use by any insurer or group of insurers may differ from those
6 of other insurers or groups of insurers to reflect the require-
7 ments of the operating methods of the insurer or group with
8 respect to any kind of insurance, or with respect to any subdivi-
9 sion or combination thereof for which subdivision or combination
10 separate expense provisions are applicable.

11 (c) Risks may be grouped by classifications for the estab-
12 lishment of rates and minimum premiums. Classification rates may
13 be modified to produce rates for individual risks in accordance
14 with rating plans ~~which~~ THAT measure variations in hazards,
15 expense provisions, or both. The rating plans may measure any
16 differences among risks that may have a probable effect upon
17 losses or expenses as provided for in subdivision (a).

18 (d) Rates shall not be excessive, inadequate, or unfairly
19 discriminatory. A rate shall not be held to be excessive unless
20 the rate is unreasonably high for the insurance coverage provided
21 and a reasonable degree of competition does not exist with
22 respect to the classification, kind, or type of risks to which
23 the rate is applicable. Except as otherwise provided in this
24 subdivision, a rate shall not be held to be inadequate unless the
25 rate is unreasonably low for the insurance coverage provided and
26 the continued use of the rate endangers the solvency of the
27 insurer; or unless the rate is unreasonably low for the insurance

1 coverage provided and the use of the rate has or will have the
2 effect of destroying competition among insurers, creating a
3 monopoly, or causing a kind of insurance to be unavailable to a
4 significant number of applicants who are in good faith entitled
5 to procure the insurance through ordinary methods. ~~For~~ EXCEPT
6 AS OTHERWISE PROVIDED IN SUBDIVISION (A), FOR commercial liabil-
7 ity insurance a rate shall not be held to be inadequate unless
8 the rate, after consideration of investment income and marketing
9 programs and underwriting programs, is unreasonably low for the
10 insurance coverage provided and is insufficient to sustain
11 projected losses and expenses; or unless the rate is unreasonably
12 low for the insurance coverage provided and the use of the rate
13 has or will have the effect of destroying competition among
14 insurers, creating a monopoly, or causing a kind of insurance to
15 be unavailable to a significant number of applicants who are in
16 good faith entitled to procure the insurance through ordinary
17 methods. As used in this subdivision, "commercial liability
18 insurance" means insurance ~~which~~ THAT provides indemnification
19 for commercial, industrial, professional, or business
20 liabilities. A rate for a coverage is unfairly discriminatory in
21 relation to another rate for the same coverage, if the differen-
22 tial between the rates is not reasonably justified by differences
23 in losses, expenses, or both, or by differences in the uncer-
24 tainty of loss for the individuals or risks to which the rates
25 apply. A reasonable justification shall be supported by a rea-
26 sonable classification system; by sound actuarial principles when
27 applicable; and by actual and credible loss and expense

1 statistics or, in the case of new coverages and classifications,
2 by reasonably anticipated loss and expense experience. A rate is
3 not unfairly discriminatory because the rate reflects differences
4 in expenses for individuals or risks with similar anticipated
5 losses, or because the rate reflects differences in losses for
6 individuals or risks with similar expenses. Rates are not
7 unfairly discriminatory if they are averaged broadly among per-
8 sons insured on a group, franchise, blanket policy, or similar
9 basis.

10 (2) Except to the extent necessary to meet the provisions of
11 subsection (1)(d), uniformity among insurers in any matters
12 within the scope of this section is neither required nor
13 prohibited.

14 SEC. 2403A. BY NOT LATER THAN JULY 1, 1993, EACH PHYSICIAN
15 MEDICAL MALPRACTICE INSURER SHALL FILE BASE RATES FOR PHYSICIAN
16 MEDICAL MALPRACTICE INSURANCE THAT REFLECT THE RATES FOR ALL COV-
17 ERAGES IN EFFECT ON JULY 1, 1992 FOR THE 2 LARGEST BY MARKET
18 SHARE PHYSICIAN MEDICAL MALPRACTICE INSURERS REDUCED BY AT LEAST
19 20%. BY NOT LATER THAN JULY 1, 1993, EACH HOSPITAL MEDICAL MAL-
20 PRACTICE INSURER SHALL FILE BASE RATES FOR HOSPITAL MEDICAL MAL-
21 PRACTICE INSURANCE THAT REFLECT THE RATES FOR ALL COVERAGES IN
22 EFFECT ON JULY 1, 1992 FOR THE LARGEST BY MARKET SHARE HOSPITAL
23 MEDICAL MALPRACTICE INSURER REDUCED BY AT LEAST 20%.

24 SEC. 2403B. (1) PURSUANT TO THIS SECTION, AN INSURER MAY
25 PETITION THE COMMISSIONER FOR RELIEF FROM THE FOLLOWING:

1 (A) THE REQUIREMENT UNDER SECTION 2403 THAT ADMINISTRATIVE
2 COSTS, OTHER OVERHEAD COSTS, AND LOSS ADJUSTMENT COSTS OTHER THAN
3 DEFENSE COSTS BE NOT MORE THAN 5% OF PREMIUM.

4 (B) THE REQUIREMENT UNDER SECTION 2403 THAT RATES ARE TO BE
5 REASONABLY EXPECTED TO PRODUCE A PURE PREMIUM LOSS RATIO, FOR
6 PAID LOSSES TO EARNED PREMIUMS, OF NOT LESS THAN 85%.

7 (C) THE REQUIREMENT UNDER SECTION 2403A THAT BASE RATES BE
8 REDUCED BY AT LEAST 20%. A PETITION FOR RELIEF UNDER THIS SUBDI-
9 VISION MUST BE SUBMITTED BY NOT LATER THAN JUNE 1, 1993.

10 (2) AN INSURER'S PETITION FOR RELIEF SHALL BE SUBMITTED TO
11 THE INDEPENDENT ACTUARIAL PANEL CREATED IN SUBSECTION (3) AND TO
12 THE COMMISSIONER. THE INDEPENDENT ACTUARIAL PANEL SHALL GRANT
13 THE INSURER A HEARING AS PROVIDED IN THE ADMINISTRATIVE PROCE-
14 DURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING
15 SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, AND
16 SHALL SUBMIT A RECOMMENDATION IN WRITING TO THE COMMISSIONER
17 WITHIN 30 DAYS AFTER THE HEARING.

18 (3) AN INDEPENDENT ACTUARIAL PANEL SHALL BE ESTABLISHED IN
19 THE INSURANCE BUREAU BY MAY 15, 1993. THE INDEPENDENT ACTUARIAL
20 PANEL SHALL CONSIST OF 3 INDEPENDENT ACTUARIES APPOINTED AS
21 FOLLOWS:

22 (A) ONE ACTUARY APPOINTED BY THE SENATE MAJORITY LEADER.

23 (B) ONE ACTUARY APPOINTED BY THE SPEAKER OF THE HOUSE OF
24 REPRESENTATIVES.

25 (C) ONE ACTUARY APPOINTED BY THE ACTUARIES APPOINTED UNDER
26 SUBDIVISIONS (A) AND (B).

1 (4) THE COMMISSIONER SHALL REVIEW THE RECOMMENDATIONS OF THE
2 INDEPENDENT ACTUARIAL PANEL AND SHALL NOT GRANT AN INSURER'S
3 PETITION FOR RELIEF UNLESS THE COMMISSIONER FINDS IN WRITING THAT
4 UNLESS THE COMMISSIONER GRANTS THE PETITION, THE INSURER, EVEN
5 WITH THE COMPUTATION OF INVESTMENT INCOME AND SAVINGS RESULTING
6 FROM THE IMPLEMENTATION OF RISK MANAGEMENT PLANS, WILL BECOME
7 INSOLVENT OR IS UNABLE TO EARN A FAIR RATE OF RETURN ON ITS OVER-
8 ALL BOOK OF MEDICAL MALPRACTICE INSURANCE. THE COMMISSIONER
9 SHALL NOT GRANT AN INSURER'S PETITION FOR RELIEF IF TO DO SO WILL
10 ACCOMMODATE INSURER INEFFICIENCIES OR MAINTAIN EXCESSIVE OR
11 UNSUBSTANTIATED RESERVES OF THE INSURER.

12 Sec. 2404. (1) Each authorized insurer ~~which~~ THAT deliv-
13 ers or issues for delivery commercial liability insurance poli-
14 cies in this state shall develop and establish a secondary or
15 merit rating plan for commercial liability insurance rates. A
16 merit rating plan required under this section shall adjust rates
17 for commercial liability insurance policies on the basis of risk
18 management technique implemented by the insured.

19 (2) An insurer's rating plan for medical malpractice insur-
20 ance may provide for a premium surcharge based upon the filing of
21 an action against the insured, SHALL BE STANDARDIZED AS PRE-
22 SCRIBED BY THE COMMISSIONER, AND SHALL BE subject to all of the
23 following limitations:

24 (a) The surcharge plan shall be filed with AND APPROVED BY
25 the commissioner.

1 (b) A surcharge shall not be based on an action that was
2 filed more than 3 years immediately preceding the issuance or
3 renewal of the policy.

4 (c) A surcharge shall not be based on an action for which
5 the insured has been adjudged not liable or which has been dis-
6 missed or settled without indemnity being paid on behalf of the
7 insured.

8 (d) A surcharge shall not be based on an action for which
9 the insurer pays, on behalf of the insured, indemnity and loss
10 adjustment expenses with respect to such action in an amount that
11 is less than 51% of the annual premium paid by the insured for
12 the policy period covering such action.

13 (E) AN INSURED PROVIDER OR GROUP OF PROVIDERS SHALL ONLY BE
14 SUBJECT TO A SURCHARGE IF THE INSURED PROVIDER HAS 3 OR MORE
15 CLAIMS IN 1 YEAR, HAS 1 OR MORE CLAIMS THAT HAVE RESULTED IN
16 \$30,000.00 SETTLEMENTS OR JUDGMENTS, OR HAS A CLAIM THAT HAS
17 RESULTED FROM AN ACTIVITY OUTSIDE THE SCOPE OF THE INSURED
18 PROVIDER'S LICENSURE.

19 (F) AN INSURED HOSPITAL SHALL ONLY BE SUBJECT TO A SURCHARGE
20 IF THE INSURED HOSPITAL HAS 8 OR MORE CLAIMS IN 1 YEAR, HAS 1 OR
21 MORE CLAIMS THAT HAVE RESULTED IN \$30,000.00 SETTLEMENTS OR JUDG-
22 MENTS, OR HAS A CLAIM THAT HAS RESULTED FROM AN ACTIVITY OUTSIDE
23 THE SCOPE OF THE INSURED HOSPITAL'S LICENSURE.

24 (3) As used in this section, "commercial liability
25 insurance" means insurance ~~which~~ THAT provides indemnification
26 for commercial, industrial, professional, or business
27 liabilities.

1 SEC. 2404A. EACH MEDICAL MALPRACTICE INSURER SHALL FILE
2 WITH THE COMMISSIONER AND IMPLEMENT RISK MANAGEMENT PLANS BY NOT
3 LATER THAN 18 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION.
4 THE RISK MANAGEMENT PLANS SHALL BE DESIGNED TO PREVENT MALOCU-
5 RENCES AND IATROGENIC INJURIES AND SHALL BE BASED ON THE
6 INSURER'S OWN DATA AND RISK MANAGEMENT EXPERTISE AND ON THE
7 COMMISSIONER'S RECOMMENDATIONS AFTER CONSIDERING NATIONAL RISK
8 MANAGEMENT STUDIES. UPON REQUEST, THE RISK MANAGEMENT PLANS
9 SHALL GIVE INSURED'S RISK MANAGEMENT INFORMATION TAILORED TO THE
10 SPECIALTY OR PRACTICE OF THE INSURED AND THAT ARE PROCEDURE CODE
11 AND DIAGNOSIS CODE SPECIFIC.

12 SEC. 2404B. (1) BY NOT LATER THAN 30 MONTHS AFTER THE
13 EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THEREAFTER, THE COM-
14 MISSIONER SHALL REVIEW THE RISK MANAGEMENT PLANS FILED PURSUANT
15 TO SECTION 2404A AND THE DATA COLLECTED FROM ALL REPORTED MEDICAL
16 MALPRACTICE CLAIMS DATA AND SHALL ISSUE A REPORT THAT EVALUATES
17 THE EFFECT OF THE RISK MANAGEMENT PLANS FILED UNDER SECTION 2404A
18 AS THEY RELATE TO QUALITY OF CARE AND COST SAVINGS.

19 (2) EACH MEDICAL MALPRACTICE INSURER SHALL REPORT BY NOT
20 LATER THAN 24 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION AND
21 ANNUALLY THEREAFTER ON UNIFORM FORMS PRESCRIBED BY THE COMMIS-
22 SIONER ON THE RESULTS OF THEIR RISK MANAGEMENT PLANS.

23 (3) EACH MEDICAL MALPRACTICE INSURER SHALL REDUCE MEDICAL
24 MALPRACTICE BASE RATES TO ACCURATELY REFLECT ANY SAVINGS RESULT-
25 ING FROM THE APPLICATION OF RISK MANAGEMENT PROCEDURES AND PLANS.