



SENATE BILL No. 346

February 4, 1993, Introduced by Senators WARTNER, WELBORN and MC MANUS and referred to the Committee on Commerce.

A bill to amend sections 1207, 2236, 2301, 2303, 2312, 2402, 2409, 2409a, 7911, and 7921 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 1207 as amended by Act No. 170 of the Public Acts of 1990, section 2236 as amended by Act No. 305 of the Public Acts of 1990, sections 2301, 2303, 2409, and 2409a as added by Act No. 8 of the Public Acts of 1982, sections 2312, 7911, and 7921 as amended by Act No. 137 of the Public Acts of 1990, and section 2402 as added by Act No. 7 of the Public Acts of 1982, being sections 500.1207, 500.2236, 500.2301, 500.2303, 500.2312, 500.2402, 500.2409, 500.2409a, 500.7911, and 500.7921 of the Michigan Compiled Laws; to add chapter 51; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1207, 2236, 2301, 2303, 2312, 2402,
2 2409, 2409a, 7911, and 7921 of Act No. 218 of the Public Acts of
3 1956, section 1207 as amended by Act No. 170 of the Public Acts
4 of 1990, section 2236 as amended by Act No. 305 of the Public
5 Acts of 1990, sections 2301, 2303, 2409, and 2409a as added by
6 Act No. 8 of the Public Acts of 1982, sections 2312, 7911, and
7 7921 as amended by Act No. 137 of the Public Acts of 1990, and
8 section 2402 as added by Act No. 7 of the Public Acts of 1982,
9 being sections 500.1207, 500.2236, 500.2301, 500.2303, 500.2312,
10 500.2402, 500.2409, 500.2409a, 500.7911, and 500.7921 of the
11 Michigan Compiled Laws, are amended and chapter 51 is added to
12 read as follows:

13 Sec. 1207. (1) An agent shall be a fiduciary for all money
14 received or held by the agent in his or her capacity as an
15 agent. Failure by an agent in a timely manner to turn over the
16 money which he or she holds in a fiduciary capacity to the per-
17 sons to whom they are owed is prima facie evidence of violation
18 of the agent's fiduciary responsibility. An agent shall not
19 accept payment of a premium for a medicare supplemental policy or
20 certificate in the form of a check or money order made payable to
21 the agent instead of the insurer. Upon receiving payment of a
22 premium for a medicare supplemental policy or certificate, an
23 agent shall immediately provide a written receipt to the
24 insured.

25 (2) An agent shall use reasonable accounting methods to
26 record funds received in his or her fiduciary capacity including

1 the receipt and distribution of all premiums due each of his or
2 her insurers. An agent shall record return premiums received by
3 or credited to him or her which are due an insured on policies
4 reduced or canceled or which are due a prospective purchaser of
5 insurance as a result of a rejected or declined application.
6 Records required by this section shall be open to examination by
7 the commissioner.

8 (3) Except as provided in section 1212 and subsection (4),
9 an agent shall not reward or remunerate any person for procuring
10 or inducing business in this state, furnishing leads or pros-
11 pects, or acting in any other manner as an agent.

12 (4) If an agent is unable to immediately provide, through
13 his or her insurers that are authorized to underwrite the cover-
14 age, all or a part of the coverage requested on a risk, the agent
15 may obtain the part of the coverage refused by his or her insur-
16 ers through another licensed agent ~~— through the state accident~~
17 ~~fund,~~ or through a risk sharing plan permitted by state law. An
18 agent who attempts to place the refused part of the coverage
19 through another licensed agent shall advise the buyer in writing
20 that the refused part of the coverage is not in effect until the
21 buyer receives written evidence of insurance.

22 (5) A person may not sell or attempt to sell insurance by
23 means of intimidation or threats, whether express or implied.
24 Except as provided in section 2077(4) a person may not induce the
25 purchase of insurance through a particular agent or from a par-
26 ticular insurer by means of a promise to sell goods, to lend
27 money, to provide services, or by a threat to refuse to sell

1 goods, to refuse to lend money, or to refuse to provide
2 services.

3 (6) After January 1, 1973, an insurer or an agent may not be
4 a party to a contract under which the agent assumes any responsi-
5 bility or obligation for payment, from his or her commission or
6 any allocation of premium to him or her by the insurer, of any
7 losses on insurance policies sold by the agent unless the claim
8 adjusting is done by insurance company adjusters or licensed
9 independent adjusters.

10 Sec. 2236. (1) A basic insurance policy form or annuity
11 contract form shall not be issued or delivered to any person in
12 this state, and an insurance or annuity application form if a
13 written application is required and is to be made a part of the
14 policy or contract, a printed rider or indorsement form or form
15 of renewal certificate, and a group certificate in connection
16 with the policy or contract, shall not be issued or delivered to
17 a person in this state, until a copy of the form is filed with
18 the insurance bureau and approved by the commissioner as conform-
19 ing with the requirements of this code and not inconsistent with
20 the law. Failure of the commissioner to act within 30 days after
21 submittal shall constitute approval. All such forms, except pol-
22 icies of disability insurance as defined in section 3400, shall
23 be plainly printed with type size not less than 8-point unless
24 the commissioner determines that portions of such a form printed
25 with type less than 8-point is not deceptive or misleading. ~~An~~
26 ~~insurance policy form submitted for approval by the state~~
27 ~~accident fund shall include on the first page of the form in a~~

~~1 separate paragraph in 10 point type a statement that the Michigan
2 state accident fund is an agency of state government, and is not
3 a member of the property and casualty guaranty association.
4 Neither the state nor the association is liable if the state
5 accident fund is declared insolvent during the effective period
6 of the policy.~~

7 (2) An insurer may satisfy its obligations to make form fil-
8 ings by becoming a member of, or a subscriber to, a rating orga-
9 nization, licensed under section 2436 or 2630, which makes such
10 filings and by filing with the commissioner a copy of its autho-
11 rization of the rating organization to make the filings on its
12 behalf. Every member of or subscriber to a rating organization
13 shall adhere to the form filings made on its behalf by the orga-
14 nization except that an insurer may file with the commissioner a
15 substitute form, and thereafter if a subsequent form filing by
16 the rating organization affects the use of the substitute form,
17 the insurer shall review its use and notify the commissioner to
18 withdraw its substitute form.

19 (3) Beginning January 1, 1992, the commissioner shall not
20 approve a form filed pursuant to this section providing for or
21 relating to an insurance policy or an annuity contract for per-
22 sonal, family, or household purposes if the form fails to obtain
23 the readability score or meet the other requirements of this sub-
24 section, as applicable:

25 (a) The readability score for a form for which approval is
26 required by this section shall not be less than 45, as determined
27 by the method provided in subdivisions (b) and (c).

1 (b) The readability score for a form shall be determined as
2 follows:

3 (i) For a form containing not more than 10,000 words, the
4 entire form shall be analyzed. For a form containing more than
5 10,000 words, not less than two 200-word samples per page shall
6 be analyzed instead of the entire form. The samples shall be
7 separated by at least 20 printed lines.

8 (ii) Count the number of words and sentences in the form or
9 samples and divide the total number of words by the total number
10 of sentences. Multiply this quotient by a factor of 1.015.

11 (iii) Count the total number of syllables in the form or
12 samples and divide the total number of syllables by the total
13 number of words. Multiply this quotient by a factor of 84.6. As
14 used in this subparagraph, "syllable" means a unit of spoken lan-
15 guage consisting of 1 or more letters of a word as indicated by
16 an accepted dictionary. If the dictionary shows 2 or more
17 equally acceptable pronunciations of a word, the pronunciation
18 containing fewer syllables may be used.

19 (iv) Add the figures obtained in subparagraphs (ii) and
20 (iii) and subtract this sum from 206.835. The figure obtained
21 equals the readability score for the form.

22 (c) For the purposes of subdivision (b)(ii) and (iii), the
23 following procedures shall be used:

24 (i) A contraction, hyphenated word, or numbers and letters
25 when separated by spaces shall be counted as 1 word.

1 (ii) A unit of words ending with a period, semicolon, or
2 colon, but excluding headings and captions, shall be counted as 1
3 sentence.

4 (d) In determining the readability score, the method pro-
5 vided in subdivisions (b) and (c):

6 (i) Shall be applied to an insurance policy form or an annu-
7 ity contract, together with a rider or indorsement form usually
8 associated with such an insurance policy form or annuity
9 contract.

10 (ii) Shall not be applied to words or phrases that are
11 defined in an insurance policy form, an annuity contract, or
12 riders, indorsements, or group certificates pursuant to an insur-
13 ance policy form or annuity contract.

14 (iii) Shall not be applied to language specifically agreed
15 upon through collective bargaining or required by a collective
16 bargaining agreement.

17 (iv) Shall not be applied to language that is prescribed by
18 state or federal statute or by rules or regulations promulgated
19 pursuant to a state or federal statute.

20 (e) Each form for which approval is required by this section
21 shall contain both of the following:

22 (i) Topical captions.

23 (ii) An identification of exclusions.

24 (f) Each insurance policy and annuity contract that has more
25 than 3,000 words printed on not more than 3 pages of text or that
26 has more than 3 pages of text regardless of the number of words

1 shall contain a table of contents. This subdivision does not
2 apply to indorsements.

3 (g) Each rider or indorsement form that changes coverage
4 shall do all of the following:

5 (i) Contain a properly descriptive title.

6 (ii) Reproduce either the entire paragraph or the provision
7 as changed.

8 (iii) Be accompanied by an explanation of the change.

9 (h) If a computer system approved by the commissioner calcu-
10 lates the readability score of a form as being in compliance with
11 this subsection, the form is considered in compliance with the
12 readability score requirements of this subsection.

13 (4) After January 1, 1992, any change or addition to a
14 policy or annuity contract form for personal, family, or house-
15 hold purposes, whether by indorsement, rider, or otherwise, or a
16 change or addition to a rider or indorsement form to such policy
17 or annuity contract form, which policy or annuity contract form
18 has not been previously approved under subsection (3), shall be
19 submitted for approval pursuant to subsection (3).

20 (5) Upon written notice to the insurer, the commissioner may
21 disapprove, withdraw approval or prohibit the issuance, advertis-
22 ing or delivery of any form to any person in this state if it
23 violates any provisions of this code, or contains inconsistent,
24 ambiguous or misleading clauses, or contains exceptions and con-
25 ditions that unreasonably or deceptively affect the risk pur-
26 ported to be assumed in the general coverage of the policy. The
27 notice shall specify the objectionable provisions or conditions

1 and state the reasons for the commissioner's decision. If the
2 form is legally in use by the insurer in this state, the notice
3 shall give the effective date of the commissioner's disapproval,
4 which shall not be less than 30 days subsequent to the mailing or
5 delivery of the notice to the insurer. If the form is not
6 legally in use, then disapproval shall be effective immediately.

7 (6) If a form is disapproved or approval is withdrawn under
8 the provisions of this code, the insurer shall be entitled upon
9 demand to a hearing before the commissioner or a deputy commis-
10 sioner within 30 days after the notice of disapproval or of with-
11 drawal of approval; and after the hearing, the commissioner shall
12 make findings of fact and law, and either affirm, modify or with-
13 draw his or her original order or decision.

14 (7) Any issuance, use or delivery by an insurer of any form
15 without the prior approval of the commissioner as required by
16 subsection (1) or after withdrawal of approval as provided by
17 subsection (5) constitutes a separate violation for which the
18 commissioner may order the imposition of a civil penalty of
19 \$25.00 for each offense, but not to exceed the maximum penalty of
20 \$500.00 for any 1 series of offenses relating to any 1 basic
21 policy form, which penalty may be recovered by the attorney gen-
22 eral as provided in section 230.

23 (8) The filing requirements of this section shall not apply
24 to:

25 (a) Insurance against loss of or damage to:

26 (i) Imports, exports, or domestic shipments.

1 (ii) Bridges, tunnels, or other instrumentalities of
2 transportation and communication.

3 (iii) Aircraft and attached equipment.

4 (iv) Vessels and watercraft under construction or owned by
5 or used in a business or having a straight-line hull length of
6 more than 24 feet.

7 (b) Insurance against loss resulting from liability, other
8 than worker's compensation or employers' liability arising out of
9 the ownership, maintenance, or use of:

10 (i) Imports, exports, or domestic shipments.

11 (ii) Aircraft and attached equipment.

12 (iii) Vessels and watercraft under construction or owned by
13 or used in a business or having a straight-line hull length of
14 more than 24 feet.

15 (c) Surety bonds other than fidelity bonds.

16 (d) Policies, riders, indorsements, or forms of unique char-
17 acter designed for and used with relation to insurance upon a
18 particular subject, or which relate to the manner of distribution
19 of benefits or to the reservation of rights and benefits under
20 life or disability insurance policies and are used at the request
21 of the individual policyholder, contract holder or certificate
22 holder. Beginning September 1, 1968, the commissioner by order
23 may exempt from the filing requirements of this section and
24 sections 2242, 3606, and 4430 for so long as he or she considers
25 proper any insurance document or form, except that portion of the
26 document or form that establishes a relationship between group
27 disability insurance and personal protection insurance benefits

1 subject to exclusions or deductibles pursuant to section 3109a,
2 as specified in the order to which this section practicably may
3 not be applied, or the filing and approval of which are consid-
4 ered unnecessary for the protection of the public. Insurance
5 documents or forms providing medical payments or income replace-
6 ment benefits, except that portion of the document or form that
7 establishes a relationship between group disability insurance and
8 personal protection insurance benefits subject to exclusions or
9 deductibles pursuant to section 3109a, exempt by order of the
10 commissioner from the filing requirements of this section and
11 sections 2242 and 3606 are considered approved by the commis-
12 sioner for purposes of section 3430.

13 (9) Every order made by the commissioner under the provi-
14 sions of this section shall be subject to court review as pro-
15 vided in section 244.

16 Sec. 2301. ~~The state accident fund and every~~ EACH insurer
17 authorized to write worker's compensation insurance in this state
18 shall participate in the Michigan worker's compensation placement
19 facility for the purpose of doing all of the following:

20 (a) Providing worker's compensation insurance to any person
21 who is unable to procure the insurance through ordinary methods.

22 (b) Preserving to the public the benefits of price competi-
23 tion by encouraging maximum use of the normal private insurance
24 system.

25 Sec. 2303. As used in this chapter:

26 (a) "Facility" means the Michigan worker's compensation
27 placement facility created under this chapter.

1 (b) "Participating member" means an insurer ~~or the state~~
2 ~~accident fund created pursuant to Act No. 317 of the Public Acts~~
3 ~~of 1969, as amended, being sections 418.101 to 418.941 of the~~
4 ~~Michigan Compiled Laws,~~ who is a member of the facility and who
5 in any given calendar year has a participation ratio greater than
6 zero in the facility for that year.

7 (c) "Participation ratio" means the ratio of the participat-
8 ing member's voluntary Michigan worker's compensation premiums to
9 the comparable statewide totals of all participating members.

10 (d) "Worker's compensation insurance" means insurance which
11 provides any of the following:

12 (i) Security required pursuant to THE WORKER'S DISABILITY
13 COMPENSATION ACT OF 1969, Act No. 317 of the Public Acts of 1969,
14 as amended, being sections 418.101 to 418.941 of the Michigan
15 Compiled Laws.

16 (ii) Security required pursuant to the United States
17 longshoreman's and harbor worker's compensation act.

18 (iii) Coverage customarily known as employer's liability
19 insurance, when contained in or endorsed to a policy providing
20 the security in subparagraph (i) or (ii).

21 Sec. 2312. (1) A plan of operation of the facility shall be
22 prepared by the board of governors and shall be subject to the
23 approval of the commissioner. The commissioner shall review the
24 plan of operation on an ongoing basis, and the plan shall be
25 subject to revision at the request of the commissioner at any
26 time.

1 (2) The plan of operation shall provide for all of the
2 following:

3 (a) Appointment by the board of governors of 1 or more serv-
4 icing carriers, subject to the approval of the commissioner.
5 Appointments may be rescinded for cause by either the board
6 subject to the approval of the commissioner, or by the
7 commissioner.

8 (b) Creation of servicing carrier performance standards
9 including all of the following:

10 (i) Sufficient personnel to provide support for safety man-
11 agement services offered by the plan.

12 (ii) Providing for sufficient personnel for claims
13 adjustment.

14 (c) Agreements among ~~the state accident fund and~~ all
15 insurers authorized to write worker's compensation insurance in
16 this state with respect to the equitable apportionment among them
17 of worker's compensation insurance which may be afforded appli-
18 cants who are in good faith entitled to, but who are unable to
19 procure such insurance through ordinary methods.

20 (d) Payment of commissions to producing agents not to exceed
21 5% of a total premium.

22 (e) Creation of 3 rating plans as follows:

23 (i) Rating plan "A" which shall provide coverage for
24 insureds who have a demonstrated accident frequency problem, who
25 have a measurably adverse loss ratio over a period of years, or
26 who have demonstrated an attitude of noncompliance with safety
27 requirements. The commissioner shall approve rates for rating

1 plan A which shall be adequate to cover losses and which shall
2 not be excessive, inadequate, or unfairly discriminatory. This
3 plan shall contain a system of surcharges established by the
4 board of governors and approved by the commissioner.

5 (ii) Rating plan "B" which shall provide coverage to those
6 employers who apply for worker's compensation insurance in the
7 facility and are either self-insured or a member of a
8 self-insurance group. This plan shall be established by the
9 board of governors of the facility and approved by the
10 commissioner. The commissioner shall convene and consult with an
11 advisory organization including representatives of self-insureds
12 and group self-insureds prior to approving rating plan "B". The
13 recommendations of the advisory organization shall be given rea-
14 sonable consideration by the commissioner. The commissioner
15 shall approve rates for rating plan B which shall be adequate to
16 cover losses and which shall not be excessive, inadequate, or
17 unfairly discriminatory.

18 (iii) Rating plan "C" which shall provide coverage to all
19 other insureds of the facility. Rating plan "C" shall not con-
20 tain any surcharge system. The commissioner shall approve rates
21 for rating plan C that are set through the lower of either of the
22 following methods:

23 (A) By using 20% of the loss experience of insurers from
24 employers while participants in rating plan C and 80% of the
25 statewide loss experience of all insurers writing worker's com-
26 pensation insurance in this state.

1 (B) Through the use of rates adequate to cover losses and
2 which shall not be excessive, inadequate, or unfairly
3 discriminatory.

4 (f) Prompt and fair hearings for purposes of section 2350.

5 (3) The application of the plans created under subsection
6 (2)(e) to insureds shall be as determined by the commissioner.
7 The plans shall be applied to insureds regardless of the number
8 of employees or amount of payroll of the insured.

9 (4) Retrospective evaluation of premiums and loss and
10 expense experience of insureds within each rating plan under
11 subsection (2)(e) shall be performed by the board of governors,
12 in a manner approved by the commissioner. If this evaluation
13 indicates that a return of a portion of premiums is in order,
14 then such a return shall be accomplished, subject to the approval
15 of the commissioner.

16 Sec. 2402. (1) As used in this act with respect to worker's
17 compensation insurance:

18 (a) "Data collection agency" means an agency established for
19 the purpose of effectuating the worker's compensation data
20 requirements of this chapter.

21 (b) "Designated advisory organization" means the advisory
22 organization designated by the data collection agency pursuant to
23 section 2407(2).

24 ~~-(c) "Insurer" includes the state accident fund.-~~

25 (C) ~~-(d)-~~ "Rate" means the cost of insurance per payroll
26 before adjustment for an individual insured's size, exposure, or
27 loss experience.

1 (D) ~~(e)~~ "Rating system" means every classification, rating
2 plan, merit rating plan, rating values, and manual, containing
3 the rules used by an insurer in the determination of premiums.

4 (2) There is created a data collection agency for the pur-
5 pose of effectuating the worker's compensation data requirements
6 of this chapter. The governing board of the data collection
7 agency shall include all of the following:

8 (a) Three persons who represent private insurers in this
9 state.

10 (b) One person who represents the general public.

11 (c) One person who represents employers in this state.

12 (d) One person who represents the executive branch of state
13 government.

14 (e) One person who is an insurance agent.

15 (f) The commissioner of insurance.

16 (3) A member of the governing board of the data collection
17 agency shall serve for a term of 1 year.

18 (4) The members specified in subsection (2)(b), (c), and (e)
19 shall be appointed by the commissioner. The member specified in
20 subsection (2)(d) shall be appointed by the governor with the
21 advice and consent of the senate. The members specified in
22 subsection (2)(a) shall be appointed by the commissioner from
23 recommendations made by the insurance industry in this state and
24 shall be generally representative of small, medium, and large
25 insurers.

26 (5) Business of the governing board of the data collection
27 agency shall be conducted at a public meeting pursuant to THE

1 OPEN MEETINGS ACT, Act No. 267 of the Public Acts of 1976, as
2 amended, being sections 15.261 to 15.275 of the Michigan Compiled
3 Laws. Notice of the date, time, and place of a public meeting of
4 the governing body shall be as prescribed in Act No. 267 of the
5 Public Acts of 1976, as amended.

6 Sec. 2409. (1) The commissioner shall hold a public hearing
7 and shall issue a tentative report detailing the state of compe-
8 tition in the worker's compensation insurance market on a state-
9 wide basis and delineating specific classifications, kinds or
10 types of insurance, if any, where competition does not exist not
11 later than January 15, 1984 and each year thereafter. The report
12 shall be based on relevant economic tests, including but not
13 limited to those in subsection (3). The findings in the report
14 shall not be based on any single measure of competition, but
15 appropriate weight shall be given to all measures of
16 competition. The report shall include a certification of whether
17 or not competition exists. Any person who disagrees with the
18 report and findings of the commissioner may request a contested
19 hearing pursuant to THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
20 Act No. 306 of the Public Acts of 1969, as amended, being
21 sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws,
22 not later than 60 days after issuance of the tentative report.

23 (2) Not later than August 1, 1984 and each year thereafter,
24 the commissioner shall issue a final report which shall include a
25 final certification of whether or not competition exists in the
26 worker's compensation insurance market. The final report and
27 certification shall be supported by substantial evidence.

1 (3) All of the following shall be considered by the
2 commissioner for purposes of subsections (1) and (2):

3 (a) The extent to which any insurer controls ALL OR A POR-
4 TION OF the worker's compensation insurance market. ~~or any~~
5 ~~portion thereof.~~ With respect to competition on a statewide
6 basis, an insurer shall not be considered to control the worker's
7 compensation insurance market unless it has more than a 15%
8 market share. ~~This subdivision shall not apply to the state~~
9 ~~accident fund.~~ IN MAKING A DETERMINATION UNDER THIS SUBDIVISION,
10 THE COMMISSIONER SHALL USE ALL INSURERS IN THIS STATE, INCLUDING
11 SELF-INSURERS, GROUP SELF-INSURERS AS DEFINED IN CHAPTER 65, AND
12 INSURERS WRITING RISKS UNDER THE PLACEMENT FACILITY CREATED IN
13 CHAPTER 23 AS A BASE FOR CALCULATING MARKET SHARE.

14 (b) Whether the total number of companies writing worker's
15 compensation insurance in this state is sufficient to provide
16 multiple options to employers.

17 (c) The disparity among worker's compensation insurance
18 rates and classifications to the extent that such classifications
19 result in rate differentials.

20 (d) The availability of worker's compensation insurance to
21 employers in all geographic areas and all types of business.

22 (e) The residual market share.

23 (f) The overall rate level which is not excessive, inade-
24 quate, or unfairly discriminatory.

25 (g) Any other factors the commissioner considers relevant.

26 (4) The reports and certifications required under
27 subsections (1) and (2) shall be forwarded to the governor, the

1 clerk of the house, the secretary of the senate, all the members
2 of the house of representatives committees on insurance and
3 labor, and all the members of the senate committees on commerce
4 and labor. ~~and retirement.~~

5 (5) Not later than 90 days after receipt of the final report
6 and final certification, the legislature, by concurrent resolu-
7 tion, shall approve or disapprove the certification by a majority
8 roll-call vote in each house. If the certification is approved,
9 the commissioner shall proceed under section 2409a.

10 Sec. 2409a. If the commissioner certifies and the legisla-
11 ture resolves pursuant to section 2409 that a reasonable degree
12 of competition does not exist with respect to the worker's com-
13 pensation insurance market on a statewide basis or any geographic
14 areas, classifications, kinds or types of risk, or that insurance
15 is unavailable to a segment of the market who are, in good faith,
16 entitled to obtain insurance through ordinary means, the commis-
17 sioner shall create competition or availability where it does not
18 exist. A plan for competition or availability adopted pursuant
19 to this section shall be included in a final certification of
20 noncompetition under section 2409. The plan shall only relate to
21 those geographic areas, classifications, or kinds or types of
22 risks where competition has been certified not to exist. The
23 plan may include such methods designed to create competition or
24 availability as the commissioner considers necessary, and may
25 provide for the commissioner to do 1 or more of the following:

26 ~~(a) Order the state accident fund created pursuant to Act~~
27 ~~No. 317 of the Public Acts of 1969, as amended, being~~

~~1 sections 418.101 to 418.941 of the Michigan Compiled Laws, to
2 develop, subject to the commissioner's approval, mechanisms to
3 create competition or availability where it does not exist. In
4 developing these mechanisms, the state accident fund may set cost
5 transfers or engage in other activity to stimulate competition or
6 availability. If a plan is not submitted to the commissioner
7 within 30 days after the date of the commissioner's order, or if
8 the plan does not meet the approval of the commissioner, the com-
9 missioner shall develop such a plan and order its implementation
10 by the state accident fund. The plan established by the commis-
11 sioner shall continue in force until superseded by a plan estab-
12 lished by the state accident fund and approved by the
13 commissioner.~~

14 (A) ~~(b)~~ Authorize, by order, joint underwriting activities
15 in a manner specified in the commissioner's order.

16 (B) ~~(e)~~ Modify the rate approval process in a manner to
17 increase competition or availability while at the same time pro-
18 viding for reasonably timely rate approvals, including prior
19 approval or file and use processes.

20 (C) ~~(d)~~ Order excess profits regulation. Excess profits
21 regulation authorized by this subdivision shall be based upon
22 rules promulgated pursuant to THE ADMINISTRATIVE PROCEDURES ACT
23 OF 1969, Act No. 306 of the Public Acts of 1969, ~~as amended~~
24 BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS.
25 Excess profits shall include both underwriting profits and all
26 after-tax investment or investment profit or loss from unearned
27 premiums and loss reserves attributable to worker's compensation

1 insurance. The commissioner, pursuant to excess profits
2 regulation, may establish forms for the reporting of financial
3 data of AN insurer.

4 (D) ~~-(e)-~~ Establish and require worker's compensation insur-
5 ance rates, by order, which insurers must use as a condition of
6 maintaining their certificate of authority. The order setting
7 the rates shall take effect not less than 90 days nor more than
8 150 days after the order is issued.

9 CHAPTER 51

10 ORGANIZATION OF AN ACQUIRING INSURER FOR TRANSACTION OF CERTAIN
11 TYPES OF INSURANCE

12 SEC. 5100. AS USED IN THIS CHAPTER:

13 (1) "ACQUIRING INSURER" MEANS A DOMESTIC STOCK INSURER ORGA-
14 NIZED PURSUANT TO THIS CHAPTER.

15 (2) "EFFECTIVE DATE OF THE TRANSFER" MEANS THE DATE UPON
16 WHICH A TRANSFER OCCURS.

17 (3) "STATE ACCIDENT FUND" MEANS THE STATE ACCIDENT FUND CRE-
18 ATED PURSUANT TO THE WORKER'S DISABILITY COMPENSATION ACT OF
19 1969, ACT NO. 317 OF THE PUBLIC ACTS OF 1969, BEING
20 SECTIONS 418.101 TO 418.941 OF THE MICHIGAN COMPILED LAWS.

21 (4) "TRANSFER" MEANS THE ACQUISITION BY AN ACQUIRING INSURER
22 OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS, AND ASSUMPTION BY THE
23 ACQUIRING INSURER OF ALL OR SUBSTANTIALLY ALL OF THE LIABILITIES
24 OF, THE STATE ACCIDENT FUND PURSUANT TO ACT NO. 317 OF THE PUBLIC
25 ACTS OF 1969, BEING SECTIONS 418.101 AND 418.941 OF THE MICHIGAN
26 COMPILED LAWS.

1 SEC. 5102. NO PERSON OTHER THAN AN ACQUIRING INSURER SHALL
2 ACQUIRE ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE STATE
3 ACCIDENT FUND.

4 SEC. 5104. SUBJECT TO THE REQUIREMENTS OF THIS CODE APPLI-
5 CABLE TO DOMESTIC STOCK INSURERS AND THE FURTHER REQUIREMENTS OF
6 THIS CHAPTER, 13 OR MORE PERSONS MAY ORGANIZE A STOCK INSURER FOR
7 THE PURPOSE OF TRANSACTING ANY OR ALL OF THE FOLLOWING KINDS OF
8 INSURANCE: PROPERTY, MARINE, INLAND NAVIGATION AND TRANSPORTA-
9 TION, CASUALTY, OR FIDELITY AND SURETY, ALL AS DEFINED IN CHAPTER
10 6.

11 SEC. 5106. ON AND AFTER THE EFFECTIVE DATE OF THE TRANSFER,
12 ANY ACQUIRING INSURER SHALL BE SUBJECT TO THE FOLLOWING:

13 (A) THE ACQUIRING INSURER SHALL ASSUME, INDEMNIFY, AND HOLD
14 THE STATE OF MICHIGAN AND ANY OF ITS SUBDIVISIONS HARMLESS FROM
15 AND AGAINST ALL EXISTING LIABILITIES OF THE STATE ACCIDENT FUND
16 UNDER POLICIES OF WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY
17 INSURANCE ISSUED BY THE STATE ACCIDENT FUND BEFORE THE EFFECTIVE
18 DATE OF THE TRANSFER.

19 (B) THE ACQUIRING INSURER SHALL NOT ADOPT OR UNDERTAKE ANY
20 UNDERWRITING PRACTICES OR PROCEDURES IN CONNECTION WITH WORKERS'
21 COMPENSATION INSURANCE THAT DISCRIMINATE AGAINST INSURED'S SOLELY
22 ON THE BASIS OF THE SIZE OF THE PAYROLL OF THE INSURED.

23 (C) THE ACQUIRING INSURER SHALL MAINTAIN INVESTMENT SECURI-
24 TIES, CASH, AND RESERVE FUNDS ACQUIRED IN THE TRANSFER AND THOSE
25 GENERATED FROM DOING BUSINESS IN MICHIGAN, ON DEPOSIT IN THE
26 STATE OF MICHIGAN WITH A MICHIGAN HEADQUARTERED BANK OR BANK
27 HOLDING COMPANY.

1 (D) FOR A PERIOD OF 5 YEARS AFTER THE EFFECTIVE DATE OF THE
2 TRANSFER, THE ACQUIRING INSURER SHALL ADMINISTER THE WORKERS'
3 DISABILITY COMPENSATION FUND OF THE STATE OF MICHIGAN AT THE
4 ACQUIRING INSURER'S DIRECT COST PLUS REASONABLY ALLOCATED
5 OVERHEAD. ANY AGREEMENT EVIDENCING SUCH ARRANGEMENT SHALL BE
6 TERMINABLE BY THE STATE OF MICHIGAN UPON 6 MONTHS' WRITTEN
7 NOTICE.

8 (E) FOR A PERIOD OF AT LEAST 1 YEAR AFTER THE EFFECTIVE DATE
9 OF THE TRANSFER, THE ACQUIRING INSURER SHALL RECOGNIZE THE COL-
10 LECTIVE BARGAINING REPRESENTATIVES OF EMPLOYEES AS CONSTITUTED ON
11 THE EFFECTIVE DATE OF THE TRANSFER.

12 (F) FOR A PERIOD OF 1 YEAR AFTER THE EFFECTIVE DATE OF THE
13 TRANSFER, THE ACQUIRING INSURER SHALL EMPLOY, ON TERMS AND CONDI-
14 TIONS DETERMINED BY THE ACQUIRING INSURER, AND SUBJECT TO THE
15 RIGHT OF THE ACQUIRING INSURER TO TERMINATE EMPLOYMENT FOR GOOD
16 CAUSE, THE EMPLOYEES, OTHER THAN THOSE EMPLOYEES ALSO EMPLOYED BY
17 THE DEPARTMENT OF ATTORNEY GENERAL, ON THE PAYROLL OF THE STATE
18 ACCIDENT FUND AS OF THE EFFECTIVE DATE OF THE TRANSFER.

19 (G) WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE TRANSFER,
20 THE ACQUIRING INSURER SHALL NOTIFY EACH HOLDER OF A POLICY OF
21 INSURANCE, THE OBLIGATIONS OF WHICH ARE ASSUMED BY THE ACQUIRING
22 INSURER THAT THE ACQUIRING INSURER IS NOW THE INSURER UNDER THE
23 POLICY, THAT THE ACQUIRING INSURER IS NOT A STATE AGENCY, AND
24 THAT THE ACQUIRING INSURER IS A MEMBER OF THE PROPERTY AND CASU-
25 ALTY GUARANTY ASSOCIATION CREATED UNDER CHAPTER 79.

26 (H) THE ACQUIRING INSURER SHALL FILE THE APPLICATIONS
27 DESCRIBED IN SECTION 5108.

1 SEC. 5108. WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE
2 TRANSFER, THE ACQUIRING INSURER SHALL APPLY TO THE COURT OR
3 ADMINISTRATIVE AGENCY IN THIS STATE IN WHICH AN ACTION OR PRO-
4 CEEDING IS PENDING IN WHICH THE STATE ACCIDENT FUND WAS A PARTY
5 PURSUANT TO SECTION 731 OF THE WORKER'S DISABILITY COMPENSATION
6 ACT OF 1969, ACT NO. 317 OF THE PUBLIC ACTS OF 1969, BEING
7 SECTION 418.731 OF THE MICHIGAN COMPILED LAWS, TO BE SUBSTITUTED
8 AS A PARTY IN PLACE OF THE STATE ACCIDENT FUND.

9 SEC. 5110. UPON PROBABLE CAUSE THE COMMISSIONER MAY EXAMINE
10 AND INVESTIGATE INTO THE AFFAIRS OF AN ACQUIRING INSURER TO
11 DETERMINE WHETHER THE INSURER HAS BEEN OR IS ENGAGED IN ANY PRAC-
12 TICE IN VIOLATION OF SECTION 5106.

13 SEC. 5112. (1) UPON PROBABLE CAUSE TO BELIEVE THAT AN
14 ACQUIRING INSURER HAS BEEN OR IS ENGAGED IN ANY PRACTICE IN VIO-
15 LATION OF SECTION 5106, THE COMMISSIONER SHALL GIVE NOTICE, PUR-
16 SUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306
17 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF
18 THE MICHIGAN COMPILED LAWS, TO THE ACQUIRING INSURER, SETTING
19 FORTH THE GENERAL NATURE OF THE COMPLAINT AGAINST IT. BEFORE THE
20 ISSUANCE OF A NOTICE OF HEARING, THE COMMISSIONER OR HIS OR HER
21 DESIGNEE SHALL GIVE THE ACQUIRING INSURER AN OPPORTUNITY TO
22 CONFER AND DISCUSS THE POSSIBLE COMPLAINT AND PROCEEDINGS WITH
23 THE COMMISSIONER OR HIS OR HER REPRESENTATIVE AND THE MATTER MAY
24 BE DISPOSED OF SUMMARILY BY THE PARTIES.

25 (2) IF, AFTER OPPORTUNITY FOR A CONTESTED CASE HEARING HELD
26 PURSUANT TO ACT NO. 306 OF THE PUBLIC ACTS OF 1969, THE
27 COMMISSIONER DETERMINES THAT THE ACQUIRING INSURER HAS VIOLATED

1 ANY PROVISION OF SECTION 5106, THE COMMISSIONER SHALL REDUCE HIS
2 OR HER FINDINGS AND CONCLUSIONS TO WRITING AND SHALL ISSUE AND
3 CAUSE TO BE SERVED UPON THE ACQUIRING INSURER A COPY OF THE FIND-
4 INGS AND CONCLUSIONS AND AN ORDER REQUIRING THE ACQUIRING INSURER
5 TO CEASE AND DESIST FROM ENGAGING IN THE VIOLATION. THE COMMIS-
6 SIONER MAY ALSO ORDER ANY OF THE FOLLOWING:

7 (A) PAYMENT OF A CIVIL PENALTY OF NOT MORE THAN \$5,000.00
8 FOR EACH VIOLATION BUT NOT TO EXCEED AN AGGREGATE PENALTY OF
9 \$50,000.00, UNLESS THE ACQUIRING INSURER KNEW OR REASONABLY
10 SHOULD HAVE KNOWN THAT IT WAS IN VIOLATION OF SECTION 5106, IN
11 WHICH CASE THE PENALTY SHALL NOT BE MORE THAN \$10,000.00 FOR EACH
12 VIOLATION AND SHALL NOT EXCEED AN AGGREGATE PENALTY OF
13 \$100,000.00 FOR ALL VIOLATIONS COMMITTED IN A 6-MONTH PERIOD.

14 (B) SUSPENSION OR REVOCATION OF THE ACQUIRING INSURER'S CER-
15 TIFICATE OF AUTHORITY IF IT KNOWINGLY AND PERSISTENTLY VIOLATED
16 SECTION 5106.

17 SEC. 5114. (1) ALL AGENTS LICENSED BY THE STATE OF MICHIGAN
18 TO SELL PROPERTY AND CASUALTY INSURANCE SHALL BE AUTHORIZED TO
19 SELL WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE
20 ISSUED BY, AND TO PLACE SUCH BUSINESS WITH, THE ACQUIRING INSURER
21 FOR A PERIOD OF 3 YEARS COMMENCING ON THE EFFECTIVE DATE OF THE
22 TRANSFER. THE ACQUIRING INSURER SHALL PAY REASONABLE COMPENSA-
23 TION FOR BUSINESS PLACED WITH AND SERVICES RENDERED IN CONNECTION
24 WITH THAT BUSINESS.

25 (2) THE ACQUIRING INSURER SHALL NOT UNFAIRLY DISCRIMINATE
26 AGAINST ANY AGENT IN PROVIDING ASSISTANCE IN MARKETING, PAYMENT,
27 OR SETTLEMENT OF CLAIMS, OR ANY OTHER MATTERS RELATED TO

1 MARKETING, PLACING BUSINESS, OR HANDLING CLAIMS. A PILOT OR TEST
2 PROGRAM OF A TERM NOT EXCEEDING 6 MONTHS IN DURATION SHALL NOT
3 CONSTITUTE UNFAIR DISCRIMINATION UNDER THIS SECTION.

4 (3) THE ACQUIRING INSURER SHALL NOT WITHHOLD SUCH APPOINT-
5 MENT UNREASONABLY AND SHALL PAY REASONABLE COMPENSATION FOR BUSI-
6 NESS PLACED WITH AND SERVICES RENDERED IN CONNECTION WITH THAT
7 BUSINESS. THE ACQUIRING INSURER, SUBJECT TO THE PROVISIONS OF
8 THIS SECTION AND CHAPTER 12 OF THE CODE, SHALL HAVE THE SOLE DIS-
9 CRETION TO DETERMINE THOSE AGENTS WHO SHALL BE APPOINTED TO REP-
10 RESENT THE ACQUIRING INSURER.

11 (4) DURING THE 3-YEAR PERIOD, THE AGENT'S AUTHORITY SHALL
12 NOT BE SUSPENDED, LIMITED, OR TERMINATED BY THE ACQUIRING INSUR-
13 ER, EXCEPT FOR 1 OR MORE OF THE FOLLOWING REASONS:

14 (A) MALFEASANCE.

15 (B) BREACH OF FIDUCIARY DUTY OR TRUST.

16 (C) A PERSISTENT TENDENCY TO VIOLATE THE PROCEDURES OUTLINED
17 IN THE ACQUIRING INSURER'S BASIC MANUALS FOR MICHIGAN WORKERS'
18 COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.

19 Sec. 7911. (1) To implement this chapter, there shall be
20 maintained within this state, by all insurers authorized to
21 transact in this state insurance other than life or disability
22 insurance, except the Michigan basic property insurance associa-
23 tion created pursuant to section 2920, the Brown-McNeely insur-
24 ance fund created in section 2502(1), ~~and on and after the~~
25 ~~effective date of this 1990 amendatory act, the accident fund~~
26 ~~created in the worker's disability compensation act of 1969, Act~~
27 ~~No. 317 of the Public Acts of 1969, being sections 418.101 to~~

1 ~~418.941 of the Michigan Compiled Laws,~~ an association of those
 2 insurers to be known as the property and casualty guaranty asso-
 3 ciation, hereafter referred to as the "association". Each
 4 insurer shall be a member of the association, as a condition of
 5 its authority to continue to transact insurance in this state.

6 (2) An insurer from which insurance has been or may be pro-
 7 cured in this state solely by virtue of sections 1901 to 1955
 8 shall not be considered to be an insurer authorized to transact
 9 insurance in this state, for the purposes of this chapter.

10 (3) The association shall be subject to the requirements of
 11 this chapter and of chapter ~~78~~ 81, but shall not be subject to
 12 the other chapters of this act. The association shall be subject
 13 to other laws of this state to the extent that it would be
 14 subject to those laws if it were an insurer organized and operat-
 15 ing under chapter 50, to the extent that those other laws are
 16 consistent with this chapter.

17 Sec. 7921. As used in this chapter:

18 (a) "Insolvent insurer" means an insurer for which a domi-
 19 ciliary receiver has been appointed by a final order in this
 20 state or in a reciprocal state, as defined in section 8103 for
 21 the liquidation of the insurer and which has been a member
 22 insurer. The date on which the order becomes final shall be the
 23 date on which the receiver is appointed for purposes of this
 24 chapter. ~~On and after the effective date of this 1990 amenda-~~
 25 ~~tory act, the state accident fund created in the worker's dis-~~
 26 ~~ability compensation act of 1969, Act No. 317 of the Public Acts~~

~~1 of 1969, being sections 418.101 to 418.941 of the Michigan~~
~~2 Compiled Laws, shall not be considered an insolvent insurer.~~

3 (b) "Member insurer" means an insurer required to be a
4 member of the association pursuant to section 7911.

5 Section 2. Sections 476c and 2400a of Act No. 218 of the
6 Public Acts of 1956, being sections 500.476c and 500.2400a of the
7 Michigan Compiled Laws, are repealed.

8 Section 3. The amendments to the worker's disability com-
9 pensation act of 1969, Act No. 317 of the Public Acts of 1969,
10 being sections 418.101 to 418.941 of the Michigan Compiled Laws,
11 and the insurance code of 1956, Act No. 218 of the Public Acts of
12 1956, being sections 500.100 to 500.8302 of the Michigan Compiled
13 Laws, by this amendatory act are intended to transfer the insur-
14 ance functions of the state accident fund from the mechanisms of
15 state government to the private insurance industry, while at the
16 same time protecting the interests of injured workers under poli-
17 cies of insurance issued by the state accident fund before the
18 effective date of a transfer authorized by this amendatory act.
19 It is the intent of this amendatory act to codify, approve, and
20 validate the long-standing interpretation of Act No. 317 of the
21 Public Acts of 1969, that the state accident fund is a state
22 agency, and that holders of policies of insurance issued by the
23 state accident fund have no interest in the state accident fund
24 other than to have claims paid as provided in those policies, and
25 to rectify any misconstruction of the rights of such policyhold-
26 ers in the consent order issued by the United States district
27 court for the western district of Michigan in Accident Fund v

1 Baerwaldt, case no. G81-224 (Jan. 9, 1984) and the opinion of the
2 court of appeals in Commissioner of Insurance v Advisory Board of
3 the Michigan State Accident Fund, case nos. 94712 and 103942
4 (Dec. 19, 1988); and to codify and declare that, in view of the
5 protections afforded by this amendatory act to insureds and
6 claimants under policies of insurance issued by the state acci-
7 dent fund, all proceeds received by the state of Michigan consti-
8 tute consideration to the state of Michigan for the transfer of a
9 state agency, and are the property of the state of Michigan.

10 Section 4. This amendatory act shall not take effect unless
11 the state administrative board certifies in writing to the secre-
12 tary of state by December 31, 1994 that an agreement for the
13 transfer of all or substantially all of the assets and the
14 assumption of all or substantially all of the liabilities of the
15 state accident fund has been consummated with a permitted trans-
16 feree pursuant to the requirements of section 701a of the
17 worker's disability compensation act of 1969, Act No. 317 of the
18 Public Acts of 1969, being section 418.701a of the Michigan
19 Compiled Laws.

20 Section 5. This amendatory act shall not take effect unless
21 all of the following bills of the 87th Legislature are enacted
22 into law:

23 (a) Senate Bill No. 48.

24

25 (b) Senate Bill No. 49.

26

1 (c) Senate Bill No. 50.

2

3 (d) Senate Bill No. 51.

4

5 (e) Senate Bill No. 52.

6

7 (f) Senate Bill No. 345.

8