



SENATE BILL No. 1308

November 29, 1994, Introduced by Senator WARTNER and referred to the Committee on Commerce.

A bill to amend sections 1903, 1905, 1920, 1930, 1932, and 1933 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 1903 as amended by Act No. 226 of the Public Acts of 1994, sections 1905 and 1920 as amended by Act No. 228 of the Public Acts of 1994, and sections 1930, 1932, and 1933 as added by Act No. 341 of the Public Acts of 1980, being sections 500.1903, 500.1905, 500.1920, 500.1930, 500.1932, and 500.1933 of the Michigan Compiled Laws; and to add sections 1908, 1935, and 1936.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Sections 1903, 1905, 1920, 1930, 1932, and 1933
- 2 of Act No. 218 of the Public Acts of 1956, section 1903 as
- 3 amended by Act No. 226 of the Public Acts of 1994, sections 1905

1 and 1920 as amended by Act No. 228 of the Public Acts of 1994,
2 and sections 1930, 1932, and 1933 as added by Act No. 341 of the
3 Public Acts of 1980, being sections 500.1903, 500.1905, 500.1920,
4 500.1930, 500.1932, and 500.1933 of the Michigan Compiled Laws,
5 are amended and sections 1908, 1935, and 1936 are added to read
6 as follows:

7 Sec. 1903. (1) As used in this chapter:

8 (a) "Eligible unauthorized insurer" means an insurer not
9 authorized to transact insurance in this state but eligible to
10 write insurance business under this chapter.

11 (b) "Association" means an association registered under sec-
12 tion 1930.

13 (c) "Licensee" means a person licensed under this chapter.

14 (d) "MEMBER ASSOCIATION" MEANS THE ASSOCIATION THAT A SUR-
15 PLUS LINES LICENSEE IS A MEMBER OF PURSUANT TO
16 SECTION 1905(3)(E).

17 (E) ~~—(d)—~~ "Surplus lines insurance" means insurance in this
18 state procured from or continued or renewed with an unauthorized
19 insurer and includes all of the following, whether effected by
20 mail or otherwise:

21 (i) Insurance for which applications are solicited from per-
22 sons resident or located in this state.

23 (ii) Insurance for which contracts of insurance are issued
24 or delivered to persons resident or located in this state.

25 (iii) Insurance that is procured through negotiations or by
26 an application occurring in whole or in part in this state or
27 made within or from within this state.

1 (iv) Insurance for which premiums, in whole or in part, are
2 remitted directly or indirectly within or from within this
3 state.

4 (2) The definitions contained in subsection (1), unless the
5 context otherwise requires, ~~shall~~ apply to the use of the
6 defined terms in this chapter and ~~shall~~ control in the inter-
7 pretation of this chapter.

8 (3) The definitions contained in other chapters of this act
9 ~~shall~~ apply to the terms used in this chapter unless otherwise
10 specifically provided in this chapter.

11 (4) Nothing contained in this section ~~shall supersede~~
12 SUPERSEDES the provisions of section 402b and ~~in the event of~~
13 IF THERE IS A conflict between ~~the provision herein~~ THIS
14 SECTION and section 402b, ~~the latter~~ SECTION 402B shall
15 govern.

16 Sec. 1905. (1) A person shall not solicit insurance, bind
17 coverage, or in any other manner act as an agent or broker in the
18 transaction of surplus lines insurance unless licensed under this
19 chapter.

20 (2) A person shall not offer, solicit, make a quotation on,
21 sell, or issue a policy of insurance, binder, or any other evi-
22 dence of insurance with an unauthorized insurer except in compli-
23 ance with this chapter.

24 (3) A person licensed as a resident agent in this state may
25 obtain a surplus lines license by doing all of the following:

26 (a) Filing an application in the form and with the
27 information as the commissioner may reasonably require to

1 determine the ability of the applicant to satisfactorily act in
2 accordance with this chapter.

3 (b) Completing an examination testing the applicant's under-
4 standing of this chapter, the surplus lines insurance business,
5 and other chapters of this act, if required by the commissioner.

6 (c) Complying with sections 1204 to 1206.

7 ~~(d) Delivering to the commissioner a financial guarantee~~
8 ~~bond from a surety acceptable to the commissioner for the greater~~
9 ~~of the following:~~

10 ~~(i) \$5,000.00.~~

11 ~~(ii) The largest semiannual surplus lines tax liability on~~
12 ~~premiums incurred in the immediately preceding 5 years.~~

13 (D) ~~(e)~~ Agreeing to file with the commissioner, not later
14 than February 15 and August 15 annually, a sworn statement of the
15 charges for insurance procured or placed, and the amounts
16 returned on the insurance canceled, under the license, for the
17 preceding 6 month period ending December 31 and June 30, respec-
18 tively; and at the time of filing the statement, paying to the
19 commissioner the 2% tax on premiums written and, instead of the
20 costs and expenses that may be imposed by the commissioner pursu-
21 ant to this chapter, a 0.5% regulatory fee on premiums written as
22 required by section 451.

23 (E) AGREE TO BECOME AND REMAIN A MEMBER OF 1 ASSOCIATION.

24 (4) A surplus lines licensee may do any or all of the
25 following:

26 (a) Place insurance on risks in this state with eligible
27 unauthorized insurers.

1 (b) Act in the capacity of an agent or broker, as determined
2 by the contractual relationship with the eligible unauthorized
3 insurer or that insurer's legal representative.

4 (c) Place insurance on risks in this state, with unautho-
5 rized insurers that are not eligible unauthorized insurers, in
6 strict compliance with section 1950. If the insurance is pro-
7 vided through the participation of several insurers and the
8 licensee has reason to believe that a substantial portion of the
9 insurance would be assumed by authorized or eligible unauthorized
10 insurers, then, with respect to the unauthorized insurers not
11 eligible, the insured or the insured's representative shall be
12 informed as provided in section 1950(a).

13 (d) Engage in any other acts expressly and implicitly autho-
14 rized by this chapter and ~~the balance of~~ this act.

15 (5) Before placement of insurance with an eligible unautho-
16 rized insurer, a licensee shall inform an insured or the
17 insured's representative that coverage is being placed with an
18 insurer not licensed in this state and that payment of loss may
19 not be guaranteed in the event of insolvency of the eligible
20 unauthorized insurer.

21 SEC. 1908. (1) A SURPLUS LINES LICENSEE SHALL SUBMIT EVERY
22 UNAUTHORIZED INSURANCE DOCUMENT ISSUED UNDER HIS OR HER SURPLUS
23 LINES LICENSE TO THE MEMBER ASSOCIATION. THE MEMBER ASSOCIATION
24 SHALL REVIEW THE DOCUMENTS TO DETERMINE WHETHER THE DOCUMENTS
25 SATISFY THIS CHAPTER, SHALL STAMP THE DOCUMENTS APPROVED IF THE
26 DOCUMENTS SATISFY THIS CHAPTER, AND SHALL RETAIN THE DOCUMENTS

1 PURSUANT TO A RETENTION SCHEDULE APPROVED BY THE COMMISSIONER.

2 THE DOCUMENTS SUBMITTED SHALL CONTAIN ALL OF THE FOLLOWING:

3 (A) THE INSURED'S NAME AND ADDRESS.

4 (B) THE GROSS PREMIUMS CHARGED OR RETURNED.

5 (C) THE NAME OF THE UNAUTHORIZED INSURER.

6 (D) THE KINDS OF INSURANCE PROCURED.

7 (2) A SURPLUS LINES LICENSEE SHALL NOT DELIVER ANY UNAUTHO-
8 RIZED INSURER'S INSURANCE DOCUMENT DESCRIBED IN SUBSECTION (1)
9 UNLESS THE DOCUMENT IS STAMPED APPROVED BY THE MEMBER
10 ASSOCIATION. AN UNAUTHORIZED INSURER IS ENTITLED TO A REVIEW BY
11 THE COMMISSIONER IF A MEMBER ASSOCIATION REFUSES TO APPROVE A
12 DOCUMENT DESCRIBED IN SUBSECTION (1). THE COMMISSIONER MAY ORDER
13 THE ASSOCIATION TO APPROVE THE DOCUMENT IF THE COMMISSIONER FINDS
14 THAT THE DOCUMENT SATISFIES THIS CHAPTER.

15 (3) AN INSURED THAT HAS PLACED INSURANCE WITH AN UNAUTHO-
16 RIZED INSURER UNDER THIS CHAPTER SHALL PAY SEMIANNUALLY TO THE
17 MEMBER ASSOCIATION OF THE LICENSEE WHO PLACED THE INSURANCE A
18 STAMPING FEE ESTABLISHED BY THAT ASSOCIATION AND APPROVED BY THE
19 COMMISSIONER. THE COMMISSIONER SHALL APPROVE THE ASSOCIATION'S
20 STAMPING FEE IF THE COMMISSIONER DETERMINES THAT THE FEE IS SUFF-
21 FICIENT TO ENABLE THE ASSOCIATION TO PURSUE ITS RESPONSIBILITIES
22 UNDER SUBSECTION (1). THE STAMPING FEE SHALL BE PAID BY
23 FEBRUARY 15 FOR THE 6-MONTH PERIOD ENDING ON THE IMMEDIATELY PRE-
24 CEDING DECEMBER 31 AND BY AUGUST 15 FOR THE 6-MONTH PERIOD ENDING
25 ON THE IMMEDIATELY PRECEDING JUNE 30.

26 Sec. 1920. (1) A licensee shall offer surplus lines
27 insurance only to insurers that are in a stable and unimpaired

1 financial condition. An insurer recognized by the commissioner
2 as an eligible surplus lines insurer pursuant to subsection (2)
3 shall be considered to meet the requirements of this subsection.
4 Recognition as an eligible surplus lines insurer shall be condi-
5 tioned upon the insurer's continued compliance with this chapter
6 and rules promulgated under this chapter.

7 (2) An unauthorized insurer may apply for recognition as an
8 eligible surplus lines insurer by filing an application in the
9 form and with the information as reasonably required by the com-
10 missioner regarding the insurer's financial stability, reputa-
11 tion, and integrity. The commissioner may delegate to an associ-
12 ation the power to process and to make recommendations on appli-
13 cations for recognition as an eligible surplus lines insurer.
14 Notwithstanding a delegation by the commissioner, an applicant
15 may file an application for recognition directly with the
16 commissioner.

17 (3) The commissioner shall recognize an insurer making an
18 application in accordance with subsection (2) as an eligible sur-
19 plus lines insurer if he or she is satisfied that the insurer is
20 in a stable and unimpaired financial condition and that the
21 insurer is qualified to provide coverage in compliance with this
22 chapter. If filed with full supporting documentation before July
23 1 of any year, an application submitted under subsection (2)
24 shall be acted upon by the commissioner before December 31 of the
25 year of submission.

26 (4) The commissioner shall not recognize an insurer as an
27 eligible surplus lines insurer unless the insurer continuously

1 maintains capital and surplus of at least \$1,500,000.00, and is
2 safe, reliable, and entitled to public confidence. This subsec-
3 tion shall not be construed to require an alien insurer to file
4 financial statements in the form required of authorized insurers
5 under section 438. However, each alien applicant shall have cur-
6 rent financial data filed with the national association of insur-
7 ance commissioners.

8 (5) If the commissioner considers it necessary, he or she
9 may request information about or examine the affairs of any eli-
10 gible unauthorized insurer, at the expense of the insurer except
11 as provided in sections 1905 and 1951, to determine whether the
12 insurer should continue to remain on the list of eligible surplus
13 lines insurers. If the commissioner finds that it is in the
14 public interest to remove an insurer from the list because the
15 insurer no longer meets the requirements of this chapter or is no
16 longer qualified to provide coverage under this chapter, the com-
17 missioner shall do so without the necessity of a hearing AND
18 SHALL ORDER ALL ASSOCIATIONS IN THIS STATE TO NOT APPROVE THE
19 INSURER'S DOCUMENTS.

20 Sec. 1930. (1) Licensees may associate and the commissioner
21 may register an association for 1 or more of the following
22 purposes:

23 (a) Advising the commissioner as to the availability of sur-
24 plus lines coverage and market practices and standards for sur-
25 plus lines insurers and licensees.

26 (b) Collecting and furnishing records, statistics, and
27 accounts.

1 (c) Submitting recommendations regarding administration of
2 this chapter.

3 (D) APPROVING DOCUMENTS UNDER SECTION 1908.

4 (2) Each association shall file with the commissioner, for
5 approval, all of the following:

6 (a) A copy of the association's constitution and articles of
7 agreement or association — or the association's certificate of
8 incorporation and bylaws, AND THE ASSOCIATION'S PLAN OF OPERA-
9 TION, PROCEDURES MANUAL, and any rules or regulations governing
10 the association's activities.

11 (b) An agreement that, as a condition of continued registra-
12 tion under subsection (1), THE ASSOCIATION WILL DO ALL OF THE
13 FOLLOWING:

14 (i) PERMIT the commissioner ~~may~~ TO examine the association
15 AT SUCH TIMES AS HE OR SHE CONSIDERS NECESSARY. THE REASONABLE
16 COST OF THE EXAMINATION SHALL BE PAID BY THE ASSOCIATION UPON
17 PRESENTATION TO IT BY THE COMMISSIONER OF A DETAILED ACCOUNT OF
18 THE COST. DURING THE COURSE OF AN EXAMINATION, THE DIRECTORS,
19 OFFICERS, MEMBERS, AGENTS, AND EMPLOYEES OF THE ASSOCIATION MAY
20 BE EXAMINED UNDER OATH REGARDING THE OPERATION OF THE ASSOCIATION
21 AND SHALL MAKE AVAILABLE ALL BOOKS, RECORDS, ACCOUNTS, DOCUMENTS,
22 AND AGREEMENTS PERTAINING TO THE ASSOCIATION. THE COMMISSIONER
23 SHALL FURNISH A COPY OF THE EXAMINATION REPORT TO THE
24 ASSOCIATION. WITHIN 20 DAYS OF RECEIPT OF THE REPORT, THE ASSO-
25 CIATION MAY REQUEST A HEARING ON THE REPORT OR ANY FACTS OR REC-
26 OMMENDATIONS IN THE REPORT. IF THE COMMISSIONER FINDS THE
27 ASSOCIATION OR ANY OF ITS MEMBERS ARE IN VIOLATION OF THIS ACT,

1 THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING DISCONTINUANCE OF
2 THE VIOLATION.

3 (ii) RECEIVE, EXAMINE, STAMP IF APPROVED, AND FILE ALL UNAU-
4 THORIZED INSURER INSURANCE DOCUMENTS THAT SURPLUS LINES LICENSEES
5 ARE REQUIRED TO FILE WITH THE ASSOCIATION UNDER SECTION 1908.

6 (iii) PREPARE MONTHLY REPORTS FOR THE COMMISSIONER ON UNAU-
7 THORIZED INSURANCE PROCURED BY ITS MEMBERS DURING THE PRECEDING
8 MONTH IN SUCH FORM AND WITH SUCH INFORMATION AS THE COMMISSIONER
9 PRESCRIBES.

10 (iv) NOTIFY THE COMMISSIONER IF THE ASSOCIATION BELIEVES
11 THAT AN UNAUTHORIZED INSURER DOES NOT SATISFY THIS CHAPTER.

12 (3) Each association shall file with the commissioner and
13 keep current all of the following:

14 (a) A list of members.

15 (b) The name and address of a resident of this state upon
16 whom notices or orders of the commissioner or process issued by
17 the commissioner may be served.

18 (4) The commissioner may refuse to register, or may suspend
19 or revoke the registration of, an association for any of the fol-
20 lowing reasons:

21 (a) It reasonably appears that the association will not be
22 able to carry out the purposes of this chapter.

23 (b) The association fails to maintain and enforce rules
24 ~~which~~ THAT can reasonably be anticipated to assure that members
25 of the association and persons associated with those members
26 comply with this chapter, other applicable chapters of this
27 ~~code~~ ACT, and rules promulgated under either.

1 (c) The rules of the association do not assure a fair
2 representation of its members in the selection of directors and
3 in the administration of its affairs.

4 (d) The rules of the association do not provide for an equi-
5 table allocation of reasonable dues, fees, and other charges
6 among members.

7 (e) The rules of the association impose a burden on competi-
8 tion not necessary or appropriate to the purposes of this
9 chapter.

10 (f) The association fails to meet other applicable require-
11 ments prescribed in this chapter.

12 (5) An association shall deny membership to any person who
13 is not a licensee.

14 (6) NOTHING IN THIS ACT SHALL BE CONSTRUED AS GIVING AN
15 ASSOCIATION ANY DISCRETIONARY AUTHORITY TO ENFORCE THIS ACT OR TO
16 WITHHOLD APPROVAL OF INSURANCE DOCUMENTS THAT SATISFY THIS
17 CHAPTER.

18 Sec. 1932. (1) In accordance with its bylaws, an associa-
19 tion may establish an independent office as a servicing
20 facility. Each servicing facility shall be reimbursed by the
21 association for expenses incurred and for any payments made on
22 behalf of the association. Each servicing facility may perform
23 any of the functions of the association that officers of the
24 association may lawfully delegate to it. In performing functions
25 delegated to it, the facility shall act on behalf of, and in the
26 name of, the association.

1 (2) Designation of servicing facilities shall be subject to
2 the approval of ~~a~~ THE commissioner. A member licensee may
3 serve as the servicing facility.

4 (3) A SERVICING FACILITY SHALL NOT PERFORM AN ASSOCIATION'S
5 DUTIES UNDER SECTION 1908.

6 Sec. 1933. (1) An association, in its own name or through
7 servicing facilities, may sue or be sued and may use the courts
8 to assert or defend any rights the association may have by virtue
9 of this chapter ~~which~~ THAT are reasonably necessary to fully
10 implement this chapter.

11 (2) THERE IS NO LIABILITY ON THE PART OF AND NO CAUSE OF
12 ACTION OF ANY NATURE SHALL ARISE AGAINST AN ASSOCIATION OR ITS
13 DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES OR THE COMMISSIONER OR
14 HIS OR HER REPRESENTATIVES FOR ANY ACTION TAKEN OR OMITTED BY
15 THEM IN THE PERFORMANCE OF THEIR POWERS AND DUTIES UNDER THIS
16 ACT.

17 SEC. 1935. AN ASSOCIATION SHALL FUNCTION THROUGH A BOARD OF
18 DIRECTORS ELECTED BY THE ASSOCIATION MEMBERS AND OFFICERS ELECTED
19 BY THE BOARD OF DIRECTORS AS ESTABLISHED IN THE PLAN OF
20 OPERATION.

21 SEC. 1936. AN ASSOCIATION SHALL SUBMIT TO THE COMMISSIONER
22 A PLAN OF OPERATION AND ANY AMENDMENTS TO THE PLAN OF OPERATION
23 TO PROVIDE OPERATING PROCEDURES FOR THE ADMINISTRATION OF THE
24 ASSOCIATION. THE PLAN OF OPERATION AND ANY AMENDMENTS TO THE
25 PLAN OF OPERATION SHALL BECOME EFFECTIVE UPON APPROVAL IN WRITING
26 BY THE COMMISSIONER. ALL ASSOCIATION MEMBERS SHALL COMPLY WITH
27 THE PLAN OF OPERATION.