



# HOUSE BILL No. 5014

September 12, 1995, Introduced by Reps. Llewellyn and Bush and referred to the Committee on Insurance.

A bill to amend section 1343 of Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," as amended by Act No. 443 of the Public Acts of 1994, being section 500.1343 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 1343 of Act No. 218 of the Public Acts  
2 of 1956, as amended by Act No. 443 of the Public Acts of 1994,  
3 being section 500.1343 of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 1343. (1) Each year the commissioner shall review the  
6 ordinary shareholder dividends paid by domestic insurers to  
7 determine whether each insurer's surplus following ~~such~~ THOSE  
8 dividends is reasonable in relation to the insurer's outstanding  
9 liabilities and adequate to its needs so that it continues to

1 comply with section 403. In conducting the review and making the  
2 determination, the commissioner shall consider the following fac-  
3 tors in addition to the provisions of section 436a:

4 (a) The adequacy of the level of surplus as regards policy-  
5 holders remaining after the dividend payment or payments.

6 (b) The quality of the insurer's earnings and the extent to  
7 which the reported earnings include extraordinary items, such as  
8 surplus relief reinsurance transactions and reserve  
9 destrengthening.

10 (c) The quality and liquidity of investments in  
11 subsidiaries. The commissioner may discount any ~~such~~  
12 ~~investment~~ OF THOSE INVESTMENTS or refuse to consider the  
13 investment as an asset for purposes of determining the adequacy  
14 of surplus as regards policyholders if the investment so  
15 warrants.

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

22 (3) Shareholder dividends shall be declared or paid only  
23 from earned surplus, unless the commissioner approves the divi-  
24 dend prior to payment. The commissioner shall consider whether  
25 the dividend will be paid from the insurer's net gain from opera-  
26 tions if the insurer is a life insurer, or the insurer's net  
27 income if the insurer is not a life insurer, for the 12-month

1 period ending December 31 of the immediately preceding year. For  
2 purposes of this subsection, earned surplus excludes surplus  
3 arising from unrealized capital gains or a revaluation of  
4 assets.

5 (4) Any domestic insurer that is a member of an insurance  
6 holding company system and declares a shareholder dividend shall  
7 report the dividend to the commissioner within 5 business days  
8 after declaring the dividend and at least 10 business days begin-  
9 ning from the date of receipt by the commissioner before the  
10 payment. ~~If the commissioner, applying the criteria in subsec-~~  
11 ~~tion (1), determines that the insurer's surplus as regards poli-~~  
12 ~~cyholders is not reasonable in relation to the insurer's out-~~  
13 ~~standing liabilities and is not adequate to its financial needs~~  
14 ~~so that the insurer will not continue to comply with section 403,~~  
15 ~~the commissioner may, prior to the expiration of the 10 day~~  
16 ~~period described in this subsection, enter an order prohibiting~~  
17 ~~the payment of the dividend.~~

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

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

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

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

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

19       (9) An insurer aggrieved by the commissioner's determination  
20 or order under this section is entitled to a contested case hear-  
21 ing pursuant to the administrative procedures act of 1969, Act  
22 No. 306 of the Public Acts of 1969, being sections 24.201 to  
23 24.328 of the Michigan Compiled Laws, to be held no later than 10  
24 days after receipt of the insurer's request. The commissioner's  
25 determination or order shall remain in effect except as modified  
26 by the commissioner during the pendency of the hearing and until  
27 a final decision by the commissioner. The commissioner shall

1 render a final decision within 30 days after the conclusion of  
2 the hearing.