



SENATE BILL No. 1134

September 12, 1996, Introduced by Senator BENNETT and referred to the Committee on Financial Services.

A bill to amend sections 407, 1905, 7704, 7705, 7706, and 7911a of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 407 as amended and section 7911a as added by Act No. 501 of the Public Acts of 1982, section 1905 as amended by Act No. 228 of the Public Acts of 1994, and sections 7704, 7705, and 7706 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.407, 500.1905, 500.7704, 500.7705, 500.7706, and 500.7911a of the Michigan Compiled Laws; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 407, 1905, 7704, 7705, 7706, and 7911a
2 of Act No. 218 of the Public Acts of 1956, section 407 as amended
3 and section 7911a as added by Act No. 501 of the Public Acts of

1 1982, section 1905 as amended by Act No. 228 of the Public Acts
2 of 1994, and sections 7704, 7705, and 7706 as amended by Act
3 No. 302 of the Public Acts of 1989, being sections 500.407,
4 500.1905, 500.7704, 500.7705, 500.7706, and 500.7911a of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 407. An insurer ~~which~~ THAT otherwise qualifies
7 ~~therefor~~ TO TRANSACT INSURANCE UNDER THIS ACT may be authorized
8 to transact any 1 kind or combination of kinds of insurance as
9 defined in chapter 6 ~~of this code,~~ except:

10 (a) A life insurer ~~shall~~ IS not ~~be~~ authorized to trans-
11 act any other kind of insurance except disability insurance as
12 defined in section 606 ~~and legal expense insurance as defined in~~
13 ~~section 618,~~ unless it was engaged in transacting ~~such~~ THAT
14 other kind ~~or kinds~~ of insurance in this state prior to January
15 1, 1909.

16 (b) A reciprocal insurer ~~shall~~ IS not ~~be~~ authorized to
17 transact life or health insurance.

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

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

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

1 (a) Filing an application in the form and with the
2 information as the commissioner may reasonably require to deter-
3 mine the ability of the applicant to satisfactorily act in
4 accordance with this chapter.

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

8 (c) Complying with sections 1204 to 1206.

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

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

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

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

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

1 (a) Place insurance on risks in this state with eligible
2 unauthorized insurers.

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

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

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

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

23 Sec. 7704. (1) This chapter shall provide coverage for the
24 policies and contracts specified in subsection (2) to the follow-
25 ing persons:

26 (a) To a person, other than nonresident certificate holders
27 under group policies or contracts, who, regardless of where he or

1 she resides, is the beneficiary, assignee, or payee of a person
2 covered under subdivision (b).

3 (b) To a person who is an owner of, or certificate holder
4 under, a policy or contract described in subsection (2), or, in
5 the case of an unallocated annuity contract, to the person who is
6 the contract holder, and which owner, certificate holder, or con-
7 tract holder is 1 of the following:

8 (i) A resident.

9 (ii) Not a resident, if all of the following conditions are
10 met:

11 (A) The insurer ~~which~~ THAT issued the policy or contract
12 is domiciled in this state.

13 (B) The insurer never held a license or certificate of
14 authority in the states in which the person resides.

15 (C) Such states have associations similar to the association
16 created by this chapter.

17 (D) The person is not eligible for coverage by those
18 associations.

19 (iii) Not a resident, if both of the following conditions
20 are met:

21 (A) The person was a resident at the time the coverage was
22 obtained by the person.

23 (B) The person is not eligible for coverage by another guar-
24 anty association.

25 (2) Except as provided in subsection (3), this chapter
26 ~~shall provide~~ PROVIDES coverage to a person specified in
27 subsection (1) for direct, nongroup life, health, annuity, and

1 supplemental policies or contracts, for certificates under direct
2 group life, health, annuity, and supplemental policies and con-
3 tracts, ~~for legal expense insurance policies,~~ and for unallo-
4 cated annuity contracts issued by member insurers, except as
5 limited by this chapter.

6 (3) This chapter ~~shall~~ DOES not provide coverage for the
7 following:

8 (a) A portion of a policy or contract not guaranteed by the
9 insurer or under which the risk is borne by the policy or con-
10 tract holder.

11 (b) A policy or contract of reinsurance, unless assumption
12 certificates have been issued.

13 (c) A portion of a policy or contract to the extent that the
14 rate of interest on which it is based exceeds the following:

15 (i) Averaged over the period of 4 years prior to the date on
16 which the association becomes obligated with respect to the
17 policy or contract, a rate of interest determined by subtracting
18 2 percentage points from Moody's corporate bond yield average
19 averaged for that same 4-year period or for a lesser period if
20 the policy or contract was issued less than 4 years before the
21 association became obligated.

22 (ii) On and after the date on which the association becomes
23 obligated with respect to the policy or contract, the rate of
24 interest determined by subtracting 3 percentage points from
25 Moody's corporate bond yield average as most recently available.

26 (d) A plan or program of an employer, association, or
27 similar entity to provide life, health, or annuity benefits to

1 its employees or members to the extent that the plan or program
2 is self-funded or uninsured, including, but not limited to, bene-
3 fits payable by an employer, association, or similar entity under
4 any of the following:

5 (i) A multiple employer welfare arrangement as defined in
6 section 7001.

7 (ii) A minimum premium group insurance plan.

8 (iii) A stop-loss group insurance plan.

9 (iv) An administrative services only contract.

10 (e) A portion of a policy or contract to the extent that it
11 provides dividends or experience rating credits, or provides that
12 any fees or allowances be paid to a person, including the policy
13 or contract holder, in connection with the service to or adminis-
14 tration of the policy or contract.

15 (f) A policy or contract issued in this state by an insurer
16 at a time when it did not have a certificate of authority to
17 issue the policy or contract in this state.

18 (g) An unallocated annuity contract issued to an employee
19 benefit plan protected under the federal pension benefit guaranty
20 corporation.

21 (h) A portion of an unallocated annuity contract ~~which~~
22 THAT is not issued to or in connection with a specific employee,
23 union, or association of natural persons benefit plan or a gov-
24 ernment lottery.

25 (i) An amount ~~which~~ THAT is not a contractual obligation
26 including, but not limited to, an award of exemplary or punitive
27 damages or statutory interest.

1 (4) The benefits for which the association may become liable
2 shall not exceed the lesser of the following:

3 (a) The contractual obligations for which the insurer is
4 liable or would have been liable if it were not an impaired or
5 insolvent insurer.

6 (b) With respect to any 1 life, regardless of the number of
7 policies or contracts:

8 (i) \$300,000.00 in life insurance death benefits, but not
9 more than \$100,000.00 in net cash surrender and net cash with-
10 drawal values for life insurance.

11 (ii) \$100,000.00 in health insurance benefits, including any
12 net cash surrender and net cash withdrawal values.

13 (iii) \$100,000.00 in the present value of annuity benefits,
14 including net cash surrender and net cash withdrawal values.

15 (c) With respect to each individual participating in a gov-
16 ernmental retirement plan established under section 401(k),
17 403(b), or 457 of the internal revenue code of 1986, 26
18 U.S.C. 401, 403, and 457, covered by an unallocated annuity con-
19 tract or the beneficiaries of each such individual, if deceased,
20 in the aggregate, \$100,000.00 in present value annuity benefits,
21 including net cash surrender and net cash withdrawal values.

22 (d) With respect to any 1 contract holder covered by an
23 unallocated annuity contract not included in subdivision (c),
24 \$5,000,000.00 in benefits, irrespective of the number of con-
25 tracts held by that contract holder.

1 (5) The association ~~shall~~ IS not ~~be~~ liable to expend
2 more than the \$300,000.00 in the aggregate with respect to any 1
3 individual under subsection (4)(b) and (c).

4 Sec. 7705. As used in this chapter:

5 (a) "Account" means ~~any~~ EITHER of the ~~3~~ 2 accounts cre-
6 ated under section 7706.

7 (b) "Association" means the Michigan life and health insur-
8 ance guaranty association created under section 7706.

9 (c) "Contractual obligation" means an obligation under cov-
10 ered policies.

11 (d) "Covered policy" means a policy or contract or certifi-
12 cate under a group policy or contract, or portion thereof, for
13 which coverage is provided under section 7704.

14 (e) "Health insurance" means disability insurance as defined
15 in section 606.

16 (f) "Impaired insurer" means a member insurer considered by
17 the commissioner after May 1, 1982, to be potentially unable to
18 fulfill the insurer's contractual obligations or is placed under
19 an order of rehabilitation or conservation by a court of compe-
20 tent jurisdiction. Impaired insurer does not mean an insolvent
21 insurer.

22 (g) "Insolvent insurer" means a member insurer which after
23 May 1, 1982, becomes insolvent and is placed under an order of
24 liquidation, by a court of competent jurisdiction with a finding
25 of insolvency.

26 (h) "Member insurer" means a person authorized to transact a
27 kind of insurance or annuity business in this state for which

1 coverage is provided under section 7704 and includes an insurer
2 whose certificate of authority in this state may have been sus-
3 pended, revoked, not renewed, or voluntarily withdrawn. Member
4 insurer does not include the following:

5 (i) A fraternal benefit society.

6 (ii) A cooperative plan insurer authorized under chapter
7 64.

8 (iii) A health maintenance organization authorized or
9 licensed under part 210 of the public health code, Act No. 368 of
10 the Public Acts of 1978, ~~as amended,~~ being sections 333.21001
11 to 333.21098 of the Michigan Compiled Laws.

12 (iv) A mandatory state pooling plan.

13 (v) A mutual assessment or any entity that operates on an
14 assessment basis.

15 (vi) A nonprofit dental care corporation operating under Act
16 No. 125 of the Public Acts of 1963, being sections 550.351 to
17 550.373 of the Michigan Compiled Laws.

18 (vii) A nonprofit health care corporation operating under
19 THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT, Act No. 350 of
20 the Public Acts of 1980, ~~as amended,~~ being sections 550.1101 to
21 550.1704 of the Michigan Compiled Laws.

22 (viii) An insurance exchange.

23 (ix) Any entity similar to the entities described in this
24 subdivision.

25 (i) "Moody's corporate bond yield average" means the monthly
26 average corporates as published by Moody's investors service,
27 inc., or a successor to that service.

1 (j) "Person" means an individual, corporation, partnership,
2 association, or voluntary organization.

3 (k) "Premiums" means amounts received in a calendar year on
4 covered policies or contracts less premiums, considerations, and
5 deposits returned and less dividends and experience credits. The
6 term "premiums" does not include an amount received for a policy
7 or contract, or a portion of a policy or contract for which cov-
8 erage is not provided under section 7704. However, accessible
9 premiums shall not be reduced on account of sections 7704(3)(c)
10 relating to interest limitations and 7704(4)(b), (c), and (d)
11 relating to limitations with respect to any 1 individual, any 1
12 participant, and any 1 contract holder. Premiums shall not
13 include a premium in excess of \$5,000,000.00 on an unallocated
14 annuity contract not issued under a governmental retirement plan
15 established under section 401(k), 403(b), or 457 of the internal
16 revenue code of 1986, 26 U.S.C. 401, 403, and 457.

17 (l) "Resident" means a person who resides in this state at
18 the time a member insurer is determined to be an impaired or
19 insolvent insurer and to whom contractual obligations are owed.
20 A person shall be considered a resident of only 1 state, which in
21 the case of a person other than a natural person, shall be its
22 principal place of business.

23 (m) "Supplemental contract" means an agreement entered into
24 for the distribution of policy or contract proceeds.

25 (n) "Unallocated annuity contract" means an annuity contract
26 or group annuity certificate ~~which~~ THAT is not issued to and
27 owned by an individual, except to the extent of an annuity

1 benefit guaranteed to an individual by an insurer under the
2 contract or certificate. The term shall also include, but not be
3 limited to, guaranteed investment contracts, deposit administra-
4 tion contracts, and contracts qualified under section 403(b) of
5 the internal revenue code of 1986, 26 U.S.C. 403.

6 Sec. 7706. (1) There is created a nonprofit legal entity to
7 be known as the Michigan life and health insurance guaranty
8 association. A member insurer shall be and remain a member of
9 the association as a condition of authority to transact insurance
10 in this state. The association shall perform its functions under
11 the plan of operation established and approved under section 7710
12 and shall exercise its powers through a board of directors estab-
13 lished under section 7707. For purposes of administration and
14 assessment the association shall maintain the following ~~3~~ 2
15 accounts:

16 (a) The health insurance account.

17 (b) The life insurance and annuity account which includes
18 the following subaccounts:

19 (i) A life insurance subaccount.

20 (ii) An annuity subaccount.

21 (iii) An unallocated annuity subaccount.

22 ~~(c) The legal expense insurance account.~~

23 (2) The association ~~shall be~~ IS under the immediate super-
24 vision of the commissioner and ~~shall be~~ IS subject to the
25 applicable provisions of the insurance laws of this state.
26 Meetings or records of the association may be open to the public
27 upon majority vote of the board of directors of the association.

1 Sec. 7911a. Notwithstanding section 7911, a life or
2 disability insurer shall not be a member of the association.
3 ~~regardless of whether the life or disability insurer also trans-~~
4 ~~acts legal expense insurance.~~

5 Section 2. Chapter 25 of Act No. 218 of the Public Acts of
6 1956, being sections 500.2501 to 500.2517 of the Michigan
7 Compiled Laws, is repealed.