

Act No. 121
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Reps. Gubow and Llewellyn

ENROLLED HOUSE BILL No. 5608

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act," by amending sections 224, 476a, 5256, 5901, 5915, and 5925 (MCL 500.224, 500.476a, 500.5256, 500.5901, 500.5915, and 500.5925), section 224 as amended by 1994 PA 228, sections 476a and 5256 as amended by 1990 PA 256, and section 5901 as amended and sections 5915 and 5925 as added by 1995 PA 215.

The People of the State of Michigan enact:

Sec. 224. (1) All actual and necessary expenses incurred in connection with the examination or other investigation of an insurer or other person regulated under the commissioner's authority shall be certified by the commissioner, together with a statement of the work performed including the number of days spent by the commissioner and each of

the commissioner's deputies, assistants, employees, and others acting under the commissioner's authority. If correct, the expenses shall be paid to the persons by whom they were incurred, upon the warrant of the state treasurer payable from appropriations made by the legislature for this purpose.

(2) Except as otherwise provided in subsection (4), the commissioner shall prepare and present to the insurer or other person examined or investigated a statement of the expenses and reasonable cost incurred for each person engaged upon the examination or investigation, including amounts necessary to cover the pay and allowances granted to the persons by the Michigan civil service commission, and the administration and supervisory expense including an amount necessary to cover fringe benefits in conjunction with the examination or investigation. Except as otherwise provided in subsection (4), the insurer or other person, upon receiving the statement, shall pay to the commissioner the stated amount. The commissioner shall deposit the funds with the state treasurer as provided in section 225.

(3) The commissioner may employ attorneys, actuaries, accountants, investment advisers, and other expert personnel not otherwise employees of this state reasonably necessary to assist in the conduct of the examination or investigation or proceeding with respect to an insurer or other person regulated under the commissioner's authority at the insurer's or other person's expense except as otherwise provided in subsection (4). Except as otherwise provided in subsection (4), upon certification by the commissioner of the reasonable expenses incurred under this section, the insurer or other person examined or investigated shall pay those expenses directly to the person or firm rendering assistance to the commissioner. Expenses paid directly to such person or firm and the regulatory fees imposed by this section shall be examination expenses under section 22e of the single business tax act, 1975 PA 228, MCL 208.22e.

(4) An insurer is subject to a regulatory fee instead of the costs and expenses provided for in subsections (2) and (3). By June 30 of each year or within 30 days after the enactment into law of any appropriation for the insurance bureau's operation, the commissioner shall impose upon all insurers authorized to do business in this state a regulatory fee calculated as follows:

(a) As used in this subsection:

(i) "A" means total annuity considerations written in this state in the immediately preceding year.

(ii) "B" means base assessment rate. The base assessment rate shall not exceed .00038 and shall be a fraction the numerator of which is the total regulatory fee and the denominator of which is the total amount of direct underwritten premiums written in this state by all insurers for the immediately preceding calendar year as reported to the commissioner on the insurer's annual statements filed with the commissioner.

(iii) "I" means all direct underwritten premiums other than life insurance premiums and annuity considerations written in this state in the immediately preceding year by all insurers.

(iv) "L" means all direct underwritten life insurance premiums written in this state in the immediately preceding year by all life insurers.

(v) Total regulatory fee shall not exceed 80% of the gross appropriations for the insurance bureau's operation for a fiscal year and shall be the difference between the gross appropriations for the insurance bureau's operation for that current fiscal year and any restricted revenues, other than the regulatory fee itself, as identified in the gross appropriation for the insurance bureau's operation.

(vi) Direct premiums written in this state do not include any amounts that represent claims payments that are made on behalf of, or administrative fees that are paid in connection with, any administrative service contract, cost-plus arrangement, or any other noninsured or self-insured business.

(b) Two actual assessment rates shall be calculated so as to distribute 75% of the burden of the regulatory fee shortfall created by the exclusion of annuity considerations from the assessment base to life insurance and 25% to all other insurance. The 2 actual assessment rates shall be determined as follows:

$$(i) \frac{L \times B + .75 \times B \times A}{L} = \text{assessment rate for life insurance.}$$

$$(ii) \frac{I \times B + .25 \times B \times A}{I} = \text{assessment rate for insurance other than life insurance.}$$

(c) Except as otherwise provided in subdivision (d), each insurer's regulatory fee shall be a minimum fee of \$250.00 and shall be determined by multiplying the actual assessment rate by the assessment base of that insurer as determined by the commissioner from the insurer's annual statement for the immediately preceding calendar year filed with the commissioner.

(d) The total regulatory fee for all health maintenance organizations in this state shall be determined by multiplying the actual assessment rate by 70% of direct underwritten premiums written by all health maintenance organizations in this state for the immediately preceding calendar year as reported to the commissioner in the health maintenance organization's annual statements filed with the commissioner. Each health maintenance organization's regulatory fee shall be a minimum fee of \$250.00 and shall be determined by taking the total regulatory fee for all health maintenance organizations divided by the total number of members of all health maintenance organizations and multiplying this quotient by the number of members in the individual health maintenance organization.

(5) Not less than 67% of the revenue derived from the regulatory fee under subsection (4) shall be used for the regulation of financial conduct of persons regulated under the commissioner's authority and for the regulation of persons regulated under the commissioner's authority engaged in the business of health care and health insurance in this state.

(6) The amount, if any, by which amounts credited to the commissioner pursuant to section 225 exceed actual expenditures pursuant to appropriations for the insurance bureau's operation for a fiscal year shall be credited toward the appropriation for the insurance bureau in the next fiscal year.

(7) All money paid into the state treasury by an insurer under this section shall be credited as provided under section 225.

(8) A regulatory fee under this section shall not be treated by an insurer as a levy or excise upon premium but as a regulatory burden that is apportioned in relation to insurance activity in this state and reflects the insurance regulatory burden on this state as a result of this insurance activity. A foreign or alien insurer authorized to do business in this state may consider the liability required under this section as a burden imposed by the state of Michigan in the calculation of the insurer's liability required under section 476a.

(9) An insurer may file with the commissioner a protest to the regulatory fee imposed not later than 15 days after receipt of the regulatory fee. The commissioner shall review the grounds for the protest and shall hold a conference with the insurer at the insurer's request. The commissioner shall transmit his or her findings to the insurer with a restatement of the regulatory fee based upon the findings. Statements of regulatory fees to which protests have not been made and restatements of regulatory fees are due and shall be paid not later than 30 days after their receipt. Regulatory fees that are not paid when due bear interest on the unpaid fee which shall be calculated at 6-month intervals from the date the fee was due at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, until the assessment is paid in full. An insurer who fails to pay its regulatory fee within the prescribed time limits may have its certificate of authority or license suspended, limited, or revoked as the commissioner considers warranted until the regulatory fee is paid. If the commissioner determines that a regulatory fee or a part of a regulatory fee paid by an insurer is in excess of the amount legally due and payable, the amount of the excess shall be refunded or, at the insurer's option, be applied as a credit against the regulatory fee for the next fiscal year. An overpayment of \$100.00 or less shall be applied as a credit against the insurer's regulatory fee for the next fiscal year unless the insurer had a \$100.00 or less overpayment in the immediately preceding fiscal year. If the insurer had a \$100.00 or less overpayment in the immediately preceding fiscal year, at the insurer's option, the current fiscal year overpayment of \$100.00 or less shall be refunded.

(10) Any amounts stated and presented to or certified, assessed, or imposed upon an insurer as provided in subsections (2), (3), and (4) that are unpaid as of the date that the insurer is subjected to a delinquency proceeding pursuant to chapter 81 shall be regarded as an expense of administering the delinquency proceeding and shall be payable as such from the general assets of the insurer.

(11) Any statements presented to insurers pursuant to subsections (2) and (3) for examinations or investigations conducted since October 1, 1993 shall be cancelled as of June 30, 1994. Amounts actually paid by an insurer because of those statements shall be credited against the regulatory fee levied for the 1993-94 fiscal year and any excess amounts shall be refunded.

(12) In addition to the regulatory fee provided in subsection (4), each insurer that locates records or personnel knowledgeable about those records outside this state pursuant to section 476a(3) or section 5256 shall reimburse the insurance bureau for expenses and reasonable costs incurred by the insurance bureau as a result of travel and other costs related to examinations or investigations of those records or personnel. The reimbursement shall not include any costs that the insurance bureau would have incurred if the examination had taken place in this state.

(13) As used in this section:

(a) "Annuity considerations" means receipts on the sale of annuities as used in section 22a of the single business tax act, 1975 PA 228, MCL 208.22a.

(b) "Insurer" means an insurer authorized to do business in this state and includes nonprofit health care corporations, dental care corporations, and health maintenance organizations.

(14) All fees added by the amendatory act that added this subsection shall not apply on and after January 1, 1996, unless by September 1, 1995, and annually thereafter, the commissioner submits a report to the senate and house of representatives standing committees on insurance issues and to the senate and house of representatives appropriations regulatory subcommittees on all receivership activities of the commissioner and the insurance bureau pertaining to the liquidation of insolvent insurers for the immediately preceding calendar year. The report shall include all of the following:

(a) A summary schedule of all insurance bureau expenditures for legal, accounting, and administrative expenditures made or incurred for the liquidation of all insurers in receivership, including, but not limited to, alien insurers described in section 431a, and paid for out of the insurer's assets during the calendar year being reported on.

(b) A detailed schedule of all insurance bureau contractual expenditures for legal, accounting, and administrative expenditures made or incurred for the liquidation of all insurers in receivership, including, but not limited to, alien insurers described in section 431a, and paid for out of the insurer's assets during the calendar year being reported on including, but not limited to, itemization of legal billings, criminal investigation expenses, travel, meals, and general office expenses.

(c) A statement of the net changes in assets and liabilities of each insurer in receivership, including, but not limited to, an alien insurer described in section 431a. This statement shall include changes due to interest rate changes, real estate values, and other investment activities, including a detailed statement of the sale of assets and the net loss or gain on those assets and a statement of the amount of assets preserved, gained, or recovered by the receiver.

Sec. 476a. (1) Beginning August 3, 1987, whenever, by a law in force outside of this state or country, a domestic insurer or agent of a domestic insurer is required to make a deposit of securities for the protection of policyholders or otherwise, or to make payment for taxes, fines, penalties, certificates of authority, valuation of policies, or otherwise, or a special burden or other burden is imposed, greater in the aggregate than is required by the laws of this state for a similar alien or foreign insurer or agent of an alien or foreign insurer, the alien or foreign insurer of that state or country is required, as a condition precedent to its transacting business in this state, to make a like deposit for like purposes with the state treasurer of this state, and to pay to the revenue commissioner for taxes, fines, penalties, certificates of authority, valuation of policies, and otherwise an amount equal in the aggregate to the charges and payments imposed by the laws of the other state or country upon a similar domestic insurer and the agents of a domestic insurer, regardless of whether a domestic insurer or agent of a domestic insurer is actually transacting business in that state or country. For fire department or salvage corps taxes or other local taxes the amount shall be computed by the revenue commissioner by dividing the total of the payments made by domestic insurers in that state or country by the gross premium received by domestic insurers in that state or country less return premiums. The commissioner shall revoke the certificate of authority of an alien or foreign insurer refusing for 30 days to make payment of fees or taxes as required by this chapter. Except as provided in subsections (3) and (4), for purposes of this section, an insurer organized under the laws of a state or country other than these United States shall be considered an insurer of the state in which its general deposit for the benefit of its policyholders is made.

(2) The purpose of this section is to promote the interstate business of domestic insurers by deterring other states from enacting discriminatory or excessive taxes.

(3) Subsection (4) does not apply to a domestic insurer that is owned or controlled, directly or indirectly, by an alien or foreign insurer who prior to 1998 and with the commissioner's approval did not keep books, records, and files or true copies thereof in this state.

(4) For purposes of this section, the state treasurer, after consultation with the commissioner, shall determine that a domestic insurer is an alien or foreign insurer domiciled in a state or country determined by the state treasurer if the insurer does not comply with all of the following:

(a) Maintain its principal place of business in this state.

(b) Maintain in this state officers and personnel responsible for and knowledgeable of the company's operation, books, records, administration, and annual statement.

(c) Conduct in this state a substantial portion of its underwriting, sales, claims, legal, and, if applicable, medical operations relating to Michigan policyholders and certificate holders.

(d) Comply with section 5256(1)(a) and (2) through (6). The commissioner shall inform the state treasurer when a domestic insurer is not in compliance with section 5256(1)(a) or (2) through (6).

(5) Taxes collected pursuant to this section are subject to section 22d of the single business tax act, 1975 PA 228, MCL 208.22d.

(6) The state treasurer shall administer the tax prescribed by this section in the manner provided in 1941 PA 122, MCL 205.1 to 205.31.

(7) The requirements of section 28 of 1941 PA 122, MCL 205.28, that prohibit an employee or an authorized representative or former employee or authorized representative or anyone connected with the department of treasury from divulging any facts or information obtained in connection with the administration of taxes, do not apply to disclosure of the tax return prescribed in this act.

Sec. 5256. (1) Each domestic insurer shall keep under its control all records relating to the insurer's business or affairs at 1 or more of the following locations:

(a) The principal place of doing business in this state.

(b) One or more locations outside the state approved for that purpose, in writing, by the commissioner.

(2) A domestic insurer shall produce those records relating to the insurer's business or affairs and personnel knowledgeable about the records at a principal place of doing business in or outside this state for examination within a reasonable time period specified by the commissioner.

(3) A domestic insurer may place for safekeeping all or any part of its securities, notes, mortgages, or other evidences of indebtedness, with any national bank, state bank, trust company, or any other United States corporation authorized as a custodian to accept and hold personal property for safekeeping. A national bank, state bank, trust company, or United States corporation authorized to accept and hold personal property for safekeeping may employ a subcustodian outside of the United States to hold assets that are not in physical form or that are customarily traded outside the United States. A statutory deposit required by any state or foreign country shall be excepted and any delivery and pledge or assignment of its notes, mortgages, or other securities by any such insurer, as security for money borrowed by it or as required in the regular course of its business by the laws of any state or foreign country, shall also be excepted. The insurer may hold certificates evidencing shares of stock or other registrable securities in the name of a nominee or nominees employed by the insurer and responsible to the insurer. The nominee or nominees, on the request of the insurer, shall indorse the certificate representing shares of stock or other registrable securities in blank or by assignment separate from the certificates. The insurer at all times shall maintain control or possession of the certificate representing the share of stock or other registrable securities, but, if necessary, the nominee or nominees may have access thereto for the purpose of examination under the supervision of the corporation.

(4) The records required to be retained by this section may be maintained in paper, photograph, micro process, magnetic, mechanical or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record. If the original document is unavailable, the domestic insurer may produce in an alternative format the same data that was contained on the original document.

(5) Removal of all or a material part of the records of a domestic insurer from this state, except pursuant to a plan or merger or consolidation approved by the commissioner under this act or as may be approved in writing by the commissioner, is prohibited. If after a hearing is held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner determines that the insurer has violated this section, the commissioner shall reduce his or her findings and decision to writing and shall issue and cause to be served upon the insurer charged with the violation a copy of the findings and order requiring the insurer to return the office, records, and assets to this state. An insurer that violates this section shall be treated as a foreign insurer for the period of time the records were removed from this state, and the insurer shall be liable for both of the following:

(a) The amount of tax prescribed in section 476a and interest in the amount of 3% of the amount due and unpaid for each month or part of a month that the insurer was in violation of this section.

(b) A penalty of \$5,000.00 plus an additional \$50.00 for each day that the insurer was not in compliance with this section. A domestic insurer that fails to comply with an order of the commissioner issued under this section is presumed to be no longer safe, reliable, and entitled to public confidence under section 436.

(6) If an insurer fails to comply with an order issued under this section, as modified or extended, the commissioner shall suspend or revoke the insurer's certificate of authority.

(7) The commissioner may require a domestic insurer to transfer its domicile to another state if the commissioner is not satisfied with the production of the records and personnel knowledgeable about the records because all or part of the records or personnel are located outside this state.

Sec. 5901. As used in this chapter:

(a) "Converted stock company" means a Michigan domiciled stock insurance company that converted from a Michigan domiciled mutual company pursuant to this chapter.

(b) "Eligible member" except as otherwise provided in section 5915, means a member whose policy is in force on the date the mutual company's board of directors adopts a plan of conversion. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the board of directors adopts the plan but before the plan's effective date is not an eligible member but has the rights established under section 5919.

(c) "Plan of conversion" or "plan" means a plan adopted by a Michigan domestic mutual company's board of directors pursuant to this chapter to convert the mutual company into a Michigan domiciled stock company.

Sec. 5915. (1) The board of directors may adopt a plan of conversion that does not rely in whole or in part upon issuing nontransferable subscription rights to members to purchase stock of the converted stock company if the commissioner finds that the plan does not prejudice the interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent of this chapter. An alternative plan may include the merger of a domestic mutual insurer into a domestic or foreign stock insurer, issuing stock or cash to policyholders instead of subscription rights, or another plan approved by the commissioner. The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the plan may be approved by the commissioner.

(2) For an alternative plan submitted under subsection (1) by a U.S. branch of an alien insurer, "eligible member" means a policyholder eligible to receive a benefit upon demutualization in accordance with the plan of demutualization approved in, and the demutualization statute and regulations of, the jurisdiction in which the alien insurer is domiciled, and approved by the commissioner as consistent with the purposes of this chapter. As used in this subsection, "U.S. branch" means a business unit through which insurance is transacted within the United States by an alien insurer that uses this state as a state of entry.

Sec. 5925. (1) If the mutual company complies substantially and in good faith with the notice requirements of this chapter, the mutual company's failure to give a member the required notice does not impair the validity of any action taken under this chapter.

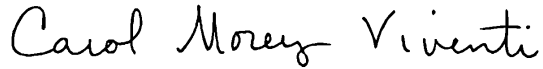
(2) Except as otherwise provided, an action challenging the validity of or arising out of acts taken or proposed to be taken under this chapter, other than an action challenging the commissioner's decision approving or disapproving the plan, shall be commenced within 30 days after the eligible members have approved the plan. An action based upon noncompliance with a business plan submitted under section 5903(2)(f) shall be commenced in Ingham county circuit court within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered or should reasonably have been discovered by the complainant, whichever occurs first.

(3) Notwithstanding section 244, an action challenging the validity of the commissioner's decision approving or disapproving the plan shall be commenced within 30 days after the commissioner's decision.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.