

Act No. 279
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Reps. Gubow and Llewellyn

ENROLLED HOUSE BILL No. 5418

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 225, 8134, 8142, and 8159 (MCL 500.225, 500.8134, 500.8142, and 500.8159), section 225 as added by 1994 PA 228, section 8134 as added by 1989 PA 302, and sections 8142 and 8159 as amended by 1996 PA 429, and by adding sections 478, 479, and 480.

The People of the State of Michigan enact:

Sec. 225. The insurance bureau fund is created in the state treasury as a separate fund. Except as otherwise specifically provided, all fees collected pursuant to this act or under the commissioner's authority shall be deposited in the insurance bureau fund. Money in the insurance bureau fund shall not revert to the general fund at the close of the

fiscal year but shall remain in the insurance bureau fund. Money in the insurance bureau fund shall be used only for regulatory purposes under the commissioner's authority. However, money in the insurance bureau fund may be appropriated by the legislature to pay for legislators designated by the senate majority leader and speaker of the house of representatives to participate in insurance activities coordinated by insurance and legislative associations including the national association of insurance commissioners and the national council of insurance legislators.

Sec. 478. (1) On or before October 1 of each year, the NAIC shall file a report of its activities with the commissioner and the senate and house of representatives standing committees on insurance issues. The report shall include all of the following:

(a) A summary of the activities of the NAIC during the preceding year.

(b) A fiscal report, in accordance with generally accepted accounting principles and on a form approved by the commissioner, stating each category of personal, operating, and capital expenditures, and each category of revenue from all sources for the NAIC's preceding fiscal year, and anticipated expenses and revenues for the current and succeeding fiscal years. The fiscal report shall include for each fiscal year statements of expenditures by major program; an audit opinion of the association's fiscal report; the salaries and other compensation for the association's officers; the salaries and other compensation of the professional and managerial employees receiving the highest 5 salaries; the salary range and other compensation of all other professional and managerial employees; and other information as may be requested on or before August 1 of each year by the commissioner or the senate and house of representatives standing committees on insurance issues.

(c) A list of each proposed or required NAIC standard, identified by name and version, to be enacted, adopted, or followed in order for a state to receive or continue its status as an NAIC accredited state, including a detailed explanation of how each NAIC standard benefits the public interest and why alternative means, less restrictive of state sovereignty and innovation, would not accomplish an equal or greater benefit to the public interest.

(d) A list of each NAIC standard adopted or proposed to be adopted during the preceding calendar year, identified by name and version, that is not required or proposed to be required for a state to receive or continue its status as an NAIC accredited state.

(e) A description of the policies and procedures in effect with the NAIC that are designed to ensure that a state's accreditation status is determined solely based on the merits of a state's regulatory effectiveness, a statement on whether the NAIC has complied with those policies and procedures, and a detailed explanation of any noncompliance with those policies and procedures.

(f) A description of the policies and procedures designed to ensure that the NAIC conducts its deliberations and makes its decisions in meetings that are open to the public and in a manner that provides fair notice and a fair opportunity for all affected persons to be heard; a statement on whether the NAIC has complied with those policies and procedures; and a detailed explanation of any noncompliance with those policies and procedures.

(2) On or before March 15 of each year, the senate and house of representatives standing committees on insurance issues shall review the NAIC report filed under subsection (1). The committees may provide an opportunity for consumers, the commissioner and other state regulators, insurers, and any other interested person to be heard on matters relating to the NAIC and any other matter relative to the efficient and effective regulation of insurers. The committees may explore the feasibility of conducting legislative oversight hearings together with the legislative committees of other states that have jurisdiction over insurance matters. The committees may transmit the record of their oversight review to the national conference of insurance legislators, the NAIC, and the commissioner on or before July 1 of each year.

Sec. 479. (1) An insurer domiciled in this state and authorized to transact insurance in this state is not required and cannot be compelled to pay any fee imposed by the NAIC, unless the fee is authorized by an order of the commissioner pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) In determining whether to authorize the payment of a fee imposed by the NAIC, the commissioner shall consider the NAIC's annual report required under section 478, any legislative oversight reports, records, or findings transmitted by the senate and house of representatives standing committees on insurance issues under section 478, and the following factors:

(a) How the NAIC dedicates the use of the fees, including the degree to which any solvency-related revenue is improperly used to subsidize NAIC functions other than solvency oversight.

(b) The degree to which fees imposed by the NAIC are based on an insurer's annual amount of premium volume, rather than the cost of a service rendered by the NAIC.

(c) Whether the NAIC has exceeded its legal authority, as determined by an examination of the fiscal report required under section 478, as well as any other factors considered appropriate by the commissioner.

(d) The level of accountability shown by the NAIC to legislative and regulatory authorities.

(e) The effect of NAIC standards on state sovereignty and innovation.

(f) Whether the NAIC determines the state's accreditation status solely on the basis of its regulatory effectiveness.

(g) Whether NAIC proceedings and decision making are open and publicly accessible.

(3) An order issued under this section shall include a detailed explanation of the commissioner's findings concerning the factors listed in subsection (2).

(4) The commissioner may by an appropriate order authorize or prohibit, in whole or in part, the payment of a fee imposed by the NAIC. The commissioner may rescind or modify, in whole or in part, an order issued by the commissioner under this section as circumstances warrant.

Sec. 480. As used in sections 478 and 479:

(a) "Fee" means financial data base fees, annual statement filing fees, securities valuation fees, user fees, and any other financial assessment or charge of any kind imposed directly or indirectly by the NAIC.

(b) "NAIC" means the national association of insurance commissioners.

(c) "NAIC standard" means a directive; financial annual statement requirement; model act; model regulation; issue paper; market conduct or financial examination report or requirement; accounting practice, procedure, or reporting standard; securities valuation requirement; or any report, action, or program of any kind promulgated by the NAIC, or a committee, task force, working group, or advisory committee of the NAIC.

(d) "Solvency oversight" means an activity directly related to regulating the financial condition of an insurer. Solvency oversight does not include an activity related to market conduct regulation, market regulatory support, or general regulatory support.

(e) "Solvency-related revenue" means only financial data base fees, annual statement fees, and securities valuation fees.

Sec. 8134. (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as those assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) A proposal under subsection (1) shall at least include provisions for all of the following:

(a) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section 8142(1)(a) and (b) and (2).

(b) Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available.

(c) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to disbursements.

(d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 8142 in accordance with those priorities. A bond shall not be required of any such association.

(e) A full report to be made by each association to the liquidator accounting for assets disbursed to the association, all disbursements made from the assets, interest earned by the association on the assets, and any other matter as the court directs.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which the associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

(5) Notice of application shall be given to the association in each state and to the commissioners of insurance of each state. Notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days before submission of the application to the court. Action on the application may be taken by the court if the notice under this subsection has been given and if the liquidator's proposal complies with subsection (2)(a) and (b).

Sec. 8142. (1) Except as provided in subsection (2), the priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

(a) Class 1. The costs and expenses of administration, including, but not limited to, the following:

(i) The actual and necessary costs of preserving or recovering the insurer's assets.

(ii) Compensation for all services rendered in the liquidation.

(iii) Any necessary filing fees.

(iv) The fees and mileage payable to witnesses.

(v) Reasonable attorney's fees.

(vi) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(vii) Debts due to employees for services performed to the extent that they do not exceed \$1,000.00 and represent payment for services performed within 1 year before the filing of the petition for liquidation, if the court determines that the payments are reasonably necessary to an orderly and effective administration for the protection of class 2 claimants. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(viii) Beginning January 3, 1990, the actual and necessary fees of a supervisor appointed pursuant to section 8109 if the liquidation was preceded by supervision pursuant to section 8109 and the fees were not paid at the date of liquidation.

(b) Class 2. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. For purposes of this section, life insurance and annuity policies include, but are not limited to, individual annuities, group annuities, guaranteed investment contracts, and funding agreement contracts, issued by an insurer. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to his or her employee shall not be treated as a gratuity.

(c) Class 3. Claims of the federal government.

(d) Class 4. To the extent not included in class 1, debts due to employees for services performed to the extent that they do not exceed \$1,000.00 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(e) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(f) Class 6. Claims of any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of the claims shall be postponed to the class of claims under subdivision (i).

(g) Class 7. Claims filed late or any other claims other than claims under subdivisions (h) and (i).

(h) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(i) Class 9. The claims of shareholders or other owners. In paying claims pursuant to this class, disinterested shareholders have priority over interested shareholders who are directors or officers who fail to exercise their duties in accordance with section 5240.

(2) If it is provided by written agreement, statute, or rule that the assets in a separate account are not chargeable with liabilities arising out of any other business of the insurer, that part of a claim that includes a separate account shall be satisfied out of the assets in the separate account equal to the reserves maintained in the separate account under the separate account agreement. The remainder of the claim shall be treated as a Class 2 claim against the insurer's estate to the extent that reserves have been established in the insurer's general account pursuant to statute, rule, or the separate account agreement.

(3) As used in this section:

(a) "Separate account" means a separate account authorized under section 925 and established in accordance with the terms of a written agreement or a contract on a variable basis.

(b) "Insurer's estate" means all of the assets of the insurer less any assets held in separate accounts. The following assets shall not be considered separate account assets:

- (i) Assets that represent money provided by the insurer initially to fund the separate account.
- (ii) Assets that represent policy reserves that are properly allocable to the general account.
- (iii) General account investments held in the separate account.

Sec. 8159. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 8142(1)(h).

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.