

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Bouchard, Shugars, Rogers, Bennett, Stille, Byrum, McManus, North, Hart and Gougeon

ENROLLED SENATE BILL No. 1007

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 the title and sections 405, 408, 410, 2016, 2213b, 4424, 5800, and 8199a (MCL 500.405, 500.408, 500.410, 500.2016, 500.2213b, 500.4424, 500.5800, and 500.8199a), the title and section 405 as amended by 1994 PA 228, sections 408 and 410 as amended by 1994 PA 443, section 2016 as added by 1982 PA 7, section 2213b as added by 1996 PA 517, section 4424 as amended by 1982 PA 27, section 5800 as amended by 1984 PA 386, and section 8199a as amended by 1994 PA 226, and by adding sections 839, 4419, and 5904.

TITLE

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 regulation over worker's compensation self-insurers; 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 acts and parts of acts; and to provide penalties for the violation of this act.

Sec. 405. (1) Except as provided in subsection (2), the certificate of authority of a foreign insurer with respect to whom control as defined in 115 changes after October 1, 1992 without being subject to the commissioner's approval shall be automatically revoked 90 days after the change in control without further action by the commissioner unless, within 90 days of the change of control or a longer period if the commissioner allows, the insurer requalifies for a certificate of authority under the provisions of this act in force as of the change of control. The certificate of authority shall be revoked under such conditions for the protection of policyholders, creditors, and the public as the commissioner may require. An insurer does not have to requalify for a certificate of authority under this subsection if the commissioner finds all of the following:

(a) The insurer's most recent a.m. best financial rating is at least an "A-" or is a comparable rating as assigned by a nationally recognized statistical rating organization approved by the commissioner.

(b) Following the change in control, the insurer meets the minimum capital and surplus requirements to qualify for and maintain authority to transact insurance in this state under section 410(2) and (3). However, the commissioner may waive the requirement of this subdivision if both of the following apply:

(i) The insurer possessed a certificate of authority to transact insurance in this state prior to the effective date of the amendatory act that added this subparagraph.

(ii) The commissioner finds that the insurer is otherwise safe, reliable, and entitled to public confidence.

(c) The insurer's total capital exceeds 2 times the company's authorized control level.

(d) The insurer's certificate of authority has not been suspended, revoked, or limited under section 436 at any time during the 5-year period immediately preceding the change of control.

(e) The insurer is not subject to an insurance regulatory information system priority 1 or 2 designation by the national association of insurance commissioners during the year immediately preceding the change of control.

(2) A person seeking to acquire control of a foreign insurer may request the commissioner to determine whether or not the commissioner would requalify the insurer for a certificate of authority if control is acquired. The commissioner shall determine within 90 days after the request is made whether or not the insurer would requalify for a certificate of authority if control is acquired. The commissioner's determination shall be in writing and shall state the commissioner's reasons as to why the commissioner would either grant or deny requalification for a certificate of authority if control is acquired. If the commissioner does not issue his or her determination within this 90-day period and the person seeking

the request acquires control of the foreign insurer within 180 days after the request for a determination was made, the insurer shall be automatically requalified for a certificate of authority. If the commissioner issues an affirmative requalification determination and the person requesting the determination acquires control of the foreign insurer within 180 days after the request for a determination was made, the commissioner is prohibited from proceeding under subsection (1).

Sec. 408. (1) To qualify for authority to transact insurance in this state a domestic, foreign, or alien insurer shall possess and thereafter maintain paid-in capital or surplus or assets in amounts that are not less than those shown by the applicable portion of the following schedule:

Kind of insurance	Domestic, foreign stock insurers CAPITAL	Domestic, foreign mutual life insurers SURPLUS	Domestic, foreign mutual insurers other than life ASSETS	Alien insurers United States ASSETS
Life	\$ 200,000.00	\$ 200,000.00	not applicable	\$ 200,000.00
Life and disability	300,000.00	300,000.00	not applicable	300,000.00
Disability, except as provided in subsection (2), (3), or (4)	200,000.00	not applicable	\$ 50,000.00	200,000.00
Property & marine	200,000.00	not applicable	50,000.00	200,000.00
Automobile	200,000.00	not applicable	50,000.00	200,000.00
Casualty	200,000.00	not applicable	50,000.00	200,000.00
Surety & fidelity	250,000.00	not applicable	250,000.00	250,000.00
Surety, fidelity, casualty	450,000.00	not applicable	250,000.00	450,000.00

Kind of insurance	Reciprocal insurers ASSETS
Disability, except as provided in subsection (2), (3), or (4)	\$ 50,000.00
Property & marine	50,000.00
Automobile	50,000.00
Casualty	50,000.00
Surety & fidelity	50,000.00
Surety, fidelity, casualty	50,000.00

Multiple lines: Any insurer may reinsure risks of every kind or description and write any and all kinds of insurance other than life insurance for which it is authorized while it maintains paid-up capital and surplus of not less than \$500,000.00.

(2) An insurer authorized to transact casualty insurance shall also have authority to transact disability insurance without additional capital, surplus, or assets, as the case may be.

(3) A domestic stock insurer organized to insure on the monthly or weekly premium payment plan any person against bodily injury or death by accident or against disability on account of sickness, or to provide a cash funeral benefit not exceeding \$500.00, shall have paid-in capital stock of not less than \$25,000.00.

(4) As to a reciprocal insurer the authority to transact disability insurance, either alone or in combination with other insuring powers, does not include authority to transact health insurance.

(5) Financial requirements as to cooperative assessment life, disability, and loss of position insurers, as identified in chapter 64, shall be as provided in that chapter. Financial requirements as to domestic stock insurers formed to insure railway employees against loss of position, to transact disability and life insurance, and to make annuities as identified in section 6604 shall be as provided in section 6608.

(6) This section applies to domestic insurers organized prior to July 21, 1965 and to foreign and alien insurers not subject to the provisions of section 410. However, a domestic insurer organized prior to July 21, 1965 and any foreign or alien insurer not subject to the provisions of section 410 that attains the level of capital and surplus required by section 410(1), (2), or (3) is required thereafter to maintain that level of capital and surplus under section 410 unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus.

(7) An insurer authorized to transact insurance on or after July 21, 1965 and before January 1, 1999 that attains the level of capital and surplus required by section 410(2) is required thereafter to maintain that level of capital and surplus under section 410 unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus.

(8) Notwithstanding the specific requirements of this section, domestic, foreign, and alien insurers shall also comply with the standard set forth in section 403.

Sec. 410. (1) To qualify for and maintain authority to transact insurance in this state on or after July 21, 1965 and before January 1, 1999, a domestic, foreign, or alien insurer shall possess and thereafter maintain unimpaired capital and surplus in an amount determined adequate by the commissioner to continue to comply with section 403 but not less than \$1,000,000.00. The commissioner shall take into account the risk based capital requirements as developed by the national association of insurance commissioners in order to determine adequate compliance with section 403.

(2) To qualify for and maintain authority to transact insurance in this state on or after January 1, 1999, a domestic, foreign, or alien insurer shall possess and thereafter maintain unimpaired capital and surplus in an amount determined adequate by the commissioner to continue to comply with section 403 but not less than \$7,000,000.00. The commissioner shall take into account the risk based capital requirements as developed by the national association of insurance commissioners in order to determine adequate compliance with section 403.

(3) In addition to the minimum capital and surplus specified in subsections (1) and (2), an insurer applying for an initial certificate of authority after July 21, 1965 in this state shall possess and maintain surplus or additional surplus in an amount determined by the commissioner adequate to comply with section 403 for the kind or kinds of insurance it writes or proposes to write, but in no event less than \$500,000.00.

(4) Except as provided by section 407, every insurer authorized to transact insurance in this state may transact life insurance or property insurance but not both, unless it was authorized to transact such other kind or kinds of insurance in this state immediately prior to January 1, 1965. For the purpose of this section, life insurance includes any 1 or more of the insurances described in sections 602 and 606; property insurance includes any 1 or more of the insurances described in chapter 6, excepting only section 602 and those provisions of section 632 that apply to insurances described in section 602. Nothing in this section shall be construed to broaden the authority of reciprocal insurers.

(5) Except as provided in subsection (7), an insurer authorized to transact insurance prior to July 21, 1965 may continue to transact insurance so long as it maintains the minimum financial requirements of section 408. However, an insurer authorized to transact insurance prior to July 21, 1965, that attains the level of minimum capital and surplus required by subsection (1) shall maintain compliance with this section unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus.

(6) Except as provided in subsection (7), an insurer authorized to transact insurance on or after July 21, 1965 and before January 1, 1999 that attains the level of minimum capital and surplus required by subsection (2) shall maintain compliance with this section unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus.

(7) An insurer shall not be authorized to transact legal expense insurance unless it meets the capital and surplus requirements of subsections (1), (2), and (3).

(8) Notwithstanding the specific requirements of this section, domestic, foreign, and alien insurers shall also comply with the standard set forth in section 403.

Sec. 839. (1) A domestic insurer may issue capital notes under this section.

(2) A capital note issued by a domestic insurer may provide for interest payments at fixed or adjustable rates, for sinking fund payments, and for payments and redemptions of principal under the terms of the capital note.

(3) The issuance of a capital note is not subject to the commissioner's prior approval.

(4) A capital note shall be treated as a liability in the computation of statutory surplus and shall be reported as a liability on the domestic insurer's annual statement filed with the commissioner under section 438.

(5) In a liquidation proceeding pursuant to chapter 81, a capital note is a similar obligation under section 8142(1)(h).

(6) A capital note may be included in a domestic insurer's total adjusted capital. For a capital note to be so included, the commissioner may require the capital note to contain other features as the commissioner determines are adequate and appropriate to ensure that the insurer continues to be safe, reliable, and entitled to public confidence.

(7) As used in this section:

(a) "Capital note" means a debt instrument that complies with this section.

(b) "Total adjusted capital" means the sum of an insurer's statutory capital and surplus as determined under the annual statement filed with the commissioner under section 438.

Sec. 2016. (1) In addition to other provisions of law, the following practices as applied to worker's compensation insurance including worker's compensation coverage provided through a self-insurer's group are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(a) As a condition of receiving a dividend for the current or a previous year, requiring an insured to renew or maintain worker's compensation insurance with the insurer beyond the current policy's expiration date or requiring a member to continue participation with a worker's compensation self-insurer group.

(b) As a condition of obtaining worker's compensation insurance, requiring a premium deposit greater than 25% of the total projected annual premium or \$2,500.00, whichever is greater.

(c) As a condition of obtaining worker's compensation insurance, requiring the purchase of any other form of insurance from the same insurer.

(d) As the result of a payroll audit or examination, requiring the payment of an increased premium increment within 30 days of written notification of the increase in premium.

(2) This section does not apply if the insured was guilty of misrepresentation, fraud, or other acts of bad faith.

(3) This section also applies to worker's compensation self-insurers' groups.

Sec. 2213b. (1) Except as provided in this section, an insurer that delivers, issues for delivery, or renews in this state an expense-incurred hospital, medical, or surgical individual policy under chapter 34 shall renew or continue in force the policy at the option of the individual.

(2) Except as provided in this section, an insurer that delivers, issues for delivery, or renews in this state an expense-incurred hospital, medical, or surgical group policy or certificate under chapter 36 shall renew or continue in force the policy or certificate at the option of the sponsor of the plan.

(3) Guaranteed renewal is not required in cases of fraud, intentional misrepresentation of material fact, lack of payment, if the insurer no longer offers that particular type of coverage in the market, or if the individual or group moves outside the service area.

(4) Subsections (1), (2), and (3) do not apply to a short-term or 1-time limited duration policy or certificate of no longer than 6 months.

(5) For the purposes of this section and section 3406f, a short-term or 1-time limited duration policy or certificate of no longer than 6 months is an individual health policy that meets all of the following:

(a) Is issued to provide coverage for a period of 185 days or less, except that the health policy may permit a limited extension of benefits after the date the policy ended solely for expenses attributable to a condition for which a covered person incurred expenses during the term of the policy.

(b) Is nonrenewable, provided that the health insurer may provide coverage for 1 or more subsequent periods that satisfy subdivision (a), if the total of the periods of coverage do not exceed a total of 185 days out of any 365-day period, plus any additional days permitted by the policy for a condition for which a covered person incurred expenses during the term of the policy.

(c) Does not cover any preexisting conditions.

(d) Is available with an immediate effective date, without underwriting, upon receipt by the insurer of a completed application indicating eligibility under the health insurer's eligibility requirements, except that coverage that includes optional benefits may be offered on a basis that does not meet this requirement.

(6) An insurer that delivers, issues for delivery, or renews in this state a short-term or 1-time limited duration policy or certificate of no longer than 6 months shall provide the following to the commissioner:

(a) By no later than February 1, 1999, a written report that discloses both of the following:

(i) The gross written premium for short-term or 1-time limited duration policies or certificates of no longer than 6 months issued in this state during the 1996 calendar year.

(ii) The gross written premium for all individual expense-incurred hospital, medical, or surgical policies or certificates issued or delivered in this state during the 1996 calendar year other than policies or certificates described in subparagraph (i).

(b) By no later than March 31, 1999 and annually thereafter, a written annual report that discloses both of the following:

(i) The gross written premium for short-term or 1-time limited duration policies or certificates issued in this state during the preceding calendar year.

(ii) The gross written premium for all individual expense-incurred hospital, medical, or surgical policies or certificates issued or delivered in this state during the preceding calendar year other than policies or certificates described in subparagraph (i).

(7) The commissioner shall maintain copies of reports prepared pursuant to subsection (6) on file with the annual statement of each reporting insurer. The commissioner shall annually compile the reports received under subsection (6). The commissioner shall provide this annual compilation to the senate and house of representatives standing committees

on insurance issues no later than the June 1 immediately following the February 1 or March 31 date for which the reports under subsection (6) are provided.

(8) In each calendar year, a health insurer shall not continue to issue short-term or 1-time limited duration policies or certificates if to do so the collective gross written premiums on those policies or certificates would total more than 10% of the collective gross written premiums for all individual expense-incurred hospital, medical, or surgical policies or certificates issued or delivered in this state either directly by that insurer or through a corporation that owns or is owned by that insurer.

Sec. 4419. Group life insurance may be issued in connection with prepaid funeral contracts only if it meets all of the following:

- (a) Is issued to an association covering the lives of its members or to a trustee of a group.
- (b) Is issued as an associated life insurance policy or annuity contract under section 2080.
- (c) Conforms with section 2080.

Sec. 4424. (1) The commissioner may authorize the insuring on a group insurance basis of groups other than those specifically defined in sections 4404 to 4420 if conditions or circumstances indicate that granting permission for discretionary group life insurance coverages is in the interest of public policy. This section does not limit the commissioner to only authorize those groups that are logically analogous in character and composition to the groups specifically defined in sections 4404 to 4420.

(2) The commissioner may refuse to grant permission in any instance on the basis of a finding that the requested group plan:

- (a) Would not result in economies of acquisition and administration that justify a group rate.
- (b) Would present hazards of voluntary adverse selection to a degree not usually present in group insurance.
- (c) Would be actuarially unsound.
- (d) Would fail to preclude individual selection among persons to be insured under the proposed group plan.

(3) The discretionary group shall consist of not less than 250 persons. The discretionary group may consist of only a portion of the employees of an employer or of the members of an organization, if segregation arises out of reasonable grounds, geographical or otherwise, that make it presently impossible or undesirable to include in a single group all of the employees or members. The discretionary group may consist of employees of more than 1 employer, or the members of more than 1 organization or association, if evidence submitted clearly indicates the desirability of embracing the proposed assemblage of individuals under a single group. By way of particular, but not in limitation, the group may consist of the employees of 1 or more governmental or quasigovernmental units, federal, state, municipal, or local.

(4) If, for reasons that the commissioner determines to be adequate, it appears to be impossible or infeasible for the employer to be the policyholder in any group authorized under this section, the commissioner may authorize the designation of a trustee or trustees to be the policyholder, subject to rules the commissioner approves.

(5) The commissioner may authorize discretionary groups and plans of group insurance that qualify in all other respects under this section although there be no contribution to the premium payment from the employer or organization if the commissioner finds that circumstances render the contribution inequitable, impossible, or impracticable.

(6) The percentage of employees or members required to participate in any group authorized under this section, the types of insurance coverage to be offered to the members of the group, and the amounts of insurance to be provided, shall be as the commissioner determines. The maximum insurance available to any member of a group authorized under this section shall not exceed \$80,000.00. The maximum shall be adjusted beginning July 1, 1982, and annually thereafter, to reflect changes in the cost of living under rules prescribed by the commissioner. However, if a group that previously operated under authority of any of the sections 4404 to 4420 is continued under the provisions of this section, the types of insurance and amounts of coverage already authorized in the group may be continued although in excess of the limitations that would otherwise be available under this section.

(7) Before any application for permission to qualify under this section is considered, the applicant shall deposit with the commissioner a specific fee of \$100.00 to defray the costs of examining into the circumstances and conditions appertaining to the proposed group and group insurance and shall covenant to compensate the insurance bureau for any additional unusual expenses that it may incur. The applicant shall furnish such information, documents, and data pertaining to the proposed group plan as the commissioner requires to arrive at his or her determination. The commissioner shall, from time to time, promulgate rules for the enforcement of this section.

(8) The applicant may appeal from the commissioner's refusal to authorize the discretionary group to the circuit court for the county of Ingham on the grounds that the refusal is arbitrary or capricious and devoid of sound underwriting or actuarial grounds; but any fees or costs paid to or incurred by the insurance bureau under subsection (7) is not subject to recovery.

Sec. 5800. (1) This chapter applies only to domestic mutual insurers transacting property, casualty, disability, and other insurances.

(2) This chapter does not apply to any domestic insurer doing business on August 10, 1917, unless the insurer fully complies with this chapter and by resolution of its board of directors duly certified to by the president and secretary and filed with and approved by the commissioner elects to adopt the provisions of this chapter, in which case the insurer may thereafter effect such kind or kinds of insurance as specified in its articles of incorporation as then or thereafter amended or as may be specified in the resolution.

(3) A person or persons incorporating under this chapter after January 1, 1984, is subject to the minimum financial requirements of sections 408 and 410. Any corporation incorporated under this chapter on or before January 1, 1984, shall continue to be subject to the provisions of section 5810(3).

Sec. 5904. Prior to the completion of a plan of conversion filed by a mutual company with the commissioner, a person shall not knowingly acquire, make an offer for, or make any announcement of an offer for any security issued or to be issued by the converting mutual company in connection with its plan of conversion filed under this chapter or any security issued or to be issued by any other company authorized in section 5905(1)(c)(i) and organized for purposes of effecting the conversion, except in compliance with the maximum purchase limitations imposed by section 5909 or the terms of the plan of conversion as approved by the commissioner.

Sec. 8199a. A fraternal benefit society transacting business in this state and not exempt from the provisions of this chapter under section 8199 is also subject to the following additional chapters and provisions of this act, as applicable:

- (a) Chapter 1.
- (b) Chapter 2. However, as to section 240, only subsection (1)(c), (d), (h), and (j) apply, except as provided in section 5222.
- (c) Sections 403, 405a, 436, 436a, 437, 476a, 839, 5222, and 5256.
- (d) Chapter 9.
- (e) Chapter 11.
- (f) Chapter 34.
- (g) Chapter 38.
- (h) Chapter 39.
- (i) Chapter 40 except as to section 4004.
- (j) Chapter 81.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Mary B. Rella

Clerk of the House of Representatives.

Approved _____

Governor.