

# HOUSE BILL No. 6327

September 17, 2002, Introduced by Rep. Bisbee and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 2409, 2409a, and 2409c (MCL 500.2409,  
500.2409a, and 500.2409c), sections 2409 and 2409a as amended by  
1993 PA 200 and section 2409c as added by 1986 PA 318.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2409. (1) ~~The~~ BEGINNING IN 2002, THE commissioner  
2 shall hold a public hearing and shall issue a ~~tentative~~ report  
3 detailing the state of competition in the worker's compensation  
4 insurance market on a statewide basis and delineating specific  
5 classifications, kinds or types of insurance, if any, where com-  
6 petition does not exist not later than January 15, ~~1984~~ 2002  
7 and each year ~~thereafter~~ AFTER 2002. The report shall be based  
8 on relevant economic tests, including but not limited to those in  
9 subsection (3). The findings in the report shall not be based on

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1 any single measure of competition, but appropriate weight shall  
2 be given to all measures of competition. The report shall  
3 include a certification of whether or not competition exists.  
4 Any person who disagrees with the report and findings of the com-  
5 missioner may request a contested hearing pursuant to the admin-  
6 istrative procedures act of 1969, ~~Act No. 306 of the Public Acts~~  
7 ~~of 1969, as amended, being sections 24.201 to 24.328 of the~~  
8 ~~Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, not  
9 later than 60 days after issuance of the ~~tentative~~ report UNDER  
10 THIS SUBSECTION.

11 (2) ~~Not later than August 1, 1984 and each year thereafter~~  
12 IF THE RESULTS OF THE REPORT ISSUED UNDER SUBSECTION (1) ARE DIS-  
13 PUTED OR IF THE COMMISSIONER DETERMINES THAT CIRCUMSTANCES THAT  
14 THE REPORT WAS BASED ON HAVE CHANGED, the commissioner shall  
15 issue a ~~final~~ SUPPLEMENTAL report TO THE REPORT UNDER SUBSEC-  
16 TION (1) which shall include a ~~final~~ certification of whether  
17 or not competition exists in the worker's compensation insurance  
18 market. The ~~final~~ SUPPLEMENTAL report and certification shall  
19 be ISSUED NOT LATER THAN AUGUST 1 IMMEDIATELY FOLLOWING THE  
20 RELEASE OF THE REPORT UNDER SUBSECTION (1) THAT THIS REPORT SUP-  
21 PLEMENTS AND SHALL BE supported by substantial evidence.

22 (3) All of the following shall be considered by the commis-  
23 sioner for purposes of subsections (1) and (2):

24 (a) The extent to which any insurer controls all or a por-  
25 tion of the worker's compensation insurance market. With respect  
26 to competition on a statewide basis, an insurer shall not be  
27 considered to control the worker's compensation insurance market

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1 unless it has more than a ~~15%~~ 22% market share. ~~In~~ EXCEPT AS  
2 OTHERWISE PROVIDED IN THIS SUBDIVISION, IN making a determination  
3 under this subdivision, the commissioner shall use all insurers  
4 in this state, including ~~self-insurers, group self-insurers as~~  
5 ~~defined in chapter 65, and~~ insurers writing risks under the  
6 placement facility created in chapter 23 as a base for calculat-  
7 ing market share. THE COMMISSIONER SHALL NOT USE SELF-INSURERS  
8 OR GROUP SELF-INSURERS AS ALLOWED UNDER CHAPTER 65 IN MAKING A  
9 DETERMINATION UNDER THIS SUBDIVISION.

10 (b) Whether the total number of companies writing worker's  
11 compensation insurance in this state is sufficient to provide  
12 multiple options to employers.

13 (c) The disparity among worker's compensation insurance  
14 rates and classifications to the extent that such classifications  
15 result in rate differentials.

16 (d) The availability of worker's compensation insurance to  
17 employers in all geographic areas and all types of business.

18 (e) The residual market share.

19 (f) The overall rate level which is not excessive, inade-  
20 quate, or unfairly discriminatory.

21 (g) Any other factors the commissioner considers relevant.

22 (4) The reports and certifications required under subsec-  
23 tions (1) and (2) shall be forwarded to the governor, the clerk  
24 of the house, the secretary of the senate, all the members of the  
25 house of representatives STANDING committees on insurance and  
26 labor ISSUES, and all the members of the senate STANDING  
27 committees on commerce and labor ISSUES.

(5) Not later than 90 days after receipt of the final report and final certification, the legislature, by concurrent resolution, shall approve or disapprove the certification by a majority roll-call vote in each house. If the certification is approved, the commissioner shall proceed under section 2409a.

Sec. 2409a. If the commissioner certifies and the legislature resolves pursuant to section 2409 that a reasonable degree of competition does not exist with respect to the worker's compensation insurance market on a statewide basis or any geographic areas, classifications, kinds or types of risk, or that insurance is unavailable to a segment of the market who are, in good faith, entitled to obtain insurance through ordinary means, the commissioner shall create competition or availability where it does not exist. A plan for competition or availability adopted pursuant to this section shall be included in a ~~final certification of noncompetition~~ REPORT OR SUPPLEMENTAL REPORT under section 2409. The plan shall only relate to those geographic areas, classifications, or kinds or types of risks where competition has been certified not to exist. The plan may include ~~such~~ methods designed to create competition or availability as the commissioner considers necessary, and may provide for the commissioner to do 1 or more of the following:

(a) Authorize, by order, joint underwriting activities in a manner specified in the commissioner's order.

(b) Modify the rate approval process in a manner to increase competition or availability while at the same time providing for

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1 reasonably timely rate approvals, including prior approval or  
2 file and use processes.

3 (c) Order excess profits regulation. Excess profits regula-  
4 tion authorized by this subdivision shall be based upon rules  
5 promulgated pursuant to the administrative procedures act of  
6 1969, ~~Act No. 306 of the Public Acts of 1969, being~~  
7 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969  
8 PA 306, MCL 24.201 TO 24.328. Excess profits shall include both  
9 underwriting profits and all after-tax investment or investment  
10 profit or loss from unearned premiums and loss reserves attribut-  
11 able to worker's compensation insurance. The commissioner, pur-  
12 suant to excess profits regulation, may establish forms for the  
13 reporting of financial data of an insurer.

14 (d) Establish and require worker's compensation insurance  
15 rates, by order, which insurers must use as a condition of main-  
16 taining their certificate of authority. The order setting the  
17 rates shall take effect not less than 90 days nor more than 150  
18 days after the order is issued.

19 Sec. 2409c. (1) ~~The~~ BEGINNING IN 2002, THE commissioner  
20 shall hold a public hearing and shall issue a ~~tentative~~ report  
21 detailing the state of competition in the commercial liability  
22 insurance market on a statewide basis and delineating specific  
23 classifications, kinds or types of insurance, if any, where com-  
24 petition does not exist not later than ~~January 15, 1988~~  
25 SEPTEMBER 1, 2002 and each year ~~thereafter~~ AFTER 2002. The  
26 report shall be based on relevant economic tests, including, but  
27 not limited to, those in subsection (3). The findings in the

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1 report shall not be based on any single measure of competition,  
2 but appropriate weight shall be given to all measures of  
3 competition. The report shall include a certification of whether  
4 or not competition exists. Any person who disagrees with the  
5 report and findings of the commissioner may request a contested  
6 hearing pursuant to the administrative procedures act of 1969,  
7 ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to~~  
8 ~~24.328 of the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO  
9 24.328, not later than 60 days after issuance of the ~~tentative~~  
10 report UNDER THIS SUBSECTION.

11 (2) ~~Not later than August 1, 1988 and each year thereafter~~  
12 IF THE RESULTS OF THE REPORT ISSUED UNDER SUBSECTION (1) ARE DIS-  
13 PUTED OR IF THE COMMISSIONER DETERMINES THAT CIRCUMSTANCES THAT  
14 THE REPORT WAS BASED ON HAVE CHANGED, the commissioner shall  
15 issue a ~~final~~ SUPPLEMENTAL report TO THE REPORT UNDER SUBSEC-  
16 TION (1) which shall include a ~~final~~ certification of whether  
17 or not competition exists in the commercial liability insurance  
18 market. The ~~final~~ SUPPLEMENTAL report and certification shall  
19 be ISSUED NOT LATER THAN MAY 1 IMMEDIATELY FOLLOWING THE RELEASE  
20 OF THE REPORT UNDER SUBSECTION (1) THAT THIS REPORT SUPPLEMENTS  
21 AND SHALL BE supported by substantial evidence.

22 (3) All of the following shall be considered by the commis-  
23 sioner for purposes of subsections (1) and (2):

24 (a) The extent to which any insurer controls the commercial  
25 liability insurance market, or any portion ~~thereof~~ OF THE COM-  
26 Mercial LIABILITY INSURANCE MARKET. With respect to competition  
27 on a statewide basis, an insurer shall not be considered to

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1 control the commercial liability insurance market unless it has  
2 more than a 15% market share.

3 (b) Whether the total number of companies writing commercial  
4 liability insurance in this state is sufficient to provide multi-  
5 ple options to commercial liability insurance purchasers.

6 (c) The disparity among commercial liability insurance rates  
7 and classifications to the extent that such classifications  
8 result in rate differentials.

9 (d) The availability of commercial liability insurance to  
10 commercial liability insurance purchasers in all geographic areas  
11 and all types of business.

12 (e) The residual market share.