

Act No. 354
Public Acts of 2006
Approved by the Governor
September 15, 2006
Filed with the Secretary of State
September 18, 2006
EFFECTIVE DATE: September 18, 2006

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Rep. Mortimer

ENROLLED HOUSE BILL No. 6223

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 provide for assessment fees on certain health maintenance organizations; 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 provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 8134 (MCL 500.8134), as amended by 1998 PA 279.

The People of the State of Michigan enact:

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 make early access

disbursements out of marshaled assets, to any guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that the estate will not have sufficient assets to make any early access disbursements to a guaranty association or foreign guaranty association under this section, the liquidator shall file a report with the court supporting this determination. Notice to the state insurance commissioners, guaranty associations, and foreign guaranty associations and court review of the report shall be provided under subsection (5). This report may be given instead of an application for a proposal to make early access disbursements. However, if at any time the estate obtains sufficient assets to support an early access disbursement under this section, the liquidator shall file an application for a proposal to make early access disbursements within 60 days of the estate obtaining those assets. If, within 120 days of a final determination of insolvency, the liquidator fails to file an application with the court for approval of a proposal to make early access disbursements or, alternatively, fails to file a report with the court supporting the determination that the estate will not have sufficient assets to make early access disbursements, any guaranty association or foreign guaranty association that may become obligated to pay claims as a result of the insolvency may file this application. An application filed by an association shall be reviewed by the court and, if the proposal submitted by the association meets the requirements set out in this section, the application shall be approved by the court. Upon court approval of the guaranty association or foreign guaranty association proposal, the liquidator shall begin making early access disbursements in accordance with the proposal.

(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). When a reserve for uncovered claims under section 8142(2) is appropriate, the amount of estate assets to be reserved for those claims shall be a percentage of the uncovered claims under section 8142(2), equal in proportion to the percentage of assets distributed, or proposed for distribution, to the guaranty association or foreign guaranty association with respect to covered obligations at the time the reserve for uncovered claims is calculated. Reserves shall be established based on the best available information at the time the distribution is calculated and modified from time to time as more refined information becomes available.

(b) Disbursement of the assets marshaled 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).

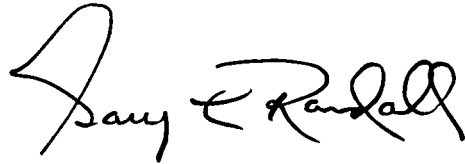
(6) The liquidator shall not offset the amount to be disbursed to any guaranty association or foreign guaranty association by any special or statutory deposit or any other asset of the insolvent insurer except to the extent the deposit or asset has been paid to the association for the purpose of satisfying the association's claims. If a guaranty association or foreign guaranty association has received an early access distribution and thereafter also receives a special or statutory deposit or any other asset of the insolvent insurer, the liquidator may request the return of the early access funds up to the amount of the special or statutory deposit or other asset of the insolvent insurer.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

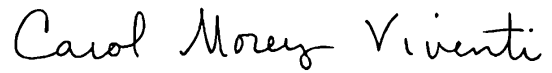
(a) House Bill No. 6235.

- (b) House Bill No. 6234.
- (c) House Bill No. 6233.
- (d) House Bill No. 6232.
- (e) House Bill No. 6231.
- (f) House Bill No. 6230.
- (g) House Bill No. 6229.
- (h) House Bill No. 6228.
- (i) House Bill No. 6227.
- (j) House Bill No. 6226.
- (k) House Bill No. 6225.
- (l) House Bill No. 6224.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor