

# HOUSE BILL No. 5489

November 28, 2007, Introduced by Rep. Polidori and referred to the Committee on Tax Policy.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 224, 440a, 443, 476a, 476b, 1239, 2352, 2954, 3390, and 5208 (MCL 500.224, 500.440a, 500.443, 500.476a, 500.476b, 500.1239, 500.2352, 500.2954, 500.3390, and 500.5208), section 224 as amended by 2001 PA 143, section 440a as added and section 443 as amended by 1990 PA 256, section 476a as amended by 1998 PA 121, sections 476b, 2352, 2954, and 3390 as added by 1987 PA 261, section 1239 as added by 2001 PA 228, and section 5208 as amended by 2002 PA 146.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 224. (1) All actual and necessary expenses incurred in  
2 connection with the examination or other investigation of an  
3 insurer or other person regulated under the commissioner's

1 authority shall be certified by the commissioner, together with a  
2 statement of the work performed including the number of days  
3 spent by the commissioner and each of the commissioner's  
4 deputies, assistants, employees, and others acting under the  
5 commissioner's authority. If correct, the expenses shall be paid  
6 to the persons by whom they were incurred, upon the warrant of  
7 the state treasurer payable from appropriations made by the  
8 legislature for this purpose.

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

22 (3) The commissioner may employ attorneys, actuaries,  
23 accountants, investment advisers, and other expert personnel not  
24 otherwise employees of this state reasonably necessary to assist  
25 in the conduct of the examination or investigation or proceeding  
26 with respect to an insurer or other person regulated under the  
27 commissioner's authority at the insurer's or other person's

1 expense except as otherwise provided in subsection (4). Except as  
2 otherwise provided in subsection (4), upon certification by the  
3 commissioner of the reasonable expenses incurred under this  
4 section, the insurer or other person examined or investigated  
5 shall pay those expenses directly to the person or firm rendering  
6 assistance to the commissioner. Expenses paid directly to such  
7 person or firm and the regulatory fees imposed by this section  
8 shall be examination expenses under section ~~22e of the single~~  
9 ~~business tax act, 1975 PA 228, MCL 208.22e-239(1) OF THE MICHIGAN~~  
10 **BUSINESS TAX ACT, 2007 PA 36, MCL 208.1239.**

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

17 (a) As used in this subsection:

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

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

27 (iii) "I" means all direct underwritten premiums other than

1 life insurance premiums and annuity considerations written in  
 2 this state in the immediately preceding year by all insurers.

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

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

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

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

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

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

1 (c) Each insurer's regulatory fee shall be a minimum fee of  
2 \$250.00 and shall be determined by multiplying the actual  
3 assessment rate by the assessment base of that insurer as  
4 determined by the commissioner from the insurer's annual  
5 statement for the immediately preceding calendar year filed with  
6 the commissioner.

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

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

18 (7) All money paid into the state treasury by an insurer  
19 under this section shall be credited as provided under section  
20 225.

21 (8) A regulatory fee under this section shall not be treated  
22 by an insurer as a levy or excise upon premium but as a  
23 regulatory burden that is apportioned in relation to insurance  
24 activity in this state and reflects the insurance regulatory  
25 burden on this state as a result of this insurance activity. A  
26 foreign or alien insurer authorized to do business in this state  
27 may consider the liability required under this section as a

1 burden imposed by this state in the calculation of the insurer's  
2 liability required under section 476a.

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

1 shall be applied as a credit against the insurer's regulatory fee  
2 for the next fiscal year unless the insurer had a \$100.00 or less  
3 overpayment in the immediately preceding fiscal year. If the  
4 insurer had a \$100.00 or less overpayment in the immediately  
5 preceding fiscal year, at the insurer's option, the current  
6 fiscal year overpayment of \$100.00 or less shall be refunded.

7 (10) Any amounts stated and presented to or certified,  
8 assessed, or imposed upon an insurer as provided in subsections  
9 (2), (3), and (4) that are unpaid as of the date that the insurer  
10 is subjected to a delinquency proceeding pursuant to chapter 81  
11 shall be regarded as an expense of administering the delinquency  
12 proceeding and shall be payable as such from the general assets  
13 of the insurer.

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

24 (12) As used in this section:

25 (a) "Annuity considerations" means receipts on the sale of  
26 annuities as used in section ~~22a of the single business tax act,~~  
27 ~~1975 PA 228, MCL 208.22a-235~~ **OF THE MICHIGAN BUSINESS TAX ACT,**

1 2007 PA 36, MCL 208.1235.

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

5 Sec. 440a. (1) Beginning August 3, 1987, an insurer that is  
6 subject to the worker's disability compensation act of 1969, ~~Act~~  
7 ~~No. 317 of the Public Acts of 1969, being sections 418.101 to~~  
8 ~~418.941 of the Michigan Compiled Laws 1969 PA 317, MCL 418.101 TO~~  
9 ~~418.941,~~ may credit against the tax imposed by section 476a ~~or~~  
10 ~~the fee imposed by section 476e~~ an amount equal to the amount  
11 paid during that tax year by the insurer under section 352 of ~~Act~~  
12 ~~No. 317 of the Public Acts of 1969, being section 418.352 of the~~  
13 ~~Michigan Compiled Laws~~ **THE WORKER'S DISABILITY COMPENSATION ACT**  
14 **OF 1969, 1969 PA 317, MCL 418.352,** as certified by the director  
15 of the bureau of worker's disability compensation under section  
16 391 of ~~Act No. 317 of the Public Acts of 1969, being section~~  
17 ~~418.391 of the Michigan Compiled Laws~~ **THE WORKER'S DISABILITY**  
18 **COMPENSATION ACT OF 1969, 1969 PA 317, MCL 418.391.**

19 (2) The credit under this section shall be claimed in the  
20 manner prescribed by the revenue commissioner.

21 (3) A taxpayer claiming a credit under this section shall  
22 claim a portion of the credit allowed by this section equal to  
23 the payments made during a calendar quarter pursuant to section  
24 352 of ~~Act No. 317 of the Public Acts of 1969~~ **THE WORKER'S**  
25 **DISABILITY COMPENSATION ACT OF 1969, 1969 PA 317, MCL 418.352,**  
26 against the quarterly payments required under section 443. The  
27 state treasurer shall refund a credit in excess of a quarterly

1 payment to the taxpayer on a quarterly basis within 60 days after  
2 receipt of a properly completed quarterly filing as required by  
3 this act. A subsequent increase or decrease in the amount claimed  
4 for payments made by the insurer or self-insurer shall be  
5 reflected in the amount of the credit taken for the calendar  
6 quarter in which the amount of the adjustment is finalized.

7 (4) Except as otherwise provided in this subsection, the  
8 state treasurer shall refund, without interest, a credit under  
9 this section that is in excess of the insurer's tax liability ~~or~~  
10 ~~fee amount~~ for the calendar year to the insurer within 60 days  
11 after receipt of a properly completed annual tax return as  
12 required by this act. The state treasurer shall only make a  
13 refund to an insurer whose tax liability or fee amount under this  
14 act is greater than its tax liability under the ~~single business~~  
15 ~~tax act, Act No. 228 of the Public Acts of 1975, being sections~~  
16 ~~208.1 to 208.145 of the Michigan Compiled Laws~~ **MICHIGAN BUSINESS**  
17 **TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601.**

18 (5) This section shall be applied retroactively to August 3,  
19 1987.

20 Sec. 443. (1) Before April 30, July 31, October 31, and  
21 January 31 of each year, each foreign insurer admitted to do  
22 insurance business in this state and subject to the tax  
23 prescribed in section 476a shall pay to the state treasurer,  
24 accompanied by forms prescribed by the revenue commissioner,  
25 quarterly installments of the insurer's total estimated tax for  
26 the current year. Failure of an insurer to make quarterly  
27 payments of at least 1/4 of either of the following shall subject

1 the insurer to the penalty and interest prescribed in ~~Act No. 122~~  
2 ~~of the Public Acts of 1941, being sections 205.1 to 205.31 of the~~  
3 ~~Michigan Compiled Laws 1941 PA 122, MCL 205.1 TO 205.31:~~

4 (a) If the preceding year's liability was \$20,000.00 or  
5 less, the total tax liability of the insurer for the previous  
6 calendar year. For purposes of this subdivision, an insurer's tax  
7 liability for the previous calendar year shall be considered to  
8 be the amount of tax imposed that year under section 476a or  
9 under the ~~single business tax act, Act No. 228 of the Public Acts~~  
10 ~~of 1975, being sections 208.1 to 208.145 of the Michigan Compiled~~  
11 ~~Laws~~ **MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO**  
12 **208.1601**, whichever is greater.

13 (b) Eighty-five percent of the actual tax liability of the  
14 insurer for the current calendar year.

15 (2) Annually before March 1, each insurer described in  
16 subsection (1) shall make and file with the revenue commissioner  
17 its statement showing all of the data necessary for computation  
18 of its taxes under this chapter, upon forms and including  
19 information that the revenue commissioner prescribes, and shall  
20 pay any additional amount due for the preceding calendar year.  
21 The failure to file the statement with the revenue commissioner  
22 does not excuse or relieve an insurer from the payment of the tax  
23 that is justly due.

24 Sec. 476a. (1) Beginning August 3, 1987, whenever, by a law  
25 in force outside of this state or country, a domestic insurer or  
26 agent of a domestic insurer is required to make a deposit of  
27 securities for the protection of policyholders or otherwise, or

1 to make payment for taxes, fines, penalties, certificates of  
2 authority, valuation of policies, or otherwise, or a special  
3 burden or other burden is imposed, greater in the aggregate than  
4 is required by the laws of this state for a similar alien or  
5 foreign insurer or agent of an alien or foreign insurer, the  
6 alien or foreign insurer of that state or country is required, as  
7 a condition precedent to its transacting business in this state,  
8 to make a like deposit for like purposes with the state treasurer  
9 of this state, and to pay to the revenue commissioner for taxes,  
10 fines, penalties, certificates of authority, valuation of  
11 policies, and otherwise an amount equal in the aggregate to the  
12 charges and payments imposed by the laws of the other state or  
13 country upon a similar domestic insurer and the agents of a  
14 domestic insurer, regardless of whether a domestic insurer or  
15 agent of a domestic insurer is actually transacting business in  
16 that state or country. For fire department or salvage corps taxes  
17 or other local taxes the amount shall be computed by the revenue  
18 commissioner by dividing the total of the payments made by  
19 domestic insurers in that state or country by the gross premium  
20 received by domestic insurers in that state or country less  
21 return premiums. The commissioner shall revoke the certificate of  
22 authority of an alien or foreign insurer refusing for 30 days to  
23 make payment of fees or taxes as required by this chapter. Except  
24 as provided in subsections (3) and (4), for purposes of this  
25 section, an insurer organized under the laws of a state or  
26 country other than these United States shall be considered an  
27 insurer of the state in which its general deposit for the benefit

1 of its policyholders is made.

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

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

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

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

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

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

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

27 ~~—— (5) Taxes collected pursuant to this section are subject to~~

1 ~~section 22d of the single business tax act, 1975 PA 228, MCL~~  
2 ~~208.22d.~~

3 (5) ~~(6)~~—The state treasurer shall administer the tax  
4 prescribed by this section in the manner provided in 1941 PA 122,  
5 MCL 205.1 to 205.31.

6 (6) ~~(7)~~—The requirements of section 28 of 1941 PA 122, MCL  
7 205.28, that prohibit an employee or an authorized representative  
8 or former employee or authorized representative or anyone  
9 connected with the department of treasury from divulging any  
10 facts or information obtained in connection with the  
11 administration of taxes, do not apply to disclosure of the tax  
12 return prescribed in this act.

13 Sec. 476b. ~~An authorized insurer subject to tax under this~~  
14 ~~chapter on August 2, 1987 shall be liable for the payment of the~~  
15 ~~tax under sections 440 to 476 for the 1987 tax year as calculated~~  
16 ~~on August 2, 1987. Beginning August 3, 1987, authorized~~  
17 **AUTHORIZED** insurers shall be **ARE** subject to the tax as provided  
18 in section 476a if applicable or the ~~single business tax, Act No.~~  
19 ~~228 of the Public Acts of 1975, being sections 208.1 to 208.145~~  
20 ~~of the Michigan Compiled Laws~~ **MICHIGAN BUSINESS TAX ACT, 2007 PA**  
21 **36, MCL 208.1101 TO 208.1601**, whichever is greater.

22 Sec. 1239. (1) In addition to any other powers under this  
23 act, the commissioner may place on probation, suspend, revoke, or  
24 refuse to issue an insurance producer's license or may levy a  
25 civil fine under section 1244 or any combination of actions for  
26 any 1 or more of the following causes:

27 (a) Providing incorrect, misleading, incomplete, or

1 materially untrue information in the license application.

2 (b) Violating any insurance laws or violating any  
3 regulation, subpoena, or order of the commissioner or of another  
4 state's insurance commissioner.

5 (c) Obtaining or attempting to obtain a license through  
6 misrepresentation or fraud.

7 (d) Improperly withholding, misappropriating, or converting  
8 any money or property received in the course of doing insurance  
9 business.

10 (e) Intentionally misrepresenting the terms of an actual or  
11 proposed insurance contract or application for insurance.

12 (f) Having been convicted of a felony.

13 (g) Having admitted or been found to have committed any  
14 insurance unfair trade practice or fraud.

15 (h) Using fraudulent, coercive, or dishonest practices or  
16 demonstrating incompetence, untrustworthiness, or financial  
17 irresponsibility in the conduct of business in this state or  
18 elsewhere.

19 (i) Having an insurance producer license or its equivalent  
20 denied, suspended, or revoked in any other state, province,  
21 district, or territory.

22 (j) Forging another's name to an application for insurance  
23 or to any document related to an insurance transaction.

24 (k) Improperly using notes or any other reference material  
25 to complete an examination for an insurance license.

26 (l) Knowingly accepting insurance business from an individual  
27 who is not licensed.

1 (m) Failing to comply with an administrative or court order  
2 imposing a child support obligation.

3 (n) Failing to pay ~~single~~-**MICHIGAN** business tax or comply  
4 with any administrative or court order directing payment of  
5 ~~single~~-**MICHIGAN** business tax.

6 (2) Before the commissioner denies an application for a  
7 license, the commissioner shall notify in writing the applicant  
8 or licensee of the denial and of the reason for the denial. Not  
9 later than 30 days after this written denial, the applicant or  
10 licensee may make written demand upon the commissioner for a  
11 hearing before the commissioner to determine the reasonableness  
12 of the commissioner's action. A hearing under this subsection  
13 shall be held pursuant to the administrative procedures act of  
14 1969, 1969 PA 306, MCL 24.201 to 24.328.

15 (3) The license of a business entity may be suspended,  
16 revoked, or refused if the commissioner finds, after hearing,  
17 that an individual licensee's violation was known or should have  
18 been known by 1 or more of the partners, officers, or managers  
19 acting on behalf of the partnership or corporation and the  
20 violation was neither reported to the commissioner nor corrective  
21 action taken.

22 (4) In addition to or in lieu of any applicable denial,  
23 suspension, or revocation of a license, a person may, after  
24 hearing, be subject to a civil fine under section 1244.

25 (5) In addition to the penalties under this section, the  
26 commissioner may enforce the provisions of and impose any penalty  
27 or remedy authorized by this act against any person who is under

1 investigation for or charged with a violation of this act even if  
2 the person's license or registration has been surrendered or has  
3 lapsed by operation of law.

4       Sec. 2352. Determinations made by the commissioner pursuant  
5 to this chapter shall be made independent of the credits provided  
6 to insurers pursuant to the ~~single business tax act, Act No. 228~~  
7 ~~of the Public Acts of 1975, being sections 208.1 to 208.145 of~~  
8 ~~the Michigan Compiled Laws~~ **MICHIGAN BUSINESS TAX ACT, 2007 PA 36,**  
9 **MCL 208.1101 TO 208.1601.**

10       Sec. 2954. Determinations made by the commissioner pursuant  
11 to this chapter shall be made independent of the credits provided  
12 to insurers pursuant to the ~~single business tax act, Act No. 228~~  
13 ~~of the Public Acts of 1975, being sections 208.1 to 208.145 of~~  
14 ~~the Michigan Compiled Laws~~ **MICHIGAN BUSINESS TAX ACT, 2007 PA 36,**  
15 **MCL 208.1101 TO 208.1601.**

16       Sec. 3390. Determinations made by the commissioner pursuant  
17 to this chapter shall be made independent of the credits provided  
18 to insurers pursuant to the ~~single business tax act, Act No. 228~~  
19 ~~of the Public Acts of 1975, being sections 208.1 to 208.145 of~~  
20 ~~the Michigan Compiled Laws~~ **MICHIGAN BUSINESS TAX ACT, 2007 PA 36,**  
21 **MCL 208.1101 TO 208.1601.**

22       Sec. 5208. (1) The corporate powers of an insurer  
23 incorporated in this state is limited to the issuance of policies  
24 insuring persons or property or other hazards in the state of  
25 domicile and in other states from which it has received authority  
26 to transact insurance business from the insurance department of  
27 that state, and to the provision of services of the kind it

1 performs in the normal conduct of its insurance business whether  
2 or not those services are performed in connection with an  
3 insurance contract. This section does not apply to insurers  
4 organized in compliance with the insurance laws of this state,  
5 which cannot be properly authorized in other states, because the  
6 laws of those states do not permit the writing of the class or  
7 kind of insurance written by those insurers.

8 (2) For services provided under subsection (1) that are  
9 performed in connection with a noninsured benefit plan, all of  
10 the following apply:

11 (a) An insurer's fees for services rendered shall be on a  
12 basis that precludes cost transfers between individuals receiving  
13 those services and policyholders of the insurer.

14 (b) Any insurer providing services described in subsection  
15 (1) in connection with a noninsured benefit plan shall offer a  
16 program of specific or aggregate excess loss insurance.

17 (c) Except as provided in subdivision (d), an insurer  
18 providing the services described in subsection (1) in connection  
19 with a noninsured benefit plan shall not enter into the service  
20 contract for a plan covering a group of less than 500  
21 individuals. However, an insurer may continue a service contract  
22 for a plan covering a group of less than 500 individuals if the  
23 contract was in existence on December 29, 1981.

24 (d) An insurer may enter into a service contract for a plan  
25 covering a group of less than 500 individuals if either the  
26 insurer makes arrangements for excess loss insurance or the  
27 sponsor of the plan that covers the individuals is liable for the

1 plan's liabilities and is a sponsor of 1 or more plans covering  
2 500 or more individuals in the aggregate. The commissioner, upon  
3 obtaining the advice of insurers, shall establish the standards  
4 for the manner and amount of the excess loss insurance required  
5 by this subdivision. It is the intent of the legislature that the  
6 excess loss insurance requirements be uniform as between insurers  
7 and other persons authorized to provide similar services.

8 (e) An insurer providing the services described in  
9 subsection (1) in connection with a noninsured benefit plan shall  
10 comply with section 5208a.

11 (f) A service contract containing an administrative services  
12 only arrangement between an insurer and a governmental entity not  
13 subject to ERISA, whose plan provides coverage under a collective  
14 bargaining agreement utilizing a policy or certificate issued by  
15 an insurer, health care corporation, dental care corporation, or  
16 health maintenance organization before the signing of the service  
17 contract, is void unless the governmental entity has provided the  
18 notice described in section 5208a(8) to the collective bargaining  
19 agent and to the members of the collective bargaining unit not  
20 less than 30 days before signing the service contract. The  
21 voiding of a service contract under this subdivision does not  
22 relieve the governmental entity of any obligations to the insurer  
23 under the service contract.

24 (3) Nothing in this section shall be construed to permit an  
25 actionable interference by an insurer with the rights and  
26 obligations of the parties under a collective bargaining  
27 agreement.

1           (4) Services provided under subsection (1) that are  
2 performed in connection with a noninsured benefit plan shall be  
3 considered a business activity that is not an insurance carrier  
4 service and are subject to tax as authorized by the ~~single~~  
5 ~~business tax act, 1975 PA 228, MCL 208.1 to 208.145~~ **MICHIGAN**  
6 **BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601.**

7           (5) An insurer shall report with its annual statement the  
8 amount of business it has conducted as services provided under  
9 subsection (1) that are performed in connection with a noninsured  
10 benefit plan, and the commissioner shall annually transmit this  
11 information to the state commissioner of revenue.

12           (6) An employee covered under a noninsured benefit plan for  
13 which services are provided under a service contract authorized  
14 under subsection (1) is not liable for that portion of claims  
15 incurred and subject to payment under the plan if the service  
16 contract is entered into between an employer and insurer, unless  
17 that portion of the claim has been paid directly to the employee.

18           (7) As used in this section, "noninsured benefit plan" or  
19 "plan" means a benefit plan without insurance or the noninsured  
20 portion of a benefit plan that has specific or aggregate excess  
21 loss insurance.