

Act No. 187
Public Acts of 2007
Approved by the Governor
December 20, 2007
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007**

Introduced by Rep. Polidori

ENROLLED HOUSE BILL No. 5489

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 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.

Sec. 224. (1) All actual and necessary expenses incurred in connection with the examination or other investigation of an insurer or other person regulated under the commissioner's authority shall be certified by the commissioner, together with a statement of the work performed including the number of days spent by the commissioner and each of the commissioner's deputies, assistants, employees, and others acting under the commissioner's authority. If correct, the expenses shall be paid to the persons by whom they were incurred, upon the warrant of the state treasurer payable from appropriations made by the legislature for this purpose.

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

(3) The commissioner may employ attorneys, actuaries, accountants, investment advisers, and other expert personnel not otherwise employees of this state reasonably necessary to assist in the conduct of the examination or investigation or proceeding with respect to an insurer or other person regulated under the commissioner's authority at the insurer's or other person's expense except as otherwise provided in subsection (4). Except as otherwise provided in subsection (4), upon certification by the commissioner of the reasonable expenses incurred under this section, the insurer or other person examined or investigated shall pay those expenses directly to the person or firm rendering assistance to the commissioner. Expenses paid directly to such person or firm and the regulatory fees imposed by this section shall be examination expenses under section 22e of the former single business tax act, 1975 PA 228, or under section 239(1) of the Michigan business tax act, 2007 PA 36, MCL 208.1239.

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

(a) As used in this subsection:

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

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

(iii) "I" means all direct underwritten premiums other than life insurance premiums and annuity considerations written in this state in the immediately preceding year by all insurers.

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

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

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

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

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

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

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

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

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

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

(8) A regulatory fee under this section shall not be treated by an insurer as a levy or excise upon premium but as a regulatory burden that is apportioned in relation to insurance activity in this state and reflects the insurance regulatory burden on this state as a result of this insurance activity. A foreign or alien insurer authorized to do business in this state may consider the liability required under this section as a burden imposed by this state in the calculation of the insurer's liability required under section 476a.

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

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

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

(12) As used in this section:

(a) "Annuity considerations" means receipts on the sale of annuities as used in section 22a of the former single business tax act, 1975 PA 228, or in section 235 of the Michigan business tax act, 2007 PA 36, MCL 208.1235.

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

Sec. 440a. (1) Beginning August 3, 1987, an insurer that is subject to the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, may credit against the tax imposed by section 476a an amount equal to the amount paid during that tax year by the insurer under section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, as certified by the director of the bureau of worker's disability compensation under section 391 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.391.

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

(3) A taxpayer claiming a credit under this section shall claim a portion of the credit allowed by this section equal to the payments made during a calendar quarter pursuant to section 352 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.352, against the quarterly payments required under section 443. The state treasurer shall refund a credit in excess of a quarterly payment to the taxpayer on a quarterly basis within 60 days after receipt of a properly completed quarterly filing as required by this act. A subsequent increase or decrease in the amount claimed

for payments made by the insurer or self-insurer shall be reflected in the amount of the credit taken for the calendar quarter in which the amount of the adjustment is finalized.

(4) Except as otherwise provided in this subsection, the state treasurer shall refund, without interest, a credit under this section that is in excess of the insurer's tax liability for the calendar year to the insurer within 60 days after receipt of a properly completed annual tax return as required by this act. The state treasurer shall only make a refund to an insurer whose tax liability or fee amount under this act is greater than its tax liability under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

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

Sec. 443. (1) Before April 30, July 31, October 31, and January 31 of each year, each foreign insurer admitted to do insurance business in this state and subject to the tax prescribed in section 476a shall pay to the state treasurer, accompanied by forms prescribed by the revenue commissioner, quarterly installments of the insurer's total estimated tax for the current year. Failure of an insurer to make quarterly payments of at least 1/4 of either of the following shall subject the insurer to the penalty and interest prescribed in 1941 PA 122, MCL 205.1 to 205.31:

(a) If the preceding year's liability was \$20,000.00 or less, the total tax liability of the insurer for the previous calendar year. For purposes of this subdivision, an insurer's tax liability for the previous calendar year shall be considered to be the amount of tax imposed that year under section 476a or under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, whichever is greater.

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

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

Sec. 476a. (1) Beginning August 3, 1987, whenever, by a law in force outside of this state or country, a domestic insurer or agent of a domestic insurer is required to make a deposit of securities for the protection of policyholders or otherwise, or to make payment for taxes, fines, penalties, certificates of authority, valuation of policies, or otherwise, or a special burden or other burden is imposed, greater in the aggregate than is required by the laws of this state for a similar alien or foreign insurer or agent of an alien or foreign insurer, the alien or foreign insurer of that state or country is required, as a condition precedent to its transacting business in this state, to make a like deposit for like purposes with the state treasurer of this state, and to pay to the revenue commissioner for taxes, fines, penalties, certificates of authority, valuation of policies, and otherwise an amount equal in the aggregate to the charges and payments imposed by the laws of the other state or country upon a similar domestic insurer and the agents of a domestic insurer, regardless of whether a domestic insurer or agent of a domestic insurer is actually transacting business in that state or country. For fire department or salvage corps taxes or other local taxes the amount shall be computed by the revenue commissioner by dividing the total of the payments made by domestic insurers in that state or country by the gross premium received by domestic insurers in that state or country less return premiums. The commissioner shall revoke the certificate of authority of an alien or foreign insurer refusing for 30 days to make payment of fees or taxes as required by this chapter. Except as provided in subsections (3) and (4), for purposes of this section, an insurer organized under the laws of a state or country other than these United States shall be considered an insurer of the state in which its general deposit for the benefit of its policyholders is made.

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

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

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

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

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

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

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

(5) Taxes collected pursuant to this section are subject to section 22d of the former single business tax act, 1975 PA 228, or section 243 of the Michigan business tax act, 2007 PA 36, MCL 208.1243.

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

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

Sec. 476b. Authorized insurers are subject to the tax as provided in section 476a if applicable or the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, whichever is greater.

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

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- (b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.
- (c) Obtaining or attempting to obtain a license through misrepresentation or fraud.
- (d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (f) Having been convicted of a felony.
- (g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.
- (h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
- (i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.
- (j) Forging another's name to an application for insurance or to any document related to an insurance transaction.
- (k) Improperly using notes or any other reference material to complete an examination for an insurance license.
- (l) Knowingly accepting insurance business from an individual who is not licensed.
- (m) Failing to comply with an administrative or court order imposing a child support obligation.
- (n) Failing to pay the single business tax or the Michigan business tax or comply with any administrative or court order directing payment of the single business tax or the Michigan business tax.

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

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

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

(5) In addition to the penalties under this section, the commissioner may enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.

Sec. 2352. Determinations made by the commissioner pursuant to this chapter shall be made independent of the credits provided to insurers pursuant to the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

Sec. 2954. Determinations made by the commissioner pursuant to this chapter shall be made independent of the credits provided to insurers pursuant to the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

Sec. 3390. Determinations made by the commissioner pursuant to this chapter shall be made independent of the credits provided to insurers pursuant to the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

Sec. 5208. (1) The corporate powers of an insurer incorporated in this state is limited to the issuance of policies insuring persons or property or other hazards in the state of domicile and in other states from which it has received authority to transact insurance business from the insurance department of that state, and to the provision of services of the kind it performs in the normal conduct of its insurance business whether or not those services are performed in connection with an insurance contract. This section does not apply to insurers organized in compliance with the insurance laws of this state, which cannot be properly authorized in other states, because the laws of those states do not permit the writing of the class or kind of insurance written by those insurers.

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

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

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

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

(d) An insurer may enter into a service contract for a plan covering a group of less than 500 individuals if either the insurer makes arrangements for excess loss insurance or the sponsor of the plan that covers the individuals is liable for the plan's liabilities and is a sponsor of 1 or more plans covering 500 or more individuals in the aggregate. The commissioner, upon obtaining the advice of insurers, shall establish the standards for the manner and amount of the excess loss insurance required by this subdivision. It is the intent of the legislature that the excess loss insurance requirements be uniform as between insurers and other persons authorized to provide similar services.

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

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

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

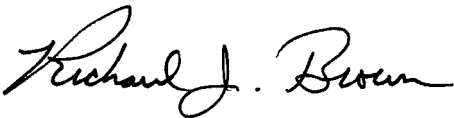
(4) Services provided under subsection (1) that are performed in connection with a noninsured benefit plan shall be considered a business activity that is not an insurance carrier service and are subject to tax as authorized by the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor