

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

CHAPTER 79

PROPERTY AND CASUALTY GUARANTY ASSOCIATION

500.7901 Property and casualty guaranty association act; short title.

Sec. 7901. This chapter constitutes, and may be cited as the "property and casualty guaranty association act".

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969.

Popular name: Act 218

500.7911 Property and casualty guaranty association; membership; exception; laws to which association subject.

Sec. 7911. (1) To implement this chapter, there shall be maintained within this state, by all insurers authorized to transact in this state insurance other than life or disability insurance, except the Michigan basic property insurance association created pursuant to section 2920, an association of those insurers to be known as the property and casualty guaranty association, hereafter referred to as the "association". Each insurer shall be a member of the association as a condition of its authority to continue to transact insurance in this state.

(2) An insurer from which insurance has been or may be procured in this state solely by virtue of chapter 19 shall not be considered to be an insurer authorized to transact insurance in this state for the purposes of this chapter.

(3) The association is subject to the requirements of this chapter and chapter 81 but is not subject to the other chapters of this act. The association shall be subject to other laws of this state to the extent that it would be subject to those laws if it were an insurer organized and operating under chapter 50, to the extent that those other laws are consistent with this chapter.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1972, Act 207, Imd. Eff. June 30, 1972;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 1982, Act 502, Eff. Mar. 30, 1983;—Am. 1990, Act 137, Eff. June 29, 1990;—Am. 1993, Act 200, Eff. Dec. 28, 1994;—Am. 2006, Act 365, Imd. Eff. Sept. 18, 2006.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Section 3 of Act 200 of 1993 provides as follows:

"Section 3. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws."

Popular name: Act 218

500.7911a Life or disability insurer not to be member of association.

Sec. 7911a. Notwithstanding section 7911, a life or disability insurer shall not be a member of the association.

History: Add. 1982, Act 501, Imd. Eff. Dec. 31, 1982;—Am. 1996, Act 548, Imd. Eff. Jan. 15, 1997.

Popular name: Act 218

500.7912 Property and casualty guaranty association; board of governors; appointment, terms, and qualifications of members; vacancy.

Sec. 7912. (1) The association shall be managed by a board of governors, composed of 5 member insurers and 2 persons representing the general public, each of whom shall be appointed by the commissioner to serve for terms of 3 years and until their successors are appointed and qualified. Three of the governors who are member insurers shall be domestic insurers and 2 shall be foreign insurers. At least 2 governors who are member insurers shall be stock insurers and at least 2 shall be nonstock insurers. The 5 governors who are member insurers shall be representative, as nearly as possible, of all the kinds of insurance covered by this chapter.

(2) In case of a vacancy for any reason in the office of any governor, the commissioner shall appoint a person to fill the unexpired term of the vacant office to maintain the membership of the board as required in subsection (1).

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1982, Act 502, Eff. Mar. 30, 1983.

Popular name: Act 218

500.7914 Property and casualty guaranty association; plan of operation, adoption, amendment, approval; failure to adopt operation plan.

Sec. 7914. (1) The association shall adopt a plan of operation and any amendments thereof, not inconsistent with the provisions of this chapter, necessary to assure the fair, reasonable and equitable manner of administering the association, and to provide for such other matters as are necessary or advisable to implement the provisions of this chapter. The plan of operation and any amendments thereof shall be subject to prior written approval by the commissioner. All members of the association shall adhere to the plan of operation.

(2) If for any reason the association fails to adopt a suitable plan of operation within 6 months following the effective date of this chapter, or if at any time thereafter the association fails to adopt suitable amendments to the plan of operation, the commissioner shall adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan of operation adopted by the association and approved by the commissioner.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969.

Popular name: Act 218

500.7916 Property and casualty guaranty association; servicing facilities; designation; reimbursement; authority; approval.

Sec. 7916. In accordance with its plan of operation the association may designate 1 or more of its members as servicing facilities but a member may decline such designation. Each servicing facility shall be reimbursed by the association for any expenses it incurs and for any payments it makes on behalf of the association. Each servicing facility shall have authority to perform any functions of the association that the governors lawfully may delegate to it and to do so on behalf of and in the name of the association. The designation of servicing facilities shall be subject to the approval of the commissioner.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969.

Popular name: Act 218

500.7918 Property and casualty guaranty association; powers generally.

Sec. 7918. (1) The association may borrow funds when necessary to implement this act.

(2) The association, either in its own name or through a servicing facility, may sue or be sued, and may use the courts to assert or defend any rights the association may have under this chapter, to the extent necessary to fully exercise its rights and perform its duties under, and to implement, this chapter.

(3) The association may retain and employ legal counsel in its discretion to represent the association in all respects.

(4) The association may bring an action against any third party administrator, agent, attorney, or other representative of the insolvent insurer to obtain custody and control of all claims information, including all files, records, and electronic data related to an insolvent company that are appropriate or necessary for the association, or a similar association in other states, to carry out its duties under this act. The association shall have the absolute right through emergency equitable relief to obtain custody and control of all claims information in the custody or control of the third party administrator, agent, attorney, or other representative of the insolvent insurer, regardless of where the information may be physically located. In bringing the action, the association is not subject to any defense, lien, possessory or otherwise, or other legal or equitable ground for refusal to surrender claims information that might be asserted against the liquidator of the insolvent insurers. If litigation is necessary for the association to obtain custody of the claims information requested and it results in the relinquishment of claims information to the association after refusal to provide the information in response to a written demand, the court shall award the association its costs, expenses, and reasonable attorney fees incurred in bringing the action. This section does not affect the rights and remedies that the custodian of the claims information may have against the insolvent insurers, so long as those rights and remedies do not conflict with the rights of the association to custody and control of the claims information under this act.

(5) Upon request of the commissioner, consent of the association, and appointment by the court, the association may act as deputy receiver in delinquency proceedings under chapter 81.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 2001, Act 182, Imd. Eff. Dec. 21, 2001;—Am. 2006, Act 364, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.7921 "Insolvent insurer" and "member insurer" defined.

Sec. 7921. As used in this chapter:

(a) "Insolvent insurer" means an insurer which has been a member insurer and against whom a final order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile. The date on which the order becomes final shall be the date on which all appeals of the finding of insolvency are exhausted. If the finding of insolvency in the order of liquidation is not appealed, the order of liquidation shall be considered final on the date the order was issued.

(b) "Member insurer" means an insurer required to be a member of the association pursuant to section 7911.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1990, Act 137, Eff. June 29, 1990;—Am. 1993, Act 200, Eff. Dec. 28, 1994;—Am. 2006, Act 363, Imd. Eff. Sept. 18, 2006.

Compiler's note: Section 3 of Act 200 of 1993 provides as follows:

"Section 3. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws."

Popular name: Act 218

500.7925 "Covered claims" defined; definitions.

Sec. 7925. (1) "Covered claims" means obligations of an insolvent insurer that meet all of the following requirements:

(a) Arise out of the insurance policy contracts of the insolvent insurer issued to residents of this state or are payable to residents of this state on behalf of insureds of the insolvent insurer.

(b) Were unpaid by the insolvent insurer.

(c) Are presented as a claim to the receiver in this state or the association on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(d) Were incurred or existed before, at the time of, or within 30 days after the date the receiver was appointed.

(e) Arise out of policy contracts of the insolvent insurer issued for all kinds of insurance except life and disability insurance.

(f) Arise out of insurance policy contracts issued on or before the last date on which the insolvent insurer was a member insurer.

(2) Covered claims shall not include any of the following:

(a) Obligations to refund unearned premiums above the first \$500.00 of unearned premiums from each person from any 1 insolvent insurer. The maximum amount of unearned premiums which shall constitute a covered claim shall be adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner. A refund in an amount less than \$50.00 shall not be made for unearned premiums.

(b) Obligations incurred after the expiration date of the insurance policy, after the insurance policy has been replaced by the insured, or after the insurance policy has been canceled by the association as provided in this chapter.

(c) Obligations arising out of sections 2001 to 2050, or similar provisions of law in another jurisdiction.

(3) Covered claims shall not include any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, or health care corporation as subrogation recoveries, contribution, indemnification, or other obligation. A claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, or health care corporation shall not be brought against an insured or claimant under a policy issued by the insolvent insurer unless the claim exceeds the association's obligation limitations under subsection (6).

(4) Covered claims shall not include obligations for any first party or third party claim by or against an insured whose net worth exceeds \$25,000,000.00 on December 31, or on the last date of the insured's fiscal period if that is other than December 31, of the year immediately preceding the date the insurer becomes an insolvent insurer. In determining net worth on this date, an insured's net worth shall include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis. The \$25,000,000.00 net worth limit shall be adjusted annually to reflect the aggregate annual percentage change in the consumer price index since the previous adjustment, rounded to the nearest \$10,000.00. The effective date of the adjustment shall be January 1 of each year. This subsection applies to an insolvency that occurs on or after the effective date of the amendatory act that added this subsection.

(5) Covered claims shall not include any portion of a claim that is in excess of an applicable limit provided in the insurance policy.

(6) Covered claims shall not include that portion of a claim, other than a worker's compensation claim or a claim for personal protection insurance benefits under section 3107, that is in excess of \$5,000,000.00. The \$5,000,000.00 claim cap shall be adjusted annually to reflect the aggregate annual percentage change in the consumer price index since the previous adjustment, rounded to the nearest \$10,000.00. The effective date of the adjustment shall be January 1 of each year and shall apply to claims made on or after that date. The claim cap in effect at the time of payment of a claim shall apply.

(7) Covered claims shall not include adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, or bond premiums if the fees, expenses, costs, interest, or premiums were incurred by the insolvent insurer before the receiver was appointed.

(8) As used in this section:

(a) "Consumer price index" means the consumer price index for all urban consumers in the U.S. city average, as most recently reported by the United States department of labor, bureau of labor statistics, and as certified by the commissioner.

(b) "Control" means that term as defined in section 115(b)(i).

(c) "Health care corporation" means that term as defined in section 105 of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1105.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1972, Act 207, Imd. Eff. June 30, 1972;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 2006, Act 362, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

Administrative rules: R 500.351 of the Michigan Administrative Code.

500.7931 Payment and discharge of covered claims; association as party in interest; rights of association; cause of action against insureds; recoverable damages or benefits as credit against covered claim; action to recover excess payment; claims made under worker's disability compensation act; continuation and duration of coverage for covered claims; cancellation of insurance policies; notice; definitions.

Sec. 7931. (1) The association may pay or discharge covered claims directly, through a servicing facility, or through a contract for reinsurance or transfer of liabilities with a member insurer, in accordance with the plan of operation.

(2) The association shall be a party in interest in all proceedings involving a covered claim and shall have the same rights as the insolvent insurer would have had if not in receivership, including the right to appear, defend, and appeal a claim in a court of competent jurisdiction; to receive notice of, investigate, adjust, compromise, settle, and pay a covered claim; and to investigate, handle, and deny a noncovered claim. The association shall not have a cause of action against the insureds of the insolvent insurer for any sums it has paid out, except those causes of action that the insolvent insurer would have had if the sums had been paid by the insolvent insurer, or except as otherwise provided by this chapter.

(3) If damages or benefits are recoverable by a claimant other than from any disability policy or life insurance policy owned or paid for by the claimant or by a claimant or insured under an insurance policy other than a policy of the insolvent insurer, or under a self-insured program of a self-insured entity, the damages or benefits recoverable shall be a credit against a covered claim payable under this chapter. The claimant, insured, or self-insured entity shall first exhaust all coverage provided by any policy or the self-insured retention of an excess insurance policy. If damages against an insured who is not a resident of this state are recoverable by a claimant who is a resident of this state, in whole or in part, from any insurance guaranty association or fund or its equivalent in the state where the insured is a resident, the damages recoverable shall be a credit against a covered claim payable under this chapter. To the extent that the association's obligation is reduced by this section, the liability of the person insured by the insolvent insurer's policy shall be reduced in the same amount. An insurer, self-insured entity, or any other person shall not maintain an action against an insured of the insolvent insurer to recover an amount that constitutes a credit against a covered claim under this section. An amount paid to a claimant in excess of the amount authorized by this section may be recovered by an action brought by the association. If the claims made arise under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, this subsection does not provide credits in excess of those specified in section 354 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.354, and does not limit the liability of the guaranty association or the insured under a policy of the insolvent insurer for benefits provided under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

(4) The association shall continue coverage for covered claims under each insurance policy of the insolvent insurer that was in force on the date the receiver was appointed until the insurance policy has expired in accordance with its terms, has been replaced by the insured, or has been canceled by the association as provided in this chapter, but in no event for more than 30 days after the date the receiver was appointed.

(5) The association may cancel insurance policies of the insolvent insurer by mailing or delivering to the insured at the last known address within this state a 10 days' written notice of cancellation, notwithstanding a statute or policy provision to the contrary.

(6) As used in this section:

(a) "Self-insured entity" means a person or employer that covers its liability through a qualified individual or group self-insurance program.

(b) "Self-insured program" means any formal program created for the specific purpose of covering liabilities typically covered by insurance.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 2006, Act 361, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.7933 Financial condition of member insurer; reports and recommendations; advice to commissioner; exemption from public disclosure.

Sec. 7933. (1) The association may submit reports and make recommendations to the commissioner regarding the financial condition of any member insurer. The reports and recommendations shall not be considered public documents.

(2) After the commissioner has entered an order restricting the certificate of authority of an insurer, the association shall render advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other obligations of the insurer.

(3) Any reports, recommendations, and advice prepared in compliance with this section shall be exempt from public disclosure.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980.

Popular name: Act 218

500.7935 Cooperation of insured with association; assignment of rights; indemnification from catastrophic claims association; options.

Sec. 7935. (1) Each insured entitled to the protection of this chapter shall cooperate with the association in accordance with the insured's policy in the same manner as the insured would have been required to cooperate with his or her insurer if it were not in receivership. Each insured shall be considered to have assigned to the association any right to make claim against the receiver for a refund of unearned premium for the period of coverage provided by the association beginning on the date of receivership.

(2) An insured or claimant entitled to the benefits of this chapter shall be considered to have assigned to the association, to the extent of any payment received from the association, his or her rights against the estate of the insolvent insurer, rights under the policy under which his or her claim arose, and any other rights the insured or claimant may have against another person for payment of the covered claim paid by the association.

(3) The association shall be entitled to receive, to the extent of the amount paid or payable by the association by reason of a covered claim, any amount recoverable by the receiver or the insolvent insurer by way of right of indemnification from the catastrophic claims association created in section 3104.

(4) The association shall be entitled to any option to take possession of, right of salvage in, or other right to proceeds from the sale or disposition of insured property which is the subject matter of a covered claim, to which the insolvent insurer would have been entitled had it paid the claim.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980.

Popular name: Act 218

500.7941 Assessments on member insurers; purpose; allocation of claim payments and costs to categories; separate assessments for each category; use, amount, and rate of assessment; remittance and administration of assessments; notice; limitation; exemption or deferment; recognition of assessments in rate-making procedures; refunds; revocation of certificate of authority.

Sec. 7941. (1) To the extent necessary to secure funds for the association for payment of covered claims and for payment of reasonable costs of administering the association, including the cost of indemnifying

members of the board of governors, other member insurers, officers, employees, and other persons acting on behalf of the association to the extent permitted by law and the plan of operation, the association shall levy assessments upon all member insurers. The association shall allocate its claim payments and costs to the following 5 categories:

- (a) Worker's compensation insurance.
- (b) Automobile insurance.
- (c) Title insurance.
- (d) Fire, allied lines, farm owner's multiple peril, homeowner's multiple peril, inland marine, earthquake, and credit insurance.
- (e) All other kinds of insurance except life and disability insurance.

(2) Separate assessments shall be made for each category prescribed in subsection (1). The assessment for each category shall be used to pay the claim payments and costs allocated to that category. The assessment for each category shall be in proportion to the net direct premiums written, after deducting dividends paid or credited to policyholders, by each member insurer in this state for kinds of insurance included within each category, as reported in the most recent annual statement available at the time of assessment. The rate of assessment shall be a uniform percentage of the premiums for all member insurers. The assessments shall be remitted to and administered by the association in accordance with the plan of operation. Each member insurer assessed shall have not less than 30 days' advance written notice of the date the assessment is due and payable.

(3) A member insurer shall not be assessed during a calendar year for more than 1% of its net direct premiums written in this state during the previous calendar year. The commissioner may exempt a member insurer from all or part of an assessment or may defer, in whole or in part, the assessment of a member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of exemption or deferment, dividends shall not be declared or paid to shareholders or policyholders. If a member insurer is exempted from all or part of an assessment, or if an assessment against a member insurer is deferred in whole or in part, the amount of the exemption or deferred assessment may be assessed against the other member insurers in a manner consistent with the basis for assessments prescribed in this section. The commissioner may impose conditions on an exemption or deferral which he or she considers reasonable and necessary.

(4) The assessments shall be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized. Unused assessments and reimbursements from the receiver remaining in a category in excess of covered claims and expenses allocated to that category shall be refunded by the association to each member insurer who paid the assessments for that category in proportion to its assessments paid. An insurer that ceases to be a member of the association shall not have a right to a refund of an assessment previously remitted to the association. The commissioner may revoke the certificate of authority to transact business in this state of a member insurer that fails to pay an assessment when due as provided in this act and after a demand has been made.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1972, Act 207, Imd. Eff. June 30, 1972;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 1982, Act 502, Eff. Mar. 30, 1983;—Am. 1990, Act 137, Eff. June 29, 1990;—Am. 2006, Act 360, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.7945 Stay of proceedings.

Sec. 7945. (1) All proceedings in any court of law of this state to which the insolvent insurer is a party, or in which the insolvent insurer is obligated to defend or has assumed the defense of a party, shall be stayed for 6 months after the date a receiver is appointed, and for any additional time as determined by the court that has jurisdiction over those proceedings, to permit proper defense of all pending causes of action.

(2) All proceedings in any administrative tribunal, including worker's compensation proceedings, to which the insolvent insurer is a party, or in which the insolvent insurer is obligated to defend or has assumed the defense of a party, shall be stayed for such length of time after the date a receiver is appointed, as determined by the administrative tribunal that has jurisdiction over those proceedings. The administrative tribunal shall grant a stay for each affected proceeding, as necessary, to provide the association with sufficient time to prepare a proper defense in the proceeding.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969;—Am. 1980, Act 41, Imd. Eff. Mar. 17, 1980;—Am. 2006, Act 359, Imd. Eff. Sept. 18, 2006.

Popular name: Act 218

500.7947 Tax exemption.

Sec. 7947. The association shall be exempt from all license fees, income, franchise, privilege or occupation taxes levied or assessed by this state, any municipality, county or other political subdivision of the state, except state, county or municipal taxes upon the real or personal property of the association, which is to be assessed and taxed in the same manner as real property and personal property of other nonexempt persons.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969.

Popular name: Act 218

500.7948 Liability.

Sec. 7948. There shall not be liability on the part of and a cause of action of any nature shall not arise against any member insurer, the association, agents or employees of the association, the board of governors, or the commissioner or representatives of the commissioner for any action taken by them in the exercise of their powers and performance of their duties under this chapter.

History: Add. 1980, Act 41, Imd. Eff. Mar. 17, 1980.

Popular name: Act 218

500.7949 Insurance commissioner; regulatory powers; visitation; examination; hearings.

Sec. 7949. (1) The operation of the association at all times shall be subject to the regulation of the commissioner. The commissioner, or any deputy or examiner, or any person whom the commissioner appoints, shall have the power of visitation and examination into the affairs of the association and free access to all books, papers and documents that relate to the business of the association, may summon and qualify witnesses under oath, and may examine officers, agents or employees or any other person having knowledge of the affairs, transactions or conditions of the association.

(2) Any member insurer aggrieved by any action or decision of the association may appeal to the commissioner within 30 days from the action or decision. Proceedings under this section are subject to the provisions of Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

History: Add. 1969, Act 277, Imd. Eff. Aug. 11, 1969.

Popular name: Act 218