

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.476a Alien or foreign insurers; deposit of securities or making certain payments; computation; revocation of certificate of authority; purpose of section; domestic insurer owned or controlled by alien or foreign insurer; domestic insurer as alien or foreign insurer; compliance; taxes subject to MCL 208.22d or MCL 208.1243; administration of tax; disclosure of tax return.

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.

History: Add. 1987, Act 261, Imd. Eff. Dec. 28, 1987;—Am. 1990, Act 256, Imd. Eff. Oct. 15, 1990;—Am. 1998, Act 121, Imd. Eff. June 10, 1998;—Am. 2007, Act 187, Imd. Eff. Dec. 21, 2007.

Constitutionality: Neither Michigan's retaliatory tax nor the 1988 amendment to that tax violates the state or federal constitutions. The retaliatory tax, and the amendments of it, are rationally related to the legitimate governmental purpose of promoting Michigan insurers in other states. Because the tax and its amendments do not violate equal protection, they also do not violate the Michigan Constitution's Uniformity of Taxation Clause (Const. 1963, art 9, § 3). TIG Ins Co Inc v Treasury, 464 Mich 548; 629 NW2d 402 (2000).

Popular name: Act 218