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

500.7709 Assessments.

Sec. 7709. (1) Except as otherwise provided in this section, for the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after written notice to the member insurers and shall accrue interest at 12% per annum on and after the due date.

(2) There shall be 2 classes of assessments, as follows:

(a) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other general expenses and may be authorized and called whether or not the assessment relates to a particular impaired insurer or insolvent insurer.

(b) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under section 7708 for an impaired insurer or insolvent insurer.

(3) The amount of a class A assessment shall be determined by the board and may be authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. The total of all nonpro rata assessments shall not exceed $150.00 per member insurer in 1 calendar year.

(4) The amount of a class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula that may be based on the premiums or reserves of the impaired insurer or insolvent insurer or any other standard considered by the board in its sole discretion as being fair and reasonable under the circumstances.

(5) A class B assessment against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the 3 most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent bears to such premiums received on business in this state for those 3 most recent calendar years by all assessed member insurers.

(6) An assessment for funds to meet the requirements of the association with respect to an impaired insurer or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (2) and computation of assessments under this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.

(7) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill that insurer's contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(8) The total of all assessments authorized by the association for a member insurer for each subaccount of the life insurance and annuity account and for the health account shall not in 1 calendar year exceed 2% of that member insurer's average annual premiums received in this state on the policies and contracts covered by the account or subaccount during the 3 calendar years preceding the year in which the insurer became an impaired insurer or insolvent insurer, subject to the following:

(a) If 2 or more assessments are authorized in 1 calendar year for insurers that become impaired insurers or insolvent insurers in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation under this subsection are equal and limited to the higher of the 3-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

(b) If the maximum assessment, together with the other assets of the association in an account, does not provide in 1 year, in either account, an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(9) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to 1 or more impaired insurers or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(10) If the maximum assessment for a subaccount of the life insurance and annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then, pursuant to

subsection (5), the board shall access the other subaccounts of the life insurance and annuity account for the necessary additional amount, subject to the maximum stated in subsection (8).

(11) The board may refund to member insurers, by an equitable method as established in the plan of operation and in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out future obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in an account to provide funds for the continuing expenses of the association and for future claims. Instead of a class A assessment, the board may transfer on an equitable pro rata basis excess amounts from class B accounts to the class A account.

(12) In determining premium rates and policy owner dividends as to any kind of insurance within the scope of this chapter, a member insurer may consider the amount reasonably necessary to meet assessment obligations under this chapter.

(13) The association shall issue to an insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in the insurer's financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(14) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as stated in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest. Within 60 days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest. Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner. Instead of rendering a final decision on a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association. If the protest or appeal is resolved in the member insurer's favor, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association.

(15) The association may request information of member insurers in order to aid in the exercise of its power under this section, and member insurers shall promptly comply with this request.

History: Add. 1982, Act 194, Imd. Eff. June 28, 1982;—Am. 1986, Act 121, Imd. Eff. May 28, 1986;—Am. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 2006, Act 671, Imd. Eff. Jan. 10, 2007.

Compiler's note: Enacting section 1(1) of Act 671 of 2006 provides:

"Enacting section 1. (1) Sections 7702, 7704, 7705, 7706, 7707, 7708, 7709, 7711, 7712, 7714, and 7717 of the insurance code of 1956, 1956 PA 218, MCL 500.7702, 500.7704, 500.7705, 500.7706, 500.7707, 500.7708, 500.7709, 500.7711, 500.7712, 500.7714, and 500.7717, as amended by this amendatory act, apply to an insurer impairment or insurer insolvency proceeding commenced on or after the effective date of this amendatory act for which guaranty association coverage obligations are incurred."

Popular name: Act 218