

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

500.8109 Orders; determination; supervision of insurer; restrictions; compliance; hearings; notice; time; judicial review; review of supervisor's action; violation of supervision order; penalty; enforcement of supervision order; personal liability to insurer for reduction of net worth or loss; action; costs and expenses.

Sec. 8109. (1) If the commissioner has reasonable cause to believe and determines after a hearing held under subsection (5) that a domestic insurer has committed or engaged in, or is about to commit or engage in, an act, practice, or transaction that would subject it to delinquency proceedings under this chapter, the commissioner may make and serve upon the insurer and any other persons involved any order as is reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

(2) If upon examination or at any other time the commissioner has reasonable cause to believe that a domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the commissioner shall upon his or her determination:

(a) Notify the insurer of his or her determination.

(b) Furnish to the insurer a written list of the commissioner's requirements to abate his or her determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require the following:

(a) That the insurer shall not do any of the following things during the period of supervision, without the prior approval of the commissioner or his or her supervisor:

(i) Dispose of, convey, or encumber any of its assets or its business in force including disposing, conveying, or encumbering its assets or business to affiliated companies, either domestic, foreign, or alien.

(ii) Withdraw from any of its bank accounts.

(iii) Lend any of its funds.

(iv) Invest any of its funds.

(v) Transfer any of its property.

(vi) Incur any debt, obligation, or liability.

(vii) Merge or consolidate with another company.

(viii) Enter into any new reinsurance contract or treaty or cancel any existing reinsurance contract or treaty.

(ix) Engage in any other activity that the commissioner or his or her supervisor considers hazardous to the insurer.

(b) That upon the written instruction of the commissioner or his or her supervisor the insurer shall do the following during the period of supervision:

(i) Produce all books, accounts, and records of affiliated companies, as required to be maintained by section 1341(1)(d), including affiliated foreign or alien insurers, for review by the commissioner or his or her supervisor.

(ii) Dispose of, convey, or encumber any of its assets or its business in force.

(iii) Deposit any funds or assets in any of its bank accounts or depositories.

(iv) Collect or enforce provisions of any of its loans, security agreements, mortgages, hypothecations, contracts, or like obligations.

(v) Invest any of its funds.

(vi) Transfer any of its property.

(vii) Incur any debt, obligation, or liability.

(viii) Enter into any new reinsurance contract or treaty.

(ix) Engage in any other activity that the commissioner, or his or her supervisor after review by the commissioner, considers reasonably necessary to insuring compliance by the insurer with the supervision order.

(4) An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and his or her supervisor and, if placed under supervision, shall have 60 days from the date the supervision order is served within which to comply with the commissioner's requirements. If the insurer fails to comply within that time, the commissioner may institute proceedings to have a rehabilitator or liquidator appointed under section 8112 or 8117, to extend the period of supervision pursuant to the commissioner's

written order, or to suspend, revoke, or limit the insurer's certificate of authority to do business in accordance with section 437.

(5) The notice of hearing under subsection (1) and an order issued pursuant to subsection (1) shall be served upon the insurer pursuant to the applicable rules of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner would base his or her order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days or more than 30 days after notice is served and shall be either in Ingham county or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) An insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of the order. If the commissioner issues an order under subsection (2), the insurer, at any time, may waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, a party to the proceedings whose interests are substantially affected shall be entitled to judicial review of an order issued by the commissioner.

(7) During the period of supervision, the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(8) If a person has violated a supervision order issued under this section which as to him or her was then still in effect, he or she may be sentenced by the court to pay a fine not exceeding \$10,000.00.

(9) The commissioner may apply for, and the circuit court may grant, a restraining order, preliminary injunction, permanent injunction, and any other order as may be considered necessary and proper to enforce a supervision order, including an order precluding a person or domestic insurer from transferring business to or writing new business with an affiliated domestic, foreign, or alien insurer so as to avoid the effects of a supervision as provided in subsections (3) and (4).

(10) If a person subject to the provisions of this chapter, including those persons described in section 8106(1), knowingly violates a valid order of the commissioner issued under the provisions of this section and, as a result of the violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, that person is personally liable to the insurer for the amount of the reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the circuit court for Ingham county to recover the amount of the reduction or loss, together with cost.

(11) Reasonable costs and expenses incurred by the commissioner in conducting a supervision of an alien insurer or any investigation preliminary to that supervision under this chapter are an expense of administering a delinquency proceeding and are payable from the assets of the trust established pursuant to section 411(4).

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994.

Compiler's note: Section 3 of Act 182 of 1992 reads as follows:

“Section 8109 of Act No. 218 of the Public Acts of 1956, being section 500.8109 of the Michigan Compiled Laws, as amended by this 1992 amendatory act is remedial and applies to all supervisions in effect 90 calendar days prior to the enactment of this amendatory act.”

Popular name: Act 218