

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5608**

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 224, 476a, 5256, 5901, 5915, and 5925 (MCL
500.224, 500.476a, 500.5256, 500.5901, 500.5915, and 500.5925),
section 224 as amended by 1994 PA 228, sections 476a and 5256 as
amended by 1990 PA 256, and section 5901 as amended and sections
5915 and 5925 as added by 1995 PA 215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 224. (1) All actual and necessary expenses incurred in
2 connection with the examination or other investigation of an
3 insurer or other person regulated under the commissioner's
4 authority shall be certified by the commissioner, together with a
5 statement of the work performed including the number of days
6 spent by the commissioner and each of the commissioner's
7 deputies, assistants, employees, and others acting under the

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1 commissioner's authority. ~~—, upon the examination or~~
2 ~~investigation, to the department of commerce's budget/finance~~
3 ~~division.~~ If correct, ~~the department of commerce's~~
4 ~~budget/finance division shall approve the expenses and~~ the
5 expenses shall be paid to the persons by whom they were incurred,
6 upon the warrant of the state treasurer payable from appropria-
7 tions made by the legislature for this purpose.

8 (2) Except as otherwise provided in subsection (4), the com-
9 missioner shall prepare and present to the insurer or other
10 person examined or investigated a statement of the expenses and
11 reasonable cost incurred for each person engaged upon the exami-
12 nation or investigation, including amounts necessary to cover the
13 pay and allowances granted to the persons by the Michigan civil
14 service commission, and the administration and supervisory
15 expense including an amount necessary to cover fringe benefits in
16 conjunction with the examination or investigation. Except as
17 otherwise provided in subsection (4), the insurer or other
18 person, upon receiving the statement, shall pay to the commis-
19 sioner the stated amount. The commissioner shall deposit the
20 funds with the state treasurer as provided in section 225.

21 (3) The commissioner may employ attorneys, actuaries,
22 accountants, investment advisers, and other expert personnel not
23 otherwise employees of this state reasonably necessary to assist
24 in the conduct of the examination or investigation or proceeding
25 with respect to an insurer or other person regulated under the
26 commissioner's authority at the insurer's or other person's
27 expense except as otherwise provided in subsection (4). Except

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1 as otherwise provided in subsection (4), upon certification by
2 the commissioner of the reasonable expenses incurred under this
3 section, the insurer or other person examined or investigated
4 shall pay those expenses directly to the person or firm rendering
5 assistance to the commissioner. Expenses paid directly to such
6 person or firm and the regulatory fees imposed by this section
7 shall be examination expenses under section 22e of the single
8 business tax act, ~~Act No. 228 of the Public Acts of 1975, being~~
9 ~~section 208.22e of the Michigan Compiled Laws~~ 1975 PA 228, MCL
10 208.22E.

11 (4) An insurer is subject to a regulatory fee instead of the
12 costs and expenses provided for in subsections (2) and (3). ~~An~~
13 ~~alien insurer is subject to a regulatory fee and a valuation fee~~
14 ~~under section 830 through December 31, 1994. On and after~~
15 ~~January 1, 1995, an alien insurer is subject to a regulatory fee~~
16 ~~instead of the valuation fee provided for in section 830. By~~
17 June 30 of each year or within 30 days after the enactment into
18 law of any appropriation for the insurance bureau's operation,
19 the commissioner shall impose upon all insurers authorized to do
20 business in this state a regulatory fee calculated as follows:

21 (a) As used in this subsection:

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

24 (ii) "B" means base assessment rate. The base assessment
25 rate shall not exceed .00038 and shall be a fraction the numera-
26 tor of which is the total regulatory fee and the denominator of
27 which is the total amount of direct underwritten premiums written

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1 in this state by all insurers for the immediately preceding
2 calendar year as reported to the commissioner on the insurer's
3 annual statements filed with the commissioner.

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

7 (iv) "L" means all direct underwritten life insurance premi-
8 ums written in this state in the immediately preceding year by
9 all life insurers.

10 (v) Total regulatory fee shall not exceed 80% of the gross
11 appropriations for the insurance bureau's operation for a fiscal
12 year and shall be the difference between the gross appropriations
13 for the insurance bureau's operation for that current fiscal year
14 and any restricted revenues, other than the regulatory fee
15 itself, as identified in the gross appropriation for the insur-
16 ance bureau's operation. ~~For fiscal year 1993-94, the gross~~
17 ~~appropriation for the insurance bureau's operation shall be con-~~
18 ~~sidered to be \$15,000,000.00.~~

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

24 (b) Two actual assessment rates shall be calculated so as to
25 distribute 75% of the burden of the regulatory fee shortfall cre-
26 ated by the exclusion of annuity considerations from the
27 assessment base to life insurance and 25% to all other

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1 insurance. The 2 actual assessment rates shall be determined as
2 follows:

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

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

7 (c) Except as otherwise provided in subdivision (d), each
8 insurer's regulatory fee shall be a minimum fee of \$250.00 and
9 shall be determined by multiplying the actual assessment rate by
10 the assessment base of that insurer as determined by the commis-
11 sioner from the insurer's annual statement for the immediately
12 preceding calendar year filed with the commissioner.

13 (d) The total regulatory fee for all health maintenance
14 organizations in this state shall be determined by multiplying
15 the actual assessment rate by 70% of direct underwritten premiums
16 written by all health maintenance organizations in this state for
17 the immediately preceding calendar year as reported to the com-
18 missioner in the health maintenance organization's annual state-
19 ments filed with the commissioner. Each health maintenance
20 organization's regulatory fee shall be a minimum fee of \$250.00
21 and shall be determined by taking the total regulatory fee for
22 all health maintenance organizations divided by the total number
23 of members of all health maintenance organizations and multiply-
24 ing this quotient by the number of members in the individual
25 health maintenance organization.

26 (5) Not less than 67% of the revenue derived from the regu-
27 latory fee under subsection (4) shall be used for the regulation
28 of financial conduct of persons regulated under the

1 commissioner's authority and for the regulation of persons
2 regulated under the commissioner's authority engaged in the busi-
3 ness of health care and health insurance in this state.

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

9 (7) All money paid into the state treasury by an insurer
10 under this section shall be credited as provided under section
11 225.

12 (8) A regulatory fee under this section shall not be treated
13 by an insurer as a levy or excise upon premium but as a regula-
14 tory burden that is apportioned in relation to insurance activity
15 in this state and reflects the insurance regulatory burden on
16 this state as a result of this insurance activity. A foreign or
17 alien insurer authorized to do business in this state may con-
18 sider the liability required under this section as a burden
19 imposed by the state of Michigan in the calculation of the
20 insurer's liability required under section 476a.

21 (9) An insurer may file with the commissioner a protest to
22 the regulatory fee imposed not later than 15 days after receipt
23 of the regulatory fee. The commissioner shall review the grounds
24 for the protest and shall hold a conference with the insurer at
25 the insurer's request. The commissioner shall transmit his or
26 her findings to the insurer with a restatement of the regulatory
27 fee based upon the findings. Statements of regulatory fees to

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1 which protests have not been made and restatements of regulatory
2 fees are due and shall be paid not later than 30 days after their
3 receipt. Regulatory fees that are not paid when due bear inter-
4 est on the unpaid fee which shall be calculated at 6-month inter-
5 vals from the date the fee was due at a rate of interest equal to
6 1% plus the average interest rate paid at auctions of 5-year
7 United States treasury notes during the 6 months immediately pre-
8 ceding July 1 and January 1, as certified by the state treasurer,
9 and compounded annually, until the assessment is paid in full.
10 An insurer who fails to pay its regulatory fee within the pre-
11 scribed time limits may have its certificate of authority or
12 license suspended, limited, or revoked as the commissioner con-
13 siders warranted until the regulatory fee is paid. If the com-
14 missioner determines that a regulatory fee or a part of a regula-
15 tory fee paid by an insurer is in excess of the amount legally
16 due and payable, the amount of the excess shall be refunded or,
17 at the insurer's option, be applied as a credit against the regu-
18 latory fee for the next fiscal year. An overpayment of \$100.00
19 or less shall be applied as a credit against the insurer's regu-
20 latory fee for the next fiscal year unless the insurer had a
21 \$100.00 or less overpayment in the immediately preceding fiscal
22 year. If the insurer had a \$100.00 or less overpayment in the
23 immediately preceding fiscal year, at the insurer's option, the
24 current fiscal year overpayment of \$100.00 or less shall be
25 refunded.

26 (10) Any amounts stated and presented to or certified,
27 assessed, or imposed upon an insurer as provided in

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1 subsections (2), (3), and (4) that are unpaid as of the date that
2 the insurer is subjected to a delinquency proceeding pursuant to
3 chapter 81 shall be regarded as an expense of administering the
4 delinquency proceeding and shall be payable as such from the gen-
5 eral assets of the insurer.

6 (11) Any statements presented to insurers pursuant to sub-
7 sections (2) and (3) ~~in respect of~~ FOR examinations or investi-
8 gations conducted since October 1, 1993 shall be cancelled as of
9 ~~the effective date of the amendatory act that added this~~
10 ~~subsection~~ JUNE 30, 1994. Amounts actually paid by an insurer
11 because of those statements shall be credited against the regula-
12 tory fee levied for the 1993-94 fiscal year and any excess
13 amounts shall be refunded.

14 (12) IN ADDITION TO THE REGULATORY FEE PROVIDED IN SUBSEC-
15 TION (4), EACH INSURER THAT LOCATES RECORDS OR PERSONNEL KNOWL-
16 EDGEABLE ABOUT THOSE RECORDS OUTSIDE THIS STATE PURSUANT TO SEC-
17 TION 476A(3) OR SECTION 5256 SHALL REIMBURSE THE INSURANCE BUREAU
18 FOR EXPENSES AND REASONABLE COSTS INCURRED BY THE INSURANCE
19 BUREAU AS A RESULT OF TRAVEL AND OTHER COSTS RELATED TO EXAMINA-
20 TIONS OR INVESTIGATIONS OF THOSE RECORDS OR PERSONNEL. THE REIM-
21 BURSEMENT SHALL NOT INCLUDE ANY COSTS THAT THE INSURANCE BUREAU
22 WOULD HAVE INCURRED IF THE EXAMINATION HAD TAKEN PLACE IN THIS
23 STATE.

24 (13) ~~-(12)-~~ As used in this section:

25 (a) "Annuity considerations" means receipts on the sale of
26 annuities as used in section 22a of the single business tax act,

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1 ~~being section 208.22a of the Michigan Compiled Laws~~ 1975 PA
2 228, MCL 208.22A.

3 (b) "Insurer" means an insurer authorized to do business in
4 this state and includes nonprofit health care corporations,
5 dental care corporations, AND health maintenance organizations.
6 ~~, and the state accident fund.~~

7 (14) ~~(13)~~ All fees added by the amendatory act that added
8 this subsection shall not apply on and after January 1, 1996,
9 unless ~~all of the following conditions are met:~~ (a) By
10 September 1, 1994, the commissioner submits a report to the
11 senate and house of representatives standing committees on insur-
12 ance issues and to the senate and house of representatives appro-
13 priations regulatory subcommittees on all receivership activities
14 of the commissioner and the insurance bureau pertaining to the
15 liquidation of insolvent insurers for the 1992 and 1993 calendar
16 years. ~~By~~ BY September 1, 1995, and annually thereafter, the
17 commissioner submits a report to the senate and house of repre-
18 sentatives standing committees on insurance issues and to the
19 senate and house of representatives appropriations regulatory
20 subcommittees on all receivership activities of the commissioner
21 and the insurance bureau pertaining to the liquidation of insol-
22 vent insurers for the immediately preceding calendar year. ~~(b)~~
23 ~~Reports under subdivision (a)~~ THE REPORT SHALL include all of
24 the following:

25 (A) ~~(i)~~ A summary schedule of all insurance bureau expen-
26 ditures for legal, accounting, and administrative expenditures
27 made or incurred for the liquidation of ALL insurers in

1 receivership, INCLUDING BUT NOT LIMITED TO ALIEN INSURERS
2 DESCRIBED IN SECTION 431A, and paid for out of the insurer's
3 assets during the calendar year being reported on.

4 (B) ~~-(ii)-~~ A detailed schedule of all insurance bureau con-
5 tractual expenditures for legal, accounting, and administrative
6 expenditures made or incurred for the liquidation of ALL insurers
7 in receivership, INCLUDING BUT NOT LIMITED TO ALIEN INSURERS
8 DESCRIBED IN SECTION 431A, and paid for out of the insurer's
9 assets during the calendar year being reported on including, but
10 not limited to, itemization of legal billings, criminal investi-
11 gation expenses, travel, meals, and general office expenses.

12 (C) ~~-(iii)-~~ A statement of the net changes in assets and
13 liabilities of each insurer in receivership, INCLUDING BUT NOT
14 LIMITED TO AN ALIEN INSURER DESCRIBED IN SECTION 431A. This
15 statement shall include changes due to interest rate changes,
16 real estate values, and other investment activities, including a
17 detailed statement of the sale of assets and the net loss or gain
18 on those assets and a statement of the amount of assets pre-
19 served, gained, or recovered by the receiver.

20 Sec. 476a. (1) Beginning August 3, 1987, whenever, by a law
21 in force outside of this state or country, a domestic insurer or
22 agent of a domestic insurer is required to make a deposit of
23 securities for the protection of policyholders or otherwise, or
24 to make payment for taxes, fines, penalties, certificates of
25 authority, valuation of policies, or otherwise, or a special
26 burden or other burden is imposed, greater in the aggregate than
27 is required by the laws of this state for a similar alien or

1 foreign insurer or agent of an alien or foreign insurer, the
2 alien or foreign insurer of that state or country is required, as
3 a condition precedent to its transacting business in this state,
4 to make a like deposit for like purposes with the state treasurer
5 of this state, and to pay to the revenue commissioner for taxes,
6 fines, penalties, certificates of authority, valuation of poli-
7 cies, and otherwise an amount equal in the aggregate to the
8 charges and payments imposed by the laws of the other state or
9 country upon a similar domestic insurer and the agents of a
10 domestic insurer, regardless of whether a domestic insurer or
11 agent of a domestic insurer is actually transacting business in
12 that state or country. ~~In the case of~~ FOR fire department or
13 salvage corps taxes or other local taxes the amount shall be com-
14 puted by the revenue commissioner by dividing the total of the
15 payments made by domestic insurers in that state or country by
16 the gross premium received by domestic insurers in that state or
17 country less return premiums. The commissioner shall revoke the
18 certificate of authority of an alien or foreign insurer refusing
19 for 30 days to make payment of fees or taxes as required by this
20 chapter. Except as provided in subsections (3) and (4), for pur-
21 poses of this section, an insurer organized under the laws of a
22 state or country other than these United States shall be consid-
23 ered an insurer of the state in which its general deposit for the
24 benefit of its policyholders is made.

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

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1 (3) ~~Before January 1, 1991, for purposes of this section,~~
2 SUBSECTION (4) DOES NOT APPLY TO a domestic insurer that is owned
3 or controlled, directly or indirectly, by an alien or foreign
4 insurer ~~and that was not granted a certificate of authority~~
5 ~~before December 28, 1987 shall be considered domiciled in the~~
6 ~~same state or country as the controlling alien or foreign~~
7 ~~insurer~~ WHO PRIOR TO 1998 AND WITH THE COMMISSIONER'S APPROVAL
8 DID NOT KEEP BOOKS, RECORDS, AND FILES OR TRUE COPIES THEREOF IN
9 THIS STATE.

10 (4) ~~Beginning January 1, 1991, for~~ FOR purposes of this
11 section, the ~~revenue commissioner~~ STATE TREASURER, after con-
12 sultation with the commissioner, shall determine that a domestic
13 insurer is an alien or foreign insurer domiciled in a state or
14 country determined by the ~~revenue commissioner~~ STATE TREASURER
15 if the insurer does not comply with all of the following:

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

17 (b) Maintain in this state officers and personnel responsi-
18 ble for and knowledgeable of the company's operation, books,
19 records, administration, and annual statement.

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

24 (d) Comply with section ~~5256~~ 5256(1)(A) AND (2) THROUGH
25 (6). THE COMMISSIONER SHALL INFORM THE STATE TREASURER WHEN A
26 DOMESTIC INSURER IS NOT IN COMPLIANCE WITH SECTION 5256(1)(A) OR
27 (2) THROUGH (6).

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1 (5) Taxes collected pursuant to this section are subject to
2 section 22d of the single business tax act, ~~Act No. 228 of the~~
3 ~~Public Acts of 1975, being section 208.22d of the Michigan~~
4 ~~Compiled Laws~~ 1975 PA 228, MCL 208.22D.

5 (6) The ~~revenue commissioner~~ STATE TREASURER shall admin-
6 ister the tax prescribed by this section in the manner provided
7 in ~~Act No. 122 of the Public Acts of 1941, being sections 205.1~~
8 ~~to 205.31 of the Michigan Compiled Laws~~ 1941 PA 122, MCL 205.1
9 TO 205.31.

10 (7) The requirements of section 28 of ~~Act No. 122 of the~~
11 ~~Public Acts of 1941, being section 205.28 of the Michigan~~
12 ~~Compiled Laws~~ 1941 PA 122, MCL 205.28, that prohibit an employee
13 or an authorized representative or former employee or authorized
14 representative or anyone connected with the department of trea-
15 sury from divulging any facts or information obtained in connec-
16 tion with the administration of taxes, do not apply to disclosure
17 of the tax return prescribed in this act.

18 Sec. 5256. (1) ~~Except as provided in subsection (5), each~~
19 EACH domestic insurer shall keep ~~all of its original books,~~
20 ~~records, and files, or true copies thereof, at its home office~~
21 ~~or~~ UNDER ITS CONTROL ALL RECORDS RELATING TO THE INSURER'S BUSI-
22 NESS OR AFFAIRS AT 1 OR MORE OF THE FOLLOWING LOCATIONS:

23 (A) THE principal place of doing business in this state. ~~—~~
24 ~~and shall keep all of its securities, notes, mortgages, or other~~
25 ~~evidences of indebtedness, representing investment of funds at~~
26 ~~its home office or principal place of doing business in this~~
27 ~~state. If a domestic insurer was processing and maintaining its~~

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~~1 books, records, and files in other states on December 17, 1982,~~
~~2 it shall be deemed in compliance with this subsection as long as~~
~~3 the books, records, and files, or true copies thereof, and per-~~
~~4 sonnel knowledgeable about the books, records, and files are made~~
~~5 readily available at the~~

6 (B) ONE OR MORE LOCATIONS OUTSIDE THE STATE APPROVED FOR
7 THAT PURPOSE, IN WRITING, BY THE COMMISSIONER.

8 (2) A DOMESTIC INSURER SHALL PRODUCE THOSE RECORDS RELATING
9 TO THE INSURER'S BUSINESS OR AFFAIRS AND PERSONNEL KNOWLEDGEABLE
10 ABOUT THE RECORDS AT A principal place of doing business in OR
11 OUTSIDE this state for examination WITHIN A REASONABLE TIME
12 PERIOD SPECIFIED by ~~and at the request of~~ the commissioner.

13 (3) ~~-(2)-~~ A domestic insurer may place for safekeeping all
14 or any part of its securities, notes, mortgages, or other evi-
15 dences of indebtedness, with any national bank, state bank, trust
16 company, or any other UNITED STATES corporation authorized AS A
17 CUSTODIAN to accept and hold personal property for safekeeping.
18 ~~and located in the United States.~~ A NATIONAL BANK, STATE BANK,
19 TRUST COMPANY, OR UNITED STATES CORPORATION AUTHORIZED TO ACCEPT
20 AND HOLD PERSONAL PROPERTY FOR SAFEKEEPING MAY EMPLOY A SUBCUSTO-
21 DIAN OUTSIDE OF THE UNITED STATES TO HOLD ASSETS THAT ARE NOT IN
22 PHYSICAL FORM OR THAT ARE CUSTOMARILY TRADED OUTSIDE THE UNITED
23 STATES. A statutory deposit required by any state or foreign
24 country shall be excepted and any delivery and pledge or assign-
25 ment of its notes, mortgages, or other securities by any such
26 insurer, as security for money borrowed by it or as required in
27 the regular course of its business by the laws of any state or

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1 foreign country, shall also be excepted. The insurer may hold
2 certificates evidencing shares of stock or other registrable
3 securities in the name of a nominee or nominees employed by the
4 insurer and responsible to the insurer. The nominee or nominees,
5 on the request of the insurer, shall indorse the certificate rep-
6 resenting shares of stock or other registrable securities in
7 blank or by assignment separate from the certificates. The
8 insurer at all times shall maintain control or possession of the
9 certificate representing the share of stock or other registrable
10 securities, but, if necessary, the nominee or nominees may have
11 access thereto for the purpose of examination under the supervi-
12 sion of the corporation.

13 (4) THE RECORDS REQUIRED TO BE RETAINED BY THIS SECTION MAY
14 BE MAINTAINED IN PAPER, PHOTOGRAPH, MICRO PROCESS, MAGNETIC,
15 MECHANICAL OR ELECTRONIC MEDIA, OR BY ANY PROCESS THAT ACCURATELY
16 REPRODUCES OR FORMS A DURABLE MEDIUM FOR THE REPRODUCTION OF A
17 RECORD. IF THE ORIGINAL DOCUMENT IS UNAVAILABLE, THE DOMESTIC
18 INSURER MAY PRODUCE IN AN ALTERNATIVE FORMAT THE SAME DATA THAT
19 WAS CONTAINED ON THE ORIGINAL DOCUMENT.

20 (5) ~~-(3)-~~ Removal of all or a material part of the records
21 of a domestic insurer from this state, except pursuant to a plan
22 or merger or consolidation approved by the commissioner under
23 this ~~-code-~~ ACT or ~~-for such reasonable purposes and periods of~~
24 ~~time-~~ as may be approved in writing by the commissioner, is
25 prohibited. ~~-Removal of the records or material part thereof~~
26 ~~from the home office or other place of business or of safekeeping~~
27 ~~of the insurer in this state with the intent to remove the~~

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1 ~~records from this state, or concealing or attempting to conceal~~
2 ~~the records from the commissioner is a violation of this~~
3 ~~section.~~ If after a hearing is held pursuant to the administra-
4 tive procedures act of 1969, ~~Act No. 306 of the Public Acts of~~
5 ~~1969, being sections 24.201 to 24.328 of the Michigan Compiled~~
6 ~~Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, the commissioner deter-
7 mines that the insurer has violated this section, the commis-
8 sioner shall reduce his or her findings and decision to writing
9 and shall issue and cause to be served upon the insurer charged
10 with the violation a copy of the findings and order requiring the
11 insurer to return the office, records, and assets to this state.
12 An insurer that violates this section shall be treated as a for-
13 eign insurer for the period of time the records were removed from
14 this state, and the insurer shall be liable for both of the
15 following:

16 (a) The amount of tax prescribed in section 476a and inter-
17 est in the amount of 3% of the amount due and unpaid for each
18 month or part of a month that the insurer was in violation of
19 this section.

20 (b) A penalty of \$5,000.00 plus an additional \$50.00 for
21 each day that the insurer was not in compliance with this
22 section. A DOMESTIC INSURER THAT FAILS TO COMPLY WITH AN ORDER
23 OF THE COMMISSIONER ISSUED UNDER THIS SECTION IS PRESUMED TO BE
24 NO LONGER SAFE, RELIABLE, AND ENTITLED TO PUBLIC CONFIDENCE UNDER
25 SECTION 436.

1 (6) ~~-(4)-~~ If an insurer fails to comply with an order issued
2 under this section, as modified or extended, the commissioner
3 shall suspend or revoke the insurer's certificate of authority.

4 ~~-(5) A domestic insurer that is a subsidiary of an alien~~
5 ~~insurer formed within the boundaries of Canada and that uses~~
6 ~~Michigan as its port of entry into the United States through a~~
7 ~~branch operation satisfies the requirements of subsection (1) by~~
8 ~~maintaining a deposit of not less than the amount of liabilities~~
9 ~~with respect to the domestic insurer's business in the United~~
10 ~~States and adequate capital and surplus to support its writings~~
11 ~~but not less than the amount of capital and surplus required by~~
12 ~~statute with the state treasurer, or with trustees resident in~~
13 ~~the United States, or with any combination of such persons, under~~
14 ~~a trust indenture approved by the commissioner. The deposit~~
15 ~~shall be in cash or in securities of the kinds permitted by~~
16 ~~chapter 9. The domestic insurer and the persons holding the~~
17 ~~deposit shall submit to the commissioner a report, under oath, on~~
18 ~~or before March 1 of each year, of the domestic insurer's depos-~~
19 ~~its as of December 31 of the preceding year. The domestic~~
20 ~~insurer shall pay to the commissioner, as compensation for regu-~~
21 ~~lating the domestic insurer under this subsection, 3/4 of 1% upon~~
22 ~~the domestic insurer's gross premiums written in this state~~
23 ~~excluding considerations for original annuities. This subsection~~
24 ~~does not apply in any of the following cases:~~

25 ~~(a) To a domestic insurer that is a subsidiary of an alien~~
26 ~~insurer formed within the boundaries of Canada if all of the~~
27 ~~domestic insurer's books, records, files, securities, notes,~~

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1 ~~mortgages, or other evidences of indebtedness representing~~
2 ~~investment of funds are not kept at the Canadian parent~~
3 ~~corporation's home office or at an administrative office located~~
4 ~~within this state.~~

5 ~~(b) To a domestic insurer that is a subsidiary of an alien~~
6 ~~insurer formed within the boundaries of Canada if the alien~~
7 ~~insurer terminates its branch operation in the United States.~~

8 ~~(c) To a domestic insurer that is a subsidiary of an alien~~
9 ~~insurer formed within the boundaries of Canada if the domestic~~
10 ~~insurer's aggregate policyholder reserves exceed those of its~~
11 ~~parent's United States operation.~~

12 (7) THE COMMISSIONER MAY REQUIRE A DOMESTIC INSURER TO
13 TRANSFER ITS DOMICILE TO ANOTHER STATE IF THE COMMISSIONER IS NOT
14 SATISFIED WITH THE PRODUCTION OF THE RECORDS AND PERSONNEL KNOWL-
15 EDGEABLE ABOUT THE RECORDS BECAUSE ALL OR PART OF THE RECORDS OR
16 PERSONNEL ARE LOCATED OUTSIDE THIS STATE.

17 Sec. 5901. As used in this chapter:

18 (a) "Converted stock company" means a Michigan domiciled
19 stock insurance company that converted from a Michigan domiciled
20 mutual company pursuant to this chapter.

21 (b) "Eligible member" EXCEPT AS OTHERWISE PROVIDED IN
22 SECTION 5915, means a member whose policy is in force on the date
23 the mutual company's board of directors adopts a plan of
24 conversion. A person insured under a group policy is not an eli-
25 gible member. A person whose policy becomes effective after the
26 board of directors adopts the plan but before the plan's

1 effective date is not an eligible member but has the rights
2 established under section 5919.

3 (c) "Plan of conversion" or "plan" means a plan adopted by a
4 Michigan domestic mutual company's board of directors pursuant to
5 this chapter to convert the mutual company into a Michigan domi-
6 ciled stock company.

7 Sec. 5915. (1) The board of directors may adopt a plan of
8 conversion that does not rely in whole or in part upon issuing
9 nontransferable subscription rights to members to purchase stock
10 of the converted stock company if the commissioner finds that the
11 plan does not prejudice the interests of the members, is fair and
12 equitable, and is not inconsistent with the purpose and intent of
13 this chapter. An alternative plan may include the merger of a
14 domestic mutual insurer into a domestic or foreign stock insurer,
15 issuing stock or cash to policyholders instead of subscription
16 rights, or another plan approved by the commissioner. The com-
17 missioner may retain, at the mutual company's expense, any quali-
18 fied expert not otherwise a part of the commissioner's staff to
19 assist in reviewing whether the plan may be approved by the
20 commissioner.

21 (2) FOR AN ALTERNATIVE PLAN SUBMITTED UNDER SUBSECTION (1)
22 BY A U.S. BRANCH OF AN ALIEN INSURER, "ELIGIBLE MEMBER" MEANS A
23 POLICYHOLDER ELIGIBLE TO RECEIVE A BENEFIT UPON DEMUTUALIZATION
24 IN ACCORDANCE WITH THE PLAN OF DEMUTUALIZATION APPROVED IN, AND THE
25 DEMUTUALIZATION STATUTE AND REGULATIONS OF,
26 THE JURISDICTION IN WHICH THE ALIEN INSURER IS DOMICILED, AND
27 APPROVED BY THE COMMISSIONER AS CONSISTENT WITH THE PURPOSES OF
THIS CHAPTER. AS USED IN THIS SUBSECTION, "U.S. BRANCH" MEANS A

HB 5608, As Passed Senate, May 19, 1998

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20

1 BUSINESS UNIT THROUGH WHICH INSURANCE IS TRANSACTED WITHIN THE
2 UNITED STATES BY AN ALIEN INSURER THAT USES THIS STATE AS A STATE
3 OF ENTRY.

4 Sec. 5925. (1) If the mutual company complies substantially
5 and in good faith with the notice requirements of this chapter,
6 the mutual company's failure to give a member the required notice
7 does not impair the validity of any action taken under this
8 chapter.

9 (2) Except as otherwise provided, an action challenging the
10 validity of or arising out of acts taken or proposed to be taken
11 under this chapter, OTHER THAN AN ACTION CHALLENGING THE
12 COMMISSIONER'S DECISION APPROVING OR DISAPPROVING THE PLAN, shall
13 be commenced within 30 days after the ~~effective date of~~
14 ELIGIBLE MEMBERS HAVE APPROVED the plan. An action based upon
15 noncompliance with a business plan submitted under
16 section 5903(2)(f) shall be commenced in Ingham county circuit
17 court within 3 years after the cause of action has accrued, or
18 within 2 years after the time when the cause of action is discov-
19 ered or should reasonably have been discovered by the complain-
20 ant, whichever occurs first.

21 (3) NOTWITHSTANDING SECTION 244, AN ACTION CHALLENGING THE
22 VALIDITY OF THE COMMISSIONER'S DECISION APPROVING OR DISAPPROVING
23 THE PLAN SHALL BE COMMENCED WITHIN 30 DAYS AFTER THE
24 COMMISSIONER'S DECISION.