

HOUSE BILL No. 4819

May 24, 2001, Introduced by Rep. Julian and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 224 (MCL 500.224), as amended by 2000 PA 252;
and to repeal acts and parts of acts.

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 depu-
7 ties, assistants, employees, and others acting under the
8 commissioner's authority. If correct, the expenses shall be paid
9 to the persons by whom they were incurred, upon the warrant of

1 the state treasurer payable from appropriations made by the
2 legislature for this purpose.

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

16 (3) The commissioner may employ attorneys, actuaries,
17 accountants, investment advisers, and other expert personnel not
18 otherwise employees of this state reasonably necessary to assist
19 in the conduct of the examination or investigation or proceeding
20 with respect to an insurer or other person regulated under the
21 commissioner's authority at the insurer's or other person's
22 expense except as otherwise provided in subsection (4). Except
23 as otherwise provided in subsection (4), upon certification by
24 the commissioner of the reasonable expenses incurred under this
25 section, the insurer or other person examined or investigated
26 shall pay those expenses directly to the person or firm rendering
27 assistance to the commissioner. Expenses paid directly to such

1 person or firm and the regulatory fees imposed by this section
2 shall be examination expenses under section 22e of the single
3 business tax act, 1975 PA 228, MCL 208.22e.

4 (4) An insurer is subject to a regulatory fee instead of the
5 costs and expenses provided for in subsections (2) and (3). By
6 June 30 of each year or within 30 days after the enactment into
7 law of any appropriation for the insurance bureau's operation,
8 the commissioner shall impose upon all insurers authorized to do
9 business in this state a regulatory fee calculated as follows:

10 (a) As used in this subsection:

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

13 (ii) "B" means base assessment rate. The base assessment
14 rate shall not exceed .00038 and shall be a fraction the numera-
15 tor of which is the total regulatory fee and the denominator of
16 which is the total amount of direct underwritten premiums written
17 in this state by all insurers for the immediately preceding cal-
18 endar year as reported to the commissioner on the insurer's
19 annual statements filed with the commissioner.

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

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

26 (v) Total regulatory fee shall not exceed 80% of the gross
27 appropriations for the insurance bureau's operation for a fiscal

1 year and shall be the difference between the gross appropriations
 2 for the insurance bureau's operation for that current fiscal year
 3 and any restricted revenues, other than the regulatory fee
 4 itself, as identified in the gross appropriation for the insur-
 5 ance bureau's operation.

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

11 (b) Two actual assessment rates shall be calculated so as to
 12 distribute 75% of the burden of the regulatory fee shortfall cre-
 13 ated by the exclusion of annuity considerations from the assess-
 14 ment base to life insurance and 25% to all other insurance. The
 15 2 actual assessment rates shall be determined as follows:

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

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

20 (c) Each insurer's regulatory fee shall be a minimum fee of
 21 \$250.00 and shall be determined by multiplying the actual assess-
 22 ment rate by the assessment base of that insurer as determined by
 23 the commissioner from the insurer's annual statement for the
 24 immediately preceding calendar year filed with the commissioner.

1 (5) Not less than 67% of the revenue derived from the
2 regulatory fee under subsection (4) shall be used for the
3 regulation of financial conduct of persons regulated under the
4 commissioner's authority and for the regulation of persons regu-
5 lated under the commissioner's authority engaged in the business
6 of health care and health insurance in this state.

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

12 (7) All money paid into the state treasury by an insurer
13 under this section shall be credited as provided under section
14 225.

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

24 (9) An insurer may file with the commissioner a protest to
25 the regulatory fee imposed not later than 15 days after receipt
26 of the regulatory fee. The commissioner shall review the grounds
27 for the protest and shall hold a conference with the insurer at

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

1 current fiscal year overpayment of \$100.00 or less shall be
2 refunded.

3 (10) Any amounts stated and presented to or certified,
4 assessed, or imposed upon an insurer as provided in
5 subsections (2), (3), and (4) that are unpaid as of the date that
6 the insurer is subjected to a delinquency proceeding pursuant to
7 chapter 81 shall be regarded as an expense of administering the
8 delinquency proceeding and shall be payable as such from the gen-
9 eral assets of the insurer.

10 (11) In addition to the regulatory fee provided in subsec-
11 tion (4), each insurer that locates records or personnel knowl-
12 edgeable about those records outside this state pursuant to sec-
13 tion 476a(3) or section 5256 shall reimburse the insurance bureau
14 for expenses and reasonable costs incurred by the insurance
15 bureau as a result of travel and other costs related to examina-
16 tions or investigations of those records or personnel. The reim-
17 bursement shall not include any costs that the insurance bureau
18 would have incurred if the examination had taken place in this
19 state.

20 (12) As used in this section:

21 (a) "Annuity considerations" means receipts on the sale of
22 annuities as used in section 22a of the single business tax act,
23 1975 PA 228, MCL 208.22a.

24 (b) "Insurer" means an insurer authorized to do business in
25 this state and includes nonprofit health care corporations,
26 dental care corporations, and health maintenance organizations.

~~1 (13) All fees added by 1994 PA 228 shall not apply on and
2 after January 1, 1996, unless by September 1, 1995, and annually
3 thereafter, the commissioner submits a report to the senate and
4 house of representatives standing committees on insurance issues
5 and to the senate and house of representatives appropriations
6 regulatory subcommittees on all receivership activities of the
7 commissioner and the insurance bureau pertaining to the liquida-
8 tion of insolvent insurers for the immediately preceding calendar
9 year. The report shall include all of the following:~~

~~10 (a) A summary schedule of all insurance bureau expenditures
11 for legal, accounting, and administrative expenditures made or
12 incurred for the liquidation of all insurers in receivership,
13 including, but not limited to, alien insurers described in
14 section 431a, and paid for out of the insurer's assets during the
15 calendar year being reported on.~~

~~16 (b) A detailed schedule of all insurance bureau contractual
17 expenditures for legal, accounting, and administrative expendi-
18 tures made or incurred for the liquidation of all insurers in
19 receivership, including, but not limited to, alien insurers
20 described in section 431a, and paid for out of the insurer's
21 assets during the calendar year being reported on including, but
22 not limited to, itemization of legal billings, criminal investi-
23 gation expenses, travel, meals, and general office expenses.~~

~~24 (c) A statement of the net changes in assets and liabilities
25 of each insurer in receivership, including, but not limited to,
26 an alien insurer described in section 431a. This statement shall
27 include changes due to interest rate changes, real estate values,~~

~~1 and other investment activities, including a detailed statement
2 of the sale of assets and the net loss or gain on those assets
3 and a statement of the amount of assets preserved, gained, or
4 recovered by the receiver.~~

5 Enacting section 1. Section 8160 of the insurance code of
6 1956, 1956 PA 218, MCL 500.8160, is repealed.