

HOUSE BILL No. 5480

November 28, 2007, Introduced by Reps. Johnson, Melton, Hammel, Constan, Young, Virgil Smith, Scott, Leland and Hammon and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 2109, 2115, 2403, and 2603 (MCL 500.2109,
500.2115, 500.2403, and 500.2603), section 2115 as amended by 1980
PA 461 and section 2403 as amended by 1993 PA 200.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2109. (1) All rates for automobile insurance and home
2 insurance shall be made in accordance with the following
3 provisions:

4 (a) Rates shall not be excessive, inadequate, or unfairly
5 discriminatory. A rate shall not be held to be excessive unless the
6 rate is unreasonably high for the insurance coverage provided. ~~and~~
7 ~~a reasonable degree of competition does not exist for the insurance~~
8 ~~to which the rate is applicable.~~

1 (b) A rate shall not be held to be inadequate unless the rate
2 is unreasonably low for the insurance coverage provided and the
3 continued use of the rate endangers the solvency of the insurer; or
4 unless the rate is unreasonably low for the insurance provided and
5 the use of the rate has or will have the effect of destroying
6 competition among insurers, creating a monopoly, or causing a kind
7 of insurance to be unavailable to a significant number of
8 applicants who are in good faith entitled to procure that insurance
9 through ordinary methods.

10 (c) A rate for a coverage is unfairly discriminatory in
11 relation to another rate for the same coverage if the differential
12 between the rates is not reasonably justified by differences in
13 losses, expenses, or both, or by differences in the uncertainty of
14 loss, for the individuals or risks to which the rates apply. A
15 reasonable justification shall be supported by a reasonable
16 classification system; by sound actuarial principles when
17 applicable; and by actual and credible loss and expense statistics
18 or, in the case of new coverages and classifications, by reasonably
19 anticipated loss and expense experience. A rate is not unfairly
20 discriminatory because it reflects differences in expenses for
21 individuals or risks with similar anticipated losses, or because it
22 reflects differences in losses for individuals or risks with
23 similar expenses.

24 ~~—— (2) A determination concerning the existence of a reasonable~~
25 ~~degree of competition with respect to subsection (1)(a) shall take~~
26 ~~into account a reasonable spectrum of relevant economic tests,~~
27 ~~including the number of insurers actively engaged in writing the~~

~~insurance in question, the present availability of such insurance compared to its availability in comparable past periods, the underwriting return of that insurance over a period of time sufficient to assure reliability in relation to the risk associated with that insurance, and the difficulty encountered by new insurers in entering the market in order to compete for the writing of that insurance.~~

(2) AN INSURED MAY COMMENCE A CIVIL ACTION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE INSURED RESIDES OR IN THE CIRCUIT COURT FOR INGHAM COUNTY CHARGING A VIOLATION OF SUBSECTION (1).

Sec. 2115. (1) ~~If as~~ **AS** part of a decision in a proceeding under section 2114, or in a separate proceeding on the commissioner's own motion, held pursuant to ~~Act No. 306 of the Public Acts of 1969, as amended, the commissioner finds that a reasonable degree of competition does not exist on a statewide basis with respect to automobile insurance or home insurance,~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328,** the commissioner shall ~~by~~ **MAY** order require each **AN AUTOMOBILE OR HOME** insurer which ~~transacts that type of insurance in this state to~~ comply with the provisions of chapter 24 or 26, as the case may be. ~~, with respect to that insurance which was the subject of the commissioner's finding.~~ The order shall take effect not less than 90 nor more than 150 days after the order is issued. On or after the effective date of an order issued under this subsection, none of the provisions of this chapter ~~shall be~~ **IS** applicable to the insurance ~~which~~ **THAT** was the subject of the order.

1 (2) After an order issued pursuant to subsection (1) has been
 2 in effect for 1 year, ~~if the commissioner has reason to believe~~
 3 ~~that there would be a reasonable degree of price competition for~~
 4 ~~the type of insurance affected by the order, THE COMMISSIONER, ON~~
 5 **HIS OR HER OWN MOTION**, or ~~if,~~ upon the petition of an insurer or a
 6 resident of this state, ~~there is a showing that there is reason to~~
 7 ~~believe that there would be a reasonable degree of price~~
 8 ~~competition for that type of insurance, the commissioner shall MAY~~
 9 hold a hearing pursuant to Act No. 306 of the Public Acts of 1969,
 10 ~~as amended, THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,~~
 11 **MCL 24.201 TO 24.328**, to determine ~~if a reasonable degree of price~~
 12 ~~competition would exist if WHETHER~~ the order were no longer **ISSUED**
 13 **UNDER SUBSECTION (1) SHOULD REMAIN** in effect. The hearing shall be
 14 held upon not less than 20 days' written notice to each insurer
 15 subject to the order **UNDER SUBSECTION (1)** and upon not less than 20
 16 days' notice in not less than 3 newspapers of general circulation
 17 within this state.

18 (3) If the commissioner finds after the hearing that a
 19 ~~reasonable degree of price competition would exist, AN ORDER ISSUED~~
 20 **UNDER SUBSECTION (1) SHOULD NOT REMAIN IN EFFECT**, the commissioner
 21 shall by order state when, not less than 90 nor more than 150 days
 22 after issuance of a new order, the ~~preceding order~~ **UNDER SUBSECTION**
 23 **(1)** will no longer be effective. On and after the effective date of
 24 an order issued under this subsection, the provisions of this
 25 chapter shall be applicable to the type of insurance ~~which THAT~~ was
 26 the subject of the order **UNDER SUBSECTION (1)**.

27 Sec. 2403. (1) All rates shall be made in accordance with this

1 section and all of the following:

2 (a) Due consideration shall be given to past and prospective
3 loss experience within and outside this state; to catastrophe
4 hazards; to a reasonable margin for underwriting profit and
5 contingencies; to dividends, savings, or unabsorbed premium
6 deposits allowed or returned by insurers to their policyholders,
7 members, or subscribers; to past and prospective expenses, both
8 countrywide and those specially applicable to this state; to
9 underwriting practice, judgment, and to all other relevant factors
10 within and outside this state. For worker's compensation insurance,
11 in determining the reasonableness of the margin for underwriting
12 profit and contingencies, consideration shall be given to all
13 after-tax investment profit or loss from unearned premium and loss
14 reserves attributable to worker's compensation insurance, as well
15 as the factors used to determine the amount of reserves. For all
16 other kinds of insurance to which this chapter applies, all factors
17 to which due consideration is given under this subdivision shall be
18 treated in a manner consistent with the laws of this state that
19 existed on December 28, 1981.

20 (b) The systems of expense provisions included in the rates
21 for use by any insurer or group of insurers may differ from those
22 of other insurers or groups of insurers to reflect the requirements
23 of the operating methods of the insurer or group with respect to
24 any kind of insurance, or with respect to any subdivision or
25 combination thereof for which subdivision or combination separate
26 expense provisions are applicable.

27 (c) Risks may be grouped by classifications for the

1 establishment of rates and minimum premiums. Classification rates
2 may be modified to produce rates for individual risks in accordance
3 with rating plans that measure variations in hazards, expense
4 provisions, or both. The rating plans may measure any differences
5 among risks that may have a probable effect upon losses or expenses
6 as provided for in subdivision (a).

7 (d) Rates shall not be excessive, inadequate, or unfairly
8 discriminatory. A rate shall not be held to be excessive unless the
9 rate is unreasonably high for the insurance coverage provided. ~~and~~
10 ~~a reasonable degree of competition does not exist with respect to~~
11 ~~the classification, kind, or type of risks to which the rate is~~
12 ~~applicable.~~ Except as otherwise provided in this subdivision, a
13 rate shall not be held to be inadequate unless the rate is
14 unreasonably low for the insurance coverage provided and the
15 continued use of the rate endangers the solvency of the insurer; or
16 unless the rate is unreasonably low for the insurance coverage
17 provided and the use of the rate has or will have the effect of
18 destroying competition among insurers, creating a monopoly, or
19 causing a kind of insurance to be unavailable to a significant
20 number of applicants who are in good faith entitled to procure the
21 insurance through ordinary methods. For commercial liability
22 insurance a rate shall not be held to be inadequate unless the
23 rate, after consideration of investment income and marketing
24 programs and underwriting programs, is unreasonably low for the
25 insurance coverage provided and is insufficient to sustain
26 projected losses and expenses; or unless the rate is unreasonably
27 low for the insurance coverage provided and the use of the rate has

1 or will have the effect of destroying competition among insurers,
2 creating a monopoly, or causing a kind of insurance to be
3 unavailable to a significant number of applicants who are in good
4 faith entitled to procure the insurance through ordinary methods.
5 As used in this subdivision, "commercial liability insurance" means
6 insurance that provides indemnification for commercial, industrial,
7 professional, or business liabilities. For worker's compensation
8 insurance provided by an insurer that is controlled by a nonprofit
9 health care corporation formed pursuant to the nonprofit health
10 care corporation reform act, ~~Act No. 350 of the Public Acts of~~
11 ~~1980, being sections 550.1101 to 550.1704 of the Michigan Compiled~~
12 ~~Laws 1980 PA 350, MCL 550.1101 TO 550.1704~~, a rate shall not be
13 held to be inadequate unless the rate is unreasonably low for the
14 insurance coverage provided. A rate for a coverage is unfairly
15 discriminatory in relation to another rate for the same coverage,
16 if the differential between the rates is not reasonably justified
17 by differences in losses, expenses, or both, or by differences in
18 the uncertainty of loss for the individuals or risks to which the
19 rates apply. A reasonable justification shall be supported by a
20 reasonable classification system; by sound actuarial principles
21 when applicable; and by actual and credible loss and expense
22 statistics or, in the case of new coverages and classifications, by
23 reasonably anticipated loss and expense experience. A rate is not
24 unfairly discriminatory because the rate reflects differences in
25 expenses for individuals or risks with similar anticipated losses,
26 or because the rate reflects differences in losses for individuals
27 or risks with similar expenses. Rates are not unfairly

1 discriminatory if they are averaged broadly among persons insured
2 on a group, franchise, blanket policy, or similar basis.

3 (2) AN INSURED MAY COMMENCE A CIVIL ACTION IN THE CIRCUIT
4 COURT FOR THE COUNTY IN WHICH THE INSURED RESIDES OR IN THE CIRCUIT
5 COURT FOR INGHAM COUNTY CHARGING A VIOLATION OF SUBSECTION (1).

6 (3) ~~(2)~~—Except to the extent necessary to meet the provisions
7 of subsection (1)(d), uniformity among insurers in any matters
8 within the scope of this section is neither required nor
9 prohibited.

10 Sec. 2603. (1) All rates shall be made in accordance with the
11 following provisions:

12 (a) Due consideration shall be given to past and prospective
13 loss experience within and outside this state; to catastrophe
14 hazards; to a reasonable margin for underwriting profit and
15 contingencies; to dividends, savings, or unabsorbed premium
16 deposits allowed or returned by insurers to their policyholders,
17 members, or subscribers; to past and prospective expenses, both
18 countrywide and those specially applicable to this state; and to
19 all other relevant factors within and outside this state. In the
20 case of fire insurance rates, consideration also shall be given to
21 the experience of the fire insurance business during a period of
22 not less than the most recent 5-year period for which that
23 experience is available.

24 (b) The systems of expense provisions included in the rates
25 for use by any insurer or group of insurers may differ from those
26 of other insurers or groups of insurers to reflect the requirements
27 of the operating methods of the insurer or group with respect to

1 any kind of insurance or with respect to any subdivision or
2 combination thereof for which subdivision or combination separate
3 expense provisions are applicable.

4 (c) Risks may be grouped by classifications for the
5 establishment of rates and minimum premiums. Classification rates
6 may be modified to produce rates for individual risks in accordance
7 with rating plans ~~which~~ **THAT** measure variations in hazards, expense
8 provisions, or both. The rating plans may measure any differences
9 among risks that may have a probable effect upon losses or expenses
10 as provided for in subdivision (a).

11 (d) Rates shall not be excessive, inadequate, or unfairly
12 discriminatory. A rate shall not be held to be excessive unless the
13 rate is unreasonably high for the insurance coverage provided. ~~and~~
14 ~~a reasonable degree of competition does not exist with respect to~~
15 ~~the classification, kind, or type of risks to which the rate is~~
16 ~~applicable.~~ A rate shall not be held to be inadequate unless the
17 rate is unreasonably low for the insurance coverage provided and
18 the continued use of the rate endangers the solvency of the
19 insurer; or unless the rate is unreasonably low for the insurance
20 provided and the use of the rate has or will have the effect of
21 destroying competition among insurers, creating a monopoly, or
22 causing a kind of insurance to be unavailable to a significant
23 number of applicants who are in good faith entitled to procure the
24 insurance through ordinary methods. A rate for a coverage is
25 unfairly discriminatory in relation to another rate for the same
26 coverage, if the differential between the rates is not reasonably
27 justified by differences in losses, expenses, or both, or by

1 differences in the uncertainty of loss for the individuals or risks
2 to which the rates apply. A reasonable justification shall be
3 supported by a reasonable classification system; by sound actuarial
4 principles when applicable; and by actual and credible loss and
5 expense statistics or, in the case of new coverages and
6 classifications, by reasonably anticipated loss and expense
7 experience. A rate is not unfairly discriminatory because the rate
8 reflects differences in expenses for individuals or risks with
9 similar anticipated losses, or because the rate reflects
10 differences in losses for individuals or risks with similar
11 expenses. Rates are not unfairly discriminatory if they are
12 averaged broadly among persons insured on a group, franchise,
13 blanket policy, or similar basis.

14 **(2) AN INSURED MAY COMMENCE A CIVIL ACTION IN THE CIRCUIT**
15 **COURT FOR THE COUNTY IN WHICH THE INSURED RESIDES OR IN THE CIRCUIT**
16 **COURT FOR INGHAM COUNTY CHARGING A VIOLATION OF SUBSECTION (1).**

17 **(3) ~~(2)~~**—Except to the extent necessary to meet the provisions
18 of subsection (1)(d), uniformity among insurers in any matters
19 within the scope of this section is neither required nor
20 prohibited.