

Act No. 39
Public Acts of 2012
Approved by the Governor
March 6, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Smith and Hune

ENROLLED SENATE BILL No. 298

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 2930a, 4501, and 4503 (MCL 500.2930a, 500.4501, and 500.4503), section 2930a as amended by 2002 PA 492 and sections 4501 and 4503 as added by 1995 PA 276.

The People of the State of Michigan enact:

Sec. 2930a. (1) Except as otherwise provided in subsection (5)(c), rates charged in each territory by the pool for home insurance shall be actuarially determined and calculated to generate a total premium sufficient to cover the

expected losses and expenses that the pool will likely incur during the projected period for which the rates will be effective, subject to the following:

(a) If the pool's actuarially indicated overall rate change is greater than 5% but less than or equal to 20%, the pool shall take 1/2 of the actuarially indicated rate change amount.

(b) If the pool's actuarially indicated overall rate change is greater than 20%, the pool shall take the full amount that exceeds 20%, plus 10%.

(c) If the pool's actuarially indicated overall rate change is less than 5%, the pool shall take the entire indicated rate change amount.

(2) Rates developed under this section are subject to the following:

(a) The rates shall not be revised more than annually.

(b) The rates shall be filed with the commissioner for prior approval. A filing is considered to be approved unless it is disapproved by the commissioner within 30 days after it is received.

(c) If the commissioner disapproves a filing within 30 days after it is received, he or she shall send written notice of disapproval to the pool specifying in what respects the filing fails to meet the requirements of this act and stating that the filing shall not become effective.

(d) If at any time after the 30-day period specified in subdivision (b) the commissioner finds that a filing does not meet the requirements of this act, the commissioner shall, after a hearing held on not less than 10 days' written notice specifying the matters to be considered at the hearing, issue an order specifying in what respects the commissioner finds that the filing fails to meet the requirements of this act and stating when, within a reasonable period after the date of the order, the filing shall be considered no longer effective.

(3) In addition to the requirements of subsections (1) and (2), the premium established for the repair cost policy offered by the pool shall not exceed the premium for an amount of insurance equal to 80% of the replacement cost of the property under the replacement cost policy of the pool equivalent to the HO-2 form replacement cost policy filed and in effect in this state for a licensed rating organization. Premiums for dwellings with identical replacement costs shall vary on a schedule determined by the pool in accordance with the insured value of the dwelling.

(4) The pool or any other association or organization designated by the pool shall develop its own actuarially justified statistical plans, rating rules, classifications, territories, and rating calculation steps for home insurance issued on behalf of the pool consistent with this section.

(5) The pool shall offer at least the following home insurance policy forms:

(a) An HO-2 form replacement cost policy equivalent to the HO-2 form replacement cost policy filed and in effect in this state for a licensed rating organization.

(b) A repair cost policy providing the deductibles, terms and conditions, perils insured against, and types and amounts of coverage equivalent to those provided by the HO-2 replacement cost policy filed and in effect for a licensed rating organization.

(c) An HO-3 form replacement cost policy equivalent to the HO-3 form replacement cost policy filed and in effect in this state for a licensed rating organization. The rates established by the pool for the HO-3 form replacement cost policy offered pursuant to this subdivision shall be actuarially determined and calculated to generate a total premium sufficient to cover the expected losses and expenses of the pool related to the HO-3 replacement cost policy that the pool will likely incur during the projected period for which the rates will be effective. The premium shall be adjusted fully in a single period or over several periods in a manner provided for in the plan of operation for any excess or deficient premiums from previous periods. Rates established by the pool under this subdivision shall not be based upon the methodology provided for in subsection (1).

(6) Policy forms shall be filed with the commissioner for prior approval.

(7) As used in this section:

(a) "Actuarially indicated overall rate change" means rate change calculated within the framework and principles of the casualty actuarial society that uses a permissible combined ratio of 100%.

(b) "Combined ratio" means the sum of the loss ratio and the expense ratio where the loss ratio is the ratio of incurred loss and loss adjustment expenses to earned premium and the expense ratio is the ratio of underwriting expenses to earned premium.

Sec. 4501. As used in this chapter:

(a) "Authorized agency" means the department of state police; a city, village, or township police department; a county sheriff's department; a United States criminal investigative department or agency; the prosecuting authority of a city, village, township, county, or state or of the United States; the office of financial and insurance regulation; or the department of state.

(b) "Financial loss" includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, investigative costs, and claims payments.

(c) "Insurance policy" or "policy" means an insurance policy, benefit contract of a self-funded plan, health maintenance organization contract, nonprofit dental care corporation certificate, or health care corporation certificate.

(d) "Insurer" means a property-casualty insurer, life insurer, third party administrator, self-funded plan, health insurer, health maintenance organization, nonprofit dental care corporation, health care corporation, reinsurer, or any other entity regulated by the insurance laws of this state and providing any form of insurance.

(e) "Organization" means an organization or internal department of an insurer established to detect and prevent insurance fraud.

(f) "Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity.

(g) "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law, any other licensee of the state, or an unlicensed health care provider whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations, or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

(h) "Runner", "capper", or "steerer" means a person who receives a pecuniary or other benefit from a practitioner, whether directly or indirectly, for procuring or attempting to procure a client, patient, or customer at the direction or request of, or in cooperation with, a practitioner whose intent is to obtain benefits under a contract of insurance or to assert a claim against an insured or an insurer for providing services to the client, patient, or customer. Runner, capper, or steerer does not include a practitioner who procures clients, patients, or customers through the use of public media.

(i) "Statement" includes, but is not limited to, any notice statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, claim form, diagnosis, prescription, hospital or doctor record, X-rays, test result, or other evidence of loss, injury, or expense.

Sec. 4503. A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or any agent of an insurer, or any agent of an insurer, reinsurer, or broker any oral or written statement knowing that the statement contains any false information concerning any fact material to an application for the issuance of an insurance policy.

(b) Prepares or assists, abets, solicits, or conspires with another to prepare or make an oral or written statement that is intended to be presented to or by any insurer in connection with, or in support of, any application for the issuance of an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the application.

(c) Presents or causes to be presented to or by any insurer, any oral or written statement including computer-generated information as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false information concerning any fact or thing material to the claim.

(d) Assists, abets, solicits, or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to or by any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the claim.

(e) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer.

(f) Removes or attempts to remove the assets or records of assets, transactions, and affairs, or a material part of the assets or records, from the home office or other place of business of the insurer or from the place of safekeeping of the insurer, or who conceals or attempts to conceal the assets or record of assets, transactions, and affairs, or a material part of the assets or records, from the commissioner.

(g) Diverts, attempts to divert, or conspires to divert funds of an insurer or of other persons in connection with any of the following:

(i) The transaction of insurance or reinsurance.

(ii) The conduct of business activities by an insurer.

(iii) The formation, acquisition, or dissolution of an insurer.

(h) Employs, uses, or acts as a runner, capper, or steerer with the intent to falsely or fraudulently obtain benefits under a contract of insurance or to falsely or fraudulently assert a claim against an insured or an insurer for providing services to the client, patient, or customer.

(i) Knowingly and willfully assists, conspires with, or urges any person to fraudulently violate this act, or any person who due to that assistance, conspiracy, or urging knowingly and willfully benefits from the proceeds derived from the fraud.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor