

SENATE BILL No. 186

March 7, 1989, Introduced by Senator FAXON and referred to the Committee on Commerce and Technology.

A bill to amend the title and section 124 of Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," as amended by Act No. 121 of the Public Acts of 1986, being section 500.124 of the Michigan Compiled Laws; and to add chapter 45.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 124 of Act No. 218 of the
2 Public Acts of 1956, as amended by Act No. 121 of the Public Acts
3 of 1986, being section 500.124 of the Michigan Compiled Laws, are
4 amended and chapter 45 is added to read as follows:

5 TITLE

6 An act to revise, consolidate, and classify the laws
7 relating to the insurance and surety business; to regulate the
8 incorporation or formation of domestic insurance and surety

1 companies and associations and the admission of foreign and alien
2 companies and associations; to provide their rights, powers, and
3 immunities and to prescribe the conditions on which companies and
4 associations organized, existing, or authorized under this act
5 may exercise their powers; to provide the rights, powers, and
6 immunities and to prescribe the conditions on which other per-
7 sons, firms, corporations, and associations engaged in an insur-
8 ance or surety business may exercise their powers; to provide for
9 the imposition of a privilege fee on domestic insurance companies
10 and associations and the state accident fund; to provide for the
11 imposition of a tax on the business of foreign and alien com-
12 panies and associations; to provide for the imposition of a tax
13 on the business of surplus line agents; to modify tort liability
14 arising out of certain accidents; to provide for limited actions
15 with respect to that modified tort liability, and to prescribe
16 certain procedures for maintaining those actions; to require
17 security for losses arising out of certain accidents; to provide
18 for the continued availability and affordability of automobile
19 insurance and homeowners insurance in this state, and to facili-
20 tate the purchase of that insurance by all residents of this
21 state at fair and reasonable rates; to provide for certain
22 reporting with respect to insurance, and with respect to certain
23 claims against uninsured or self-insured persons; and to pre-
24 scribe duties for certain state departments and officers with
25 respect to that reporting; to provide for certain assessments; to
26 establish and continue certain state insurance funds; to modify
27 and clarify the status, rights, powers, duties, and operations of

1 the nonprofit malpractice insurance fund; TO PROVIDE FOR A
2 PHYSICIAN'S LIABILITY ASSOCIATION; to provide for the departmen-
3 tal supervision and regulation of the insurance and surety busi-
4 ness within this state; to provide for the conservation, rehabil-
5 itation, or liquidation of unsound or insolvent insurers; to pro-
6 vide for the protection of policyholders, claimants, and credi-
7 tors of unsound or insolvent insurers; to provide for associa-
8 tions of insurers to protect policyholders and claimants in the
9 event of insurer insolvencies; to prescribe educational require-
10 ments for insurance agents and solicitors; to provide for the
11 regulation of multiple employer welfare arrangements; to create
12 an automobile theft prevention authority to reduce the number of
13 automobile thefts in this state; to prescribe the powers and
14 duties of the automobile theft prevention authority; to provide
15 certain powers and duties upon certain officials, departments,
16 and authorities of this state; to repeal certain acts and parts
17 of acts; to repeal certain acts and parts of acts on specific
18 dates; and to provide penalties for the violation of this act.

19 Sec. 124. This code shall not apply to:

20 (a) Domestic farmers' and other special risk mutual property
21 insurers, as identified in chapter 68, except as stated in chap-
22 ter 68.

23 (b) Fraternal benefit societies, except as stated in chapter
24 80.

25 (c) A multiple employer welfare arrangement regulated under
26 chapter 70, except as provided in chapter 70.

1 (D) THE PHYSICIAN'S LIABILITY ASSOCIATION, EXCEPT AS
2 PROVIDED IN CHAPTER 45.

3 CHAPTER 45

4 PHYSICIAN'S LIABILITY ASSOCIATION

5 SEC. 4501. AS USED IN THIS CHAPTER:

6 (A) "ASSOCIATION" MEANS THE PHYSICIAN'S LIABILITY
7 ASSOCIATION.

8 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE
9 ASSOCIATION.

10 (C) "PHYSICIAN" MEANS THAT TERM AS DEFINED IN SECTION 17001
11 OR 17501 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC
12 ACTS OF 1978, BEING SECTIONS 333.17001 AND 333.17501 OF THE
13 MICHIGAN COMPILED LAWS.

14 SEC. 4504. (1) AN UNINCORPORATED, NONPROFIT ASSOCIATION TO
15 BE KNOWN AS THE PHYSICIAN'S LIABILITY ASSOCIATION IS CREATED.
16 EACH PHYSICIAN IN THIS STATE, AS A CONDITION OF LICENSURE, SHALL
17 BE A MEMBER OF THE ASSOCIATION AND SHALL BE BOUND BY THE PLAN OF
18 OPERATION OF THE ASSOCIATION. THE ASSOCIATION SHALL NOT BE
19 SUBJECT TO THE OTHER CHAPTERS OF THIS ACT, BUT SHALL BE SUBJECT
20 TO THE OTHER LAWS OF THIS STATE TO THE EXTENT THAT THE ASSOCIA-
21 TION WOULD BE WERE IT AN INSURER ORGANIZED AND OPERATING UNDER
22 CHAPTER 50.

23 (2) THE ASSOCIATION SHALL PROVIDE AND EACH MEMBER SHALL
24 ACCEPT INDEMNIFICATION FOR 100% OF THE AMOUNT OF ULTIMATE LOSS
25 SUSTAINED FOR PROFESSION LIABILITY OR MALPRACTICE CLAIMS IN
26 EXCESS OF \$200,000.00 IN EACH LOSS OCCURRENCE. AS USED IN THIS
27 SECTION, "ULTIMATE LOSS" MEANS THE ACTUAL LOSS AMOUNTS AS A

1 RESULT OF AN INJURY OR DAMAGE FOR WHICH A MEMBER IS LEGALLY
2 OBLIGATED TO PAY. AN ULTIMATE LOSS IS INCURRED BY THE ASSOCIA-
3 TION ON THE DATE WHICH THE LOSS OCCURS.

4 (3) A PHYSICIAN MAY WITHDRAW FROM THE ASSOCIATION ONLY UPON
5 CEASING TO BE A LICENSED PHYSICIAN IN THIS STATE.

6 (4) A PHYSICIAN WHOSE MEMBERSHIP IN THE ASSOCIATION HAS BEEN
7 TERMINATED BY WITHDRAWAL SHALL CONTINUE TO BE BOUND BY THE PLAN
8 OF OPERATION, AND UPON WITHDRAWAL, ALL UNPAID PREMIUMS WHICH HAVE
9 BEEN CHARGED TO THE WITHDRAWING MEMBER SHALL BE PAYABLE AS OF THE
10 EFFECTIVE DATE OF THE WITHDRAWAL.

11 (5) AN UNSATISFIED NET LIABILITY TO THE ASSOCIATION OF AN
12 INSOLVENT MEMBER SHALL BE ASSUMED BY AND APPORTIONED AMONG THE
13 REMAINING MEMBERS OF THE ASSOCIATION AS PROVIDED IN THE PLAN OF
14 OPERATION. THE ASSOCIATION SHALL HAVE ALL RIGHTS ALLOWED BY LAW
15 ON BEHALF OF THE REMAINING MEMBERS AGAINST THE ESTATE OR FUNDS OF
16 THE INSOLVENT MEMBER FOR SUMS DUE THE ASSOCIATION.

17 SEC. 4508. THE ASSOCIATION SHALL DO ALL OF THE FOLLOWING ON
18 BEHALF OF THE MEMBERS OF THE ASSOCIATION:

19 (A) ASSUME 100% OF ALL LIABILITY AS PROVIDED IN SECTION
20 4504.

21 (B) ESTABLISH PROCEDURES BY WHICH MEMBERS SHALL PROMPTLY
22 REPORT TO THE ASSOCIATION EACH INCIDENT WHICH, ON THE BASIS OF
23 THE INJURIES OR DAMAGES SUSTAINED, MAY REASONABLY BE ANTICIPATED
24 TO INVOLVE THE ASSOCIATION IF THE MEMBER IS ULTIMATELY HELD
25 LEGALLY LIABLE FOR THE INJURIES OR DAMAGES. THE MEMBER SHALL
26 ALSO ADVISE THE ASSOCIATION OF SUBSEQUENT DEVELOPMENTS LIKELY TO

1 MATERIALLY AFFECT THE INTEREST OF THE ASSOCIATION IN THE
2 INCIDENT.

3 (C) MAINTAIN RELEVANT LOSS AND EXPENSE DATA RELATIVE TO ALL
4 LIABILITIES OF THE ASSOCIATION AND REQUIRE EACH MEMBER TO FURNISH
5 STATISTICS, IN CONNECTION WITH LIABILITIES OF THE ASSOCIATION, AT
6 THE TIMES AND IN THE FORM AND DETAIL AS MAY BE REQUIRED BY THE
7 PLAN OF OPERATION.

8 (D) IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION, CAL-
9 CULATE AND CHARGE TO MEMBERS OF THE ASSOCIATION A TOTAL PREMIUM
10 SUFFICIENT TO COVER THE EXPECTED LOSSES AND EXPENSES OF THE ASSO-
11 CIATION WHICH THE ASSOCIATION WILL LIKELY INCUR DURING THE PERIOD
12 FOR WHICH THE PREMIUM IS APPLICABLE. THE PREMIUM SHALL INCLUDE
13 AN AMOUNT TO COVER INCURRED BUT NOT REPORTED LOSSES FOR THE
14 PERIOD AND MAY BE ADJUSTED FOR ANY EXCESS OR DEFICIENT PREMIUMS
15 FROM PREVIOUS PERIODS. EXCESSES OR DEFICIENCIES FROM PREVIOUS
16 PERIODS MAY BE FULLY ADJUSTED IN A SINGLE PERIOD OR MAY BE
17 ADJUSTED OVER SEVERAL PERIODS IN A MANNER PROVIDED FOR IN THE
18 PLAN OF OPERATION.

19 (E) REQUIRE AND ACCEPT THE PAYMENT OF PREMIUMS FROM MEMBERS
20 OF THE ASSOCIATION AS PROVIDED FOR IN THE PLAN OF OPERATION. THE
21 ASSOCIATION SHALL DO EITHER OF THE FOLLOWING:

22 (i) REQUIRE PAYMENT OF THE PREMIUM IN FULL WITHIN 45 DAYS
23 AFTER THE PREMIUM CHARGE.

24 (ii) REQUIRE PAYMENT OF THE PREMIUMS TO BE MADE PERIODICALLY
25 TO COVER THE ACTUAL CASH OBLIGATIONS OF THE ASSOCIATION.

26 (F) RECEIVE AND DISTRIBUTE ALL SUMS REQUIRED BY THE
27 OPERATION OF THE ASSOCIATION.

1 (G) ESTABLISH PROCEDURES FOR REVIEWING INCIDENT REPORTING
2 PROCEDURES AND PRACTICES OF MEMBERS OF THE ASSOCIATION. IF THE
3 INCIDENT REPORTING PROCEDURES OR PRACTICES OF A MEMBER ARE CON-
4 sidered INADEQUATE TO PROPERLY SERVICE THE LIABILITIES OF THE
5 ASSOCIATION, THE ASSOCIATION MAY UNDERTAKE OR MAY CONTRACT WITH
6 ANOTHER PERSON TO ADJUST OR ASSIST IN THE ADJUSTMENT OF INCIDENT
7 REPORTS FOR THE MEMBER ON INCIDENTS WHICH CREATE A POTENTIAL
8 LIABILITY TO THE ASSOCIATION AND MAY CHARGE THE COST OF THE
9 ADJUSTMENT TO THE MEMBER.

10 SEC. 4510. THE ASSOCIATION MAY DO ALL OF THE FOLLOWING:

11 (A) SUE AND BE SUED IN THE NAME OF THE ASSOCIATION. A JUDG-
12 MENT AGAINST THE ASSOCIATION SHALL NOT CREATE ANY DIRECT LIABIL-
13 ITY AGAINST THE INDIVIDUAL MEMBERS OF THE ASSOCIATION. THE ASSO-
14 CIATION MAY PROVIDE FOR THE INDEMNIFICATION OF ITS MEMBERS, MEM-
15 BERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION, AND OFFICERS,
16 EMPLOYEES, AND OTHER PERSONS LAWFULLY ACTING ON BEHALF OF THE
17 ASSOCIATION.

18 (B) REINSURE ALL OR ANY PORTION OF ITS POTENTIAL LIABILITY
19 WITH REINSURERS LICENSED TO TRANSACT INSURANCE IN THIS STATE OR
20 APPROVED BY THE COMMISSIONER.

21 (C) PROVIDE FOR APPROPRIATE HOUSING, EQUIPMENT, AND PERSON-
22 NEL AS MAY BE NECESSARY TO ASSURE THE EFFICIENT OPERATION OF THE
23 ASSOCIATION.

24 (D) PURSUANT TO THE PLAN OF OPERATION, ADOPT REASONABLE
25 RULES FOR THE ADMINISTRATION OF THE ASSOCIATION, ENFORCE THOSE
26 RULES, AND DELEGATE AUTHORITY, AS THE BOARD CONSIDERS NECESSARY

1 TO ASSURE THE PROPER ADMINISTRATION AND OPERATION OF THE
2 ASSOCIATION CONSISTENT WITH THE PLAN OF OPERATION.

3 (E) CONTRACT FOR GOODS AND SERVICES, INCLUDING INDEPENDENT
4 CLAIMS MANAGEMENT, ACTUARIAL, INVESTMENT, AND LEGAL SERVICES,
5 FROM OTHERS WITHIN OR WITHOUT THIS STATE TO ASSURE THE EFFICIENT
6 OPERATION OF THE ASSOCIATION.

7 (F) HEAR AND DETERMINE COMPLAINTS CONCERNING THE OPERATION
8 OF THE ASSOCIATION.

9 (G) PERFORM OTHER ACTS NOT SPECIFICALLY ENUMERATED IN THIS
10 SECTION WHICH ARE NECESSARY OR PROPER TO ACCOMPLISH THE PURPOSES
11 OF THE ASSOCIATION AND WHICH ARE NOT INCONSISTENT WITH THIS ACT
12 OR THE PLAN OF OPERATION.

13 SEC. 4515. (1) A BOARD OF DIRECTORS IS CREATED WHICH SHALL
14 BE RESPONSIBLE FOR THE OPERATION OF THE ASSOCIATION CONSISTENT
15 WITH THE PLAN OF OPERATION AND THIS CHAPTER.

16 (2) NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS
17 CHAPTER, THE COMMISSIONER SHALL CONVENE AN ORGANIZATIONAL MEETING
18 OF THE BOARD. THE INITIAL BOARD SHALL BE COMPOSED OF 5 MEMBERS
19 OF THE ASSOCIATION APPOINTED BY THE COMMISSIONER TO SERVE AS
20 DIRECTORS, AND THE COMMISSIONER OR A DESIGNATED REPRESENTATIVE OF
21 THE COMMISSIONER SERVING AS AN EX OFFICIO MEMBER OF THE BOARD
22 WITHOUT VOTE. EACH DIRECTOR SHALL BE ENTITLED TO 1 VOTE. THE
23 INITIAL TERM OF OFFICE OF A DIRECTOR SHALL BE 2 YEARS.

24 (3) AS PART OF THE PLAN OF OPERATION, THE BOARD SHALL ADOPT
25 RULES PROVIDING FOR THE COMPOSITION AND TERM OF SUCCESSOR BOARDS
26 TO THE INITIAL BOARD, CONSISTENT WITH THE MEMBERSHIP COMPOSITION
27 REQUIREMENTS IN SUBSECTION (2). TERMS OF THE DIRECTORS OF

1 SUCCESSOR BOARDS SHALL BE STAGGERED SO THAT THE TERMS OF ALL THE
2 DIRECTORS DO NOT EXPIRE AT THE SAME TIME AND SO THAT A DIRECTOR
3 DOES NOT SERVE A TERM OF MORE THAN 4 YEARS.

4 (4) EACH DIRECTOR OF SUCCESSOR BOARDS SHALL BE APPOINTED BY
5 THE COMMISSIONER AND SHALL SERVE UNTIL THAT DIRECTOR'S SUCCESSOR
6 IS SELECTED AND QUALIFIED. THE CHAIRPERSON OF THE BOARD SHALL BE
7 ELECTED BY THE BOARD. A VACANCY ON THE BOARD SHALL BE FILLED BY
8 THE COMMISSIONER CONSISTENT WITH THE PLAN OF OPERATION.

9 (5) AFTER THE BOARD IS APPOINTED, THE BOARD SHALL MEET AS
10 OFTEN AS THE CHAIRPERSON, THE COMMISSIONER, OR THE PLAN OF OPERA-
11 TION SHALL REQUIRE, OR AT THE REQUEST OF ANY 3 DIRECTORS OF THE
12 BOARD. THE CHAIRPERSON SHALL RETAIN THE RIGHT TO VOTE ON ALL
13 ISSUES. FOUR DIRECTORS OF THE BOARD SHALL CONSTITUTE A QUORUM.

14 (6) AN ANNUAL REPORT OF THE OPERATIONS OF THE ASSOCIATION IN
15 A FORM AND DETAIL AS MAY BE DETERMINED BY THE BOARD SHALL BE FUR-
16 NISHED TO EACH MEMBER.

17 SEC. 4520. (1) NOT MORE THAN 60 DAYS AFTER THE INITIAL
18 ORGANIZATIONAL MEETING OF THE BOARD, THE BOARD SHALL SUBMIT TO
19 THE COMMISSIONER FOR APPROVAL A PROPOSED PLAN OF OPERATION CON-
20 SISTENT WITH THE OBJECTIVES AND PROVISIONS OF THIS CHAPTER, WHICH
21 SHALL PROVIDE FOR THE ECONOMICAL, FAIR, AND NONDISCRIMINATORY
22 ADMINISTRATION OF THE ASSOCIATION AND FOR THE PROMPT AND EFFI-
23 CIENT PROVISION OF INDEMNITY. IF A PLAN IS NOT SUBMITTED WITHIN
24 THIS 60-DAY PERIOD, THEN THE COMMISSIONER, AFTER CONSULTATION
25 WITH THE BOARD, SHALL FORMULATE AND PLACE INTO EFFECT A PLAN CON-
26 SISTENT WITH THIS CHAPTER.

1 (2) THE PLAN OF OPERATION, UNLESS APPROVED SOONER IN
2 WRITING, SHALL BE CONSIDERED TO MEET THE REQUIREMENTS OF THIS ACT
3 IF IT IS NOT DISAPPROVED BY WRITTEN ORDER OF THE COMMISSIONER
4 WITHIN 30 DAYS AFTER THE DATE OF ITS SUBMISSION. BEFORE DISAP-
5 PROVAL OF ALL OR ANY PART OF THE PROPOSED PLAN OF OPERATION, THE
6 COMMISSIONER SHALL NOTIFY THE BOARD IN WHAT RESPECT THE PLAN OF
7 OPERATION FAILS TO MEET THE REQUIREMENTS AND OBJECTIVES OF THIS
8 CHAPTER. IF THE BOARD FAILS TO SUBMIT A REVISED PLAN OF OPERA-
9 TION WHICH MEETS THE REQUIREMENTS AND OBJECTIVES OF THIS ACT
10 WITHIN THE 30-DAY PERIOD, THE COMMISSIONER SHALL ENTER AN ORDER
11 ACCORDINGLY AND SHALL IMMEDIATELY FORMULATE AND PLACE INTO EFFECT
12 A PLAN CONSISTENT WITH THE REQUIREMENTS AND OBJECTIVES OF THIS
13 CHAPTER.

14 (3) THE PROPOSED PLAN OF OPERATION OR AMENDMENTS TO THE PLAN
15 OF OPERATION SHALL BE SUBJECT TO MAJORITY APPROVAL BY THE BOARD,
16 RATIFIED BY A MAJORITY OF THE MEMBERSHIP HAVING A VOTE, WITH
17 VOTING RIGHTS BEING APPORTIONED ACCORDING TO THE PREMIUMS CHARGED
18 IN SECTION 4525(D) AND SHALL BE SUBJECT TO APPROVAL BY THE
19 COMMISSIONER.

20 SEC. 4522. UPON APPROVAL BY THE COMMISSIONER AND RATIFICA-
21 TION BY THE MEMBERS OF THE PLAN SUBMITTED, OR UPON THE PROMULGA-
22 TION OF A PLAN BY THE COMMISSIONER, EACH PHYSICIAN SHALL BE BOUND
23 BY AND SHALL FORMALLY SUBSCRIBE TO AND PARTICIPATE IN THE PLAN
24 APPROVED AS A CONDITION OF MAINTAINING HIS OR HER LICENSE.

25 SEC. 4525. THE PLAN OF OPERATION SHALL PROVIDE FOR ALL OF
26 THE FOLLOWING:

1 (A) THE ESTABLISHMENT OF NECESSARY FACILITIES.

2 (B) THE MANAGEMENT AND OPERATION OF THE ASSOCIATION.

3 (C) A PRELIMINARY PREMIUM, PAYABLE BY EACH MEMBER IN PROPOR-
4 TION TO ITS TOTAL FIRST-YEAR PREMIUM, FOR INITIAL EXPENSES NECES-
5 SARY TO COMMENCE OPERATION OF THE ASSOCIATION.

6 (D) PROCEDURES AND CRITERIA TO BE UTILIZED IN CALCULATING
7 AND CHARGING PREMIUMS OF EACH MEMBER, INCLUDING ADJUSTMENTS FROM
8 EXCESS OR DEFICIENT PREMIUMS FROM PRIOR PERIODS.

9 (E) PROCEDURES GOVERNING THE ACTUAL PAYMENT OF PREMIUMS TO
10 THE ASSOCIATION.

11 (F) REIMBURSEMENT OF EACH MEMBER OF THE BOARD BY THE ASSOCI-
12 ATION FOR ACTUAL AND NECESSARY EXPENSES INCURRED ON ASSOCIATION
13 BUSINESS.

14 (G) THE INVESTMENT POLICY OF THE ASSOCIATION.

15 (H) ANY OTHER MATTERS REQUIRED BY OR NECESSARY TO EFFEC-
16 TIVELY IMPLEMENT THIS CHAPTER.

17 SEC. 4530. (1) THE ASSOCIATION SHALL BE SUBJECT TO ALL THE
18 REPORTING, LOSS RESERVE, AND INVESTMENT REQUIREMENTS OF THE COM-
19 MISSIONER TO THE SAME EXTENT AS WOULD AN INSURER.

20 (2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE
21 COMMISSIONER MAY VISIT THE ASSOCIATION AT ANY TIME AND EXAMINE
22 ANY AND ALL THE ASSOCIATION'S AFFAIRS.

23 Section 2. This amendatory act shall not take effect unless
24 Senate Bill No. 185

25 of the 85th Legislature is enacted into law.