

SENATE BILL No. 531

July 27, 1989, Introduced by Senators POSTHUMUS and SHINKLE
and referred to the Committee on Commerce and Technology.

A bill to amend sections 901, 6510, and 6534 of Act No. 218
of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 901 as amended by Act No. 340 of the Public Acts of 1988
and sections 6510 and 6534 as added by Act No. 173 of the Public
Acts of 1986, being sections 500.901, 500.6510, and 500.6534 of
the Michigan Compiled Laws; and to add sections 6512, 6514, 6516,
and 6517.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 901, 6510, and 6534 of Act No. 218 of
2 the Public Acts of 1956, section 901 as amended by Act No. 340 of
3 the Public Acts of 1988 and sections 6510 and 6534 as added by
4 Act No. 173 of the Public Acts of 1986, being sections 500.901,
5 500.6510, and 500.6534 of the Michigan Compiled Laws, are amended

1 and sections 6512, 6514, 6516, and 6517 are added to read as
2 follows:

3 Sec. 901. (1) Each insurer authorized to transact the busi-
4 ness of insurance in this state, ~~and~~ each person approved for
5 placement of business by a surplus lines agent pursuant to
6 chapter 19, AND EACH LIMITED LIABILITY POOL FORMED UNDER CHAPTER
7 65, may loan or invest its funds in any investment, and may buy,
8 sell, hold title to, possess, occupy, pledge, convey, manage,
9 protect, insure, and deal with respect to its investments, prop-
10 erty, and money to the same extent as any other person or corpo-
11 ration under the laws of this state or of the United States if
12 the insurer has assets in cash, computers, or as defined in this
13 chapter in a total amount at least equal to the sum of its
14 liabilities including its reserves as required by this code, plus
15 an amount for contingencies as defined in subsection (5), plus an
16 amount equal to the minimum capital or minimum surplus required
17 to be maintained by sections 408 and 410. However, the value of
18 all computers shall not exceed 2% of the assets required by this
19 subsection and the value of each computer shall not exceed the
20 original cost of the computer amortized over a period not to
21 exceed 10 years. For purposes of this section, "computer" means
22 an electronic data processing system, composed of 1 or more com-
23 ponents, which utilizes storage and processing mechanization, and
24 which has a direct automatic means of input and output, includ-
25 ing, but not limited to, central processing units, data
26 input/output channels, main storage or memory, and peripheral
27 devices for systems control, data input, output, or temporary or

1 permanent storage of information, and associated reusable media
2 required by these devices and operating systems software. Title
3 insurers may include their net investment in their title plant.
4 Assets defined by sections 946 and 947 shall not be used to sat-
5 isfy more than 20% of this requirement. The sum of the liabili-
6 ties and reserves may be reduced by 1 or more of the following:

7 (a) A reinsurance balance recoverable or other credit due
8 from a reinsurer that complies with rule 402 of the general rules
9 of the insurance bureau, being R 500.402 of the Michigan adminis-
10 trative code, or other applicable rule promulgated by the commis-
11 sioner, to the extent that the balance recoverable or other
12 credit due may be used to offset a liability as authorized in an
13 insurer's annual statement concerning its affairs filed pursuant
14 to section 438.

15 (b) Policy loans secured by policies included in the liabil-
16 ities and reserves but not in excess of the cash surrender value
17 of the policies.

18 (c) Premium notes secured by letters of credit, security
19 trust funds, or unearned premium reserves.

20 (d) The net amount of life insurance premiums and annuity
21 considerations deferred and uncollected. Reduction under this
22 subdivision shall not be allowed for credit life and credit acci-
23 dent and health premiums deferred and uncollected, whether indi-
24 vidual or group, except as allowed pursuant to subdivision (e).

25 (e) Agents' balances or uncollected premiums owed directly
26 to the insurer or owed indirectly to the insurer through an
27 affiliated or controlled person, including credit insurance

1 premiums, whether individual or group, other than amounts by
2 which liabilities may be reduced in accordance with
3 subdivision (d), from an agent, agency, policyholder, or other
4 person, subject to the following conditions:

5 (i) This reduction shall only be allowed for agents' bal-
6 ances or uncollected premiums not due from an agent, agency, pol-
7 icyholder, or other person for more than 3 months.

8 (ii) This reduction shall only be allowed as to the amount
9 due from each agent, agency, policyholder, or other person to the
10 extent that the balance or uncollected premium does not exceed
11 10% of the sum of the insurer's liabilities and minimum capital
12 or minimum surplus.

13 (iii) The total amount by which the receivable from all
14 agents, agencies, single policyholders, or other persons, net of
15 ceded balances payable, exceeds 40% of the insurer's surplus as
16 regards policyholders shall not be used to reduce liabilities
17 under this subdivision. Premiums, agents' balances, and install-
18 ments booked but deferred and not yet due are excluded from the
19 40% limitation.

20 (f) Assets, liabilities, and reserves under this subsection
21 shall exclude assets, liabilities, and reserves included in sepa-
22 rate accounts established in accordance with section 925. The
23 value of income due and accrued in respect to these assets may be
24 included in the total amount. The assets shall not be valued at
25 more than the actual value as ascertained in a manner approved by
26 the commissioner, except those assets defined by sections 912,
27 914, 918, 934, 938, and 942 which have a fixed term and rate, if

1 amply secured and not in default as to principal and interest may
2 be valued as follows: if purchased at par, the par value; if
3 purchased above or below par, on the basis of the purchase price
4 adjusted so as to bring the value to par at maturity and so as to
5 yield in the meantime the effective rate of interest at which the
6 purchase was made. The purchase price shall not be taken at a
7 higher figure than the actual market value at the time of
8 purchase.

9 (g) Amounts receivable from a person to the extent such
10 amounts offset liabilities or amounts payable to that person.
11 Receivables and payables with respect to reinsurance may be
12 allowed so long as the reinsurance contract has a right of offset
13 provision. A reduction under this subdivision shall not be
14 allowed for agents' balances or uncollected premiums as defined
15 by subdivision (e).

16 (h) The commissioner may promulgate rules pursuant to the
17 administrative procedures act of 1969, Act No. 306 of the Public
18 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
19 Compiled Laws, to permit other assets not specifically defined in
20 this section to be used as qualified assets for purposes of this
21 subsection, as long as the assets are financially equivalent to
22 those assets defined in sections 910 to 947.

23 (2) The assets required by subsection (1) shall not include
24 more than 5% of such assets invested in, loaned to, receivable
25 from, secured by, leased or rented to, or deposited with 1 person
26 or invested in 1 parcel of real estate. This restriction shall
27 not apply to funds deposited with or cash in banks, savings and

1 loan institutions, or credit unions, or obligations of the United
2 States or any state, or agencies or instrumentalities of the
3 United States or any state, if the principal and interest are
4 fully guaranteed by the United States or any state. This
5 restriction shall not apply to cash or cash equivalent, including
6 certificates of deposit in chartered banks. In the case of an
7 alien insurer which is an insurer authorized to transact the
8 business of life insurance, for purposes of this subsection the
9 term "assets" means the total assets of such insurer, excluding
10 assets included in separate accounts, as reported in the total
11 business annual statement filed by the insurer with its domicili-
12 ary authority.

13 (3) The assets referred to in subsection (1) may include
14 assets invested in, loaned to, receivable from, secured by,
15 leased or rented to, or deposited with a person that is, directly
16 or indirectly, owned or controlled by the insurer or that,
17 directly or indirectly, owns, controls, or is affiliated with the
18 insurer. Two persons shall be considered to be affiliated if
19 they are both owned or controlled, directly or indirectly, by the
20 same person or by the same group of persons. Control shall be
21 presumed to exist if a person, directly or indirectly, owns, con-
22 trols, holds with the power to vote, or holds proxies, represent-
23 ing 10% or more of the voting securities of any other person, or
24 in the case of a mutual insurer, owns 10% or more of the mutual
25 insurer's policyholders' surplus through surplus notes, guarantee
26 fund certificates, or other evidences of indebtedness issued by
27 the mutual insurer.

1 (4) The value of controlled, owned, or affiliated entities,
2 for purposes of subsection (1), shall be calculated in accordance
3 with the following conditions and limitations:

4 (a) If the owned, affiliated, or controlled entity is an
5 insurer, the entity will be permitted as an asset only if the
6 entity is licensed to transact the business of insurance in this
7 state or, if not licensed to transact the business of insurance
8 in this state, if it possesses the qualifications to become
9 licensed in this state. The value of an affiliated or controlled
10 insurance subsidiary shall be the value of assets in excess of
11 liabilities as determined pursuant to this section prorated to
12 reflect the extent of the insurer's ownership or equity partici-
13 pation with the entity.

14 (b) If the owned, affiliated, or controlled entity is not an
15 insurer, the value of the entity shall be assets in excess of all
16 liabilities to the extent that the assets comply with
17 sections 910 to 947. The value shall be prorated to reflect the
18 insurer's ownership or equity participation in the entity.

19 However, if an insurer can demonstrate to the satisfaction of the
20 commissioner that other assets of this owned, affiliated, or con-
21 trolled entity are at least as secure as assets which comply with
22 sections 910 to 947, the assets may be included in calculating
23 the value of the entity.

24 (5) The amount for contingencies required by subsection (1)
25 shall be calculated in accordance with the following:

26 (a) The amount for contingencies required by subsection (1)
27 for insurers, other than an insurer authorized to transact life

1 insurance and an insurer transacting only title insurance, shall
2 equal the net premiums written in excess of 3.5 times the
3 insurer's surplus as regards policyholders reported by the
4 insurer in its current statement of financial condition filed
5 with the commissioner.

6 (b) For purposes of this section, net premiums written shall
7 equal gross premiums less return premiums, including policy and
8 membership fees written during the year, plus all premiums
9 assumed through reinsurance, less premiums ceded through
10 reinsurance.

11 (c) The 3.5 to 1 limitation, for those insurers required to
12 file financial statements other than on an annual basis, shall be
13 calculated by annualizing the net premiums as reported for
14 interim statements. An even premium volume shall be assumed
15 unless the insurer demonstrates to the satisfaction of the com-
16 missioner that another method will more accurately reflect the
17 insurer's projected annual premium volume. However, an alterna-
18 tive projection method which utilizes a projection factor for
19 surplus as regards policyholders shall not be acceptable.

20 (d) The amount for contingencies referred to in this section
21 for insurers authorized to transact life insurance and insurers
22 transacting only title insurance shall equal zero.

23 (e) Two or more insurers authorized to transact insurance in
24 this state may compute the amount for contingencies referred to
25 in this section on a consolidated basis and prorate the total
26 amount for contingencies to each insurer in proportion to the

1 premiums earned by each insurer, if either of the following
2 conditions exist:

3 (i) The insurers are affiliated through ownership, where
4 each insurer is wholly owned by or wholly owns 1 or more of the
5 other insurers in the group.

6 (ii) The insurers pool substantially all their business with
7 each other and the commissioner certifies that the computation on
8 a consolidated basis will more accurately reflect the financial
9 condition and affairs of the insurers.

10 (f) An insurer may write premiums in excess of the ratio
11 prescribed in subdivision (c) without incurring a contingency
12 reserve penalty if the insurer elects to deposit funds or securi-
13 ties of the kind described in section 912, registered in the name
14 of the state treasurer of Michigan, designated as exclusively
15 held and deposited for the sole benefit of Michigan policyhold-
16 ers, claimants, and creditors, in an amount, at market value,
17 equal to the greater of \$1,000,000.00 or the aggregate sum of
18 100% of Michigan direct unpaid losses and unpaid loss adjustment
19 expense plus 100% of Michigan direct unearned premiums. Direct
20 unpaid losses and unpaid loss adjustment expenses shall include a
21 provision for incurred but not reported losses and associated
22 loss adjustment expense. The deposit shall be a special deposit
23 and shall be subject to special deposit claims for the benefit of
24 Michigan policyholders, claimants, and creditors pursuant to the
25 uniform insurers liquidation act, being sections 7836 to 7868.
26 The deposit of funds required by this subdivision shall be
27 increased by adjustment each quarter. A decrease to the

1 deposited fund may be made annually only upon a satisfactory
2 showing by the insurer to the commissioner that a decrease in the
3 deposit is justified. The commissioner may require the special
4 deposits set forth in this subsection as a condition for any
5 insurer to transact insurance in this state if the commissioner
6 finds that the insurer meets any of the conditions set forth in
7 section 436.

8 (6) Compliance with subsection (1) is the obligation of each
9 insurer, fund, POOL, or fraternal benefit society authorized to
10 transact the business of insurance in this state. Failure to
11 comply shall limit the insurer, fund, POOL, or fraternal benefit
12 society under the remainder of this code. If, at any time fol-
13 lowing compliance with the requirements of this section, an
14 insurer, fund, POOL, or fraternal benefit society, fails to main-
15 tain compliance, the commissioner shall notify the insurer, fund,
16 POOL, or fraternal benefit society that it has failed to maintain
17 compliance with this section. Within 30 business days after
18 notification by the commissioner of noncompliance with the provi-
19 sions of this section, an insurer shall file a plan to restore
20 compliance with this section. Failure of the insurer to file a
21 plan shall create a presumption that the insurer does not meet
22 the requirements of this code with respect to surplus and
23 assets. The commissioner, upon written request by the insurer,
24 may grant a period of time within which to restore compliance.
25 The period of time may be granted only if the commissioner is
26 satisfied the insurer is safe, reliable, and entitled to public
27 confidence; is satisfied the insurer would suffer a material

1 financial loss from an immediate forced conversion of its assets;
2 and approves the plan filed by the insurer for restoring compli-
3 ance within the time granted. If the plan is not approved by the
4 commissioner, or if the plan is approved, and, at the end of 1
5 year the insurer still does not comply with the requirements of
6 this section, the commissioner may grant additional time to
7 comply, or the commissioner may suspend, revoke, or limit the
8 certificate of authority of the insurer pursuant to section 436.

9 Sec. 6510. ~~-(1)-~~ A limited liability pool shall not com-
10 mence business under this chapter until all of the following are
11 met:

12 (a) The pool has procured bona fide applications for insur-
13 ance together with the first premium in cash from at least 50
14 eligible persons for the business or class of businesses or pro-
15 fession or class of professions as defined in section 6506 which
16 the pool undertakes to write.

17 (b) The secretary and treasurer have given good and suffi-
18 cient bonds, approved by the commissioner, to the pool to be held
19 by the president of the pool, for the faithful performance of
20 their duties, which bonds shall each be in an amount at least
21 twice the amount of money liable to come into the hands of such
22 officer at any 1 time.

23 (c) The pool has accrued a contingency reserve deposit as
24 defined and described in section 6534.

25 (d) The pool has met the insurer requirements provided in
26 section 411.

1 (E) THE POOL HAS MET THE MINIMUM CAPITAL OR MINIMUM SURPLUS
2 REQUIRED TO BE MAINTAINED BY SECTIONS 408 AND 410.

3 (F) ~~(e)~~ The commissioner, after receipt of satisfactory
4 proof as to compliance with these and such other requirements as
5 he or she considers essential, has issued a certificate of
6 authority to the pool.

7 ~~(2) A limited liability pool formed under this chapter~~
8 ~~shall not be subject to the requirement provided in section 410.~~

9 SEC. 6512. THE COMMISSIONER SHALL REQUIRE A LIMITED LIABIL-
10 ITY POOL FORMED UNDER THIS CHAPTER TO CERTIFY THE LOSS RESERVES
11 OF THE POOL BY AN ACTUARY APPROVED BY THE COMMISSIONER.

12 SEC. 6514. THE RATES CHARGED BY A LIMITED LIABILITY POOL
13 FORMED UNDER THIS CHAPTER SHALL BE FILED IN ACCORDANCE WITH SEC-
14 TION 2408 AND SHALL BE SUBJECT TO THE PRIOR APPROVAL OF THE
15 COMMISSIONER.

16 SEC. 6516. (1) A LIMITED LIABILITY POOL FORMED UNDER THIS
17 CHAPTER SHALL PUT IN WRITING ALL UNDERWRITING RULES USED BY THE
18 INSURER AND SHALL FILE ITS UNDERWRITING RULES WITH THE COMMIS-
19 SIONER PRIOR TO THEIR USE IN THIS STATE.

20 (2) AS USED IN THIS SECTION, "UNDERWRITING RULES" MEANS THE
21 WRITTEN STATEMENTS, GUIDELINES, OR CRITERIA OF A LIMITED LIABIL-
22 ITY POOL, WHICH DESCRIBE THE STANDARDS UNDER WHICH THE LIMITED
23 LIABILITY POOL ISSUES, REFUSES TO ISSUE, RENEWS, REFUSES TO
24 RENEW, OR LIMITS COVERAGE FOR LIABILITY INSURANCE UNDER THIS
25 CHAPTER.

26 SEC. 6517. A LIMITED LIABILITY POOL FORMED UNDER THIS
27 CHAPTER MAY REINSURE ALL OR ANY PORTION OF ITS POTENTIAL

1 LIABILITY WITH REINSURERS LICENSED TO TRANSACT INSURANCE IN THIS
2 STATE OR APPROVED BY THE COMMISSIONER. A LIMITED LIABILITY POOL
3 SHALL NOT DIRECTLY OR INDIRECTLY REINSURE ALL OR ANY PORTION OF
4 ITS POTENTIAL LIABILITY WITH AN INSURER NOT AUTHORIZED TO TRANS-
5 ACT INSURANCE IN THIS STATE WITHOUT APPROVAL BY THE COMMISSIONER.

6 Sec. 6534. Every pool subject to this chapter shall main-
7 tain a contingency reserve at all times at least equal to ~~+1/10~~
8 1/4 of the total premium income for the preceding calendar year
9 but not less than \$300,000.00 and shall maintain a deposit with
10 the state treasurer ~~—~~ of the kind and amount and for the pur-
11 poses specified in section 411. The deposit with the state trea-
12 surer may be used by the pool for purposes of calculating the
13 contingency reserve. This contingency reserve shall be in addi-
14 tion to the ordinary reserves maintained for unpaid losses and
15 loss adjustment expenses, including those claims which have been
16 incurred but not reported and the reserve required under
17 section 6532.