

Act No. 548  
Public Acts of 1996  
Approved by the Governor  
January 15, 1997  
Filed with the Secretary of State  
January 15, 1997

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Senator Bennett

**ENROLLED SENATE BILL No. 1134**

AN ACT to amend sections 407, 1905, 7704, 7705, 7706, and 7911a of Act No. 218 of the Public Acts of 1956, entitled as amended "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 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 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 repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act," section 407 as amended and section 7911a as added by Act No. 501 of the Public Acts of 1982, section 1905 as amended by Act No. 228 of the Public Acts of 1994, and sections 7704, 7705, and 7706 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.407, 500.1905, 500.7704, 500.7705, 500.7706, and 500.7911a of the Michigan Compiled Laws; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. Sections 407, 1905, 7704, 7705, 7706, and 7911a of Act No. 218 of the Public Acts of 1956, section 407 as amended and section 7911a as added by Act No. 501 of the Public Acts of 1982, section 1905 as amended by Act No. 228 of the Public Acts of 1994, and sections 7704, 7705, and 7706 as amended by Act No. 302 of the Public Acts of 1989, being sections 500.407, 500.1905, 500.7704, 500.7705, 500.7706, and 500.7911a of the Michigan Compiled Laws, are amended to read as follows:

Sec. 407. An insurer that otherwise qualifies to transact insurance under this act may be authorized to transact any 1 kind or combination of kinds of insurance as defined in chapter 6 except:

(a) A life insurer is not authorized to transact any other kind of insurance except disability insurance as defined in section 606 unless it was engaged in transacting that other kind of insurance in this state prior to January 1, 1909.

(b) A reciprocal insurer is not authorized to transact life or health insurance.

Sec. 1905. (1) A person shall not solicit insurance, bind coverage, or in any other manner act as an agent or broker in the transaction of surplus lines insurance unless licensed under this chapter.

(2) A person shall not offer, solicit, make a quotation on, sell, or issue a policy of insurance, binder, or any other evidence of insurance with an unauthorized insurer except in compliance with this chapter.

(3) A person licensed as a resident agent in this state may obtain a surplus lines license by doing all of the following:

(a) Filing an application in the form and with the information as the commissioner may reasonably require to determine the ability of the applicant to satisfactorily act in accordance with this chapter.

(b) Completing an examination testing the applicant's understanding of this chapter, the surplus lines insurance business, and other chapters of this act, if required by the commissioner.

(c) Complying with sections 1204 to 1206.

(d) Agreeing to file with the commissioner, not later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed, and the amounts returned on the insurance canceled, under the license, for the preceding 6-month period ending December 31 and June 30, respectively; and at the time of filing the statement, paying to the commissioner the 2% tax on premiums written and, instead of the costs and expenses that may be imposed by the commissioner pursuant to this chapter, a 0.5% regulatory fee on premiums written as required by section 451.

(4) A surplus lines licensee may do any or all of the following:

(a) Place insurance on risks in this state with eligible unauthorized insurers.

(b) Act in the capacity of an agent or broker, as determined by the contractual relationship with the eligible unauthorized insurer or that insurer's legal representative.

(c) Place insurance on risks in this state, with unauthorized insurers that are not eligible unauthorized insurers, in strict compliance with section 1950. If the insurance is provided through the participation of several insurers and the licensee has reason to believe that a substantial portion of the insurance would be assumed by authorized or eligible unauthorized insurers, then, with respect to the unauthorized insurers not eligible, the insured or the insured's representative shall be informed as provided in section 1950(a).

(d) Engage in any other acts expressly and implicitly authorized by this chapter and this act.

(5) Before placement of insurance with an eligible unauthorized insurer, a licensee shall inform an insured or the insured's representative that coverage is being placed with an insurer not licensed in this state and that payment of loss may not be guaranteed in the event of insolvency of the eligible unauthorized insurer.

Sec. 7704. (1) This chapter shall provide coverage for the policies and contracts specified in subsection (2) to the following persons:

(a) To a person, other than nonresident certificate holders under group policies or contracts, who, regardless of where he or she resides, is the beneficiary, assignee, or payee of a person covered under subdivision (b).

(b) To a person who is an owner of, or certificate holder under, a policy or contract described in subsection (2), or, in the case of an unallocated annuity contract, to the person who is the contract holder, and which owner, certificate holder, or contract holder is 1 of the following:

(i) A resident.

(ii) Not a resident, if all of the following conditions are met:

(A) The insurer that issued the policy or contract is domiciled in this state.

(B) The insurer never held a license or certificate of authority in the states in which the person resides.

(C) Such states have associations similar to the association created by this chapter.

(D) The person is not eligible for coverage by those associations.

(iii) Not a resident, if both of the following conditions are met:

(A) The person was a resident at the time the coverage was obtained by the person.

(B) The person is not eligible for coverage by another guaranty association.

(2) Except as provided in subsection (3), this chapter provides coverage to a person specified in subsection (1) for direct, nongroup life, health, annuity, and supplemental policies or contracts, for certificates under direct group life, health, annuity, and supplemental policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter.

(3) This chapter does not provide coverage for the following:

(a) A portion of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder.

(b) A policy or contract of reinsurance, unless assumption certificates have been issued.

(c) A portion of a policy or contract to the extent that the rate of interest on which it is based exceeds the following:

(i) Averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for a lesser period if the policy or contract was issued less than 4 years before the association became obligated.

(ii) On and after the date on which the association becomes obligated with respect to the policy or contract, the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as most recently available.

(d) A plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in section 7001.

(ii) A minimum premium group insurance plan.

(iii) A stop-loss group insurance plan.

(iv) An administrative services only contract.

(e) A portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to a person, including the policy or contract holder, in connection with the service to or administration of the policy or contract.

(f) A policy or contract issued in this state by an insurer at a time when it did not have a certificate of authority to issue the policy or contract in this state.

(g) An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation.

(h) A portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(i) An amount that is not a contractual obligation including, but not limited to, an award of exemplary or punitive damages or statutory interest.

(4) The benefits for which the association may become liable shall not exceed the lesser of the following:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(b) With respect to any 1 life, regardless of the number of policies or contracts:

(i) \$300,000.00 in life insurance death benefits, but not more than \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance.

(ii) \$100,000.00 in health insurance benefits, including any net cash surrender and net cash withdrawal values.

(iii) \$100,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(c) With respect to each individual participating in a governmental retirement plan established under section 401(k), 403(b), or 457 of the internal revenue code of 1986, 26 U.S.C. 401, 403, and 457, covered by an unallocated annuity contract or the beneficiaries of each such individual, if deceased, in the aggregate, \$100,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values.

(d) With respect to any 1 contract holder covered by an unallocated annuity contract not included in subdivision (c), \$5,000,000.00 in benefits, irrespective of the number of contracts held by that contract holder.

(5) The association is not liable to expend more than the \$300,000.00 in the aggregate with respect to any 1 individual under subsection (4)(b) and (c).

Sec. 7705. As used in this chapter:

(a) "Account" means either of the 2 accounts created under section 7706.

(b) "Association" means the Michigan life and health insurance guaranty association created under section 7706.

(c) "Contractual obligation" means an obligation under covered policies.

(d) "Covered policy" means a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 7704.

(e) "Health insurance" means disability insurance as defined in section 606.

(f) "Impaired insurer" means a member insurer considered by the commissioner after May 1, 1982, to be potentially unable to fulfill the insurer's contractual obligations or is placed under an order of rehabilitation or conservation by a court of competent jurisdiction. Impaired insurer does not mean an insolvent insurer.

(g) "Insolvent insurer" means a member insurer which after May 1, 1982, becomes insolvent and is placed under an order of liquidation, by a court of competent jurisdiction with a finding of insolvency.

(h) "Member insurer" means a person authorized to transact a kind of insurance or annuity business in this state for which coverage is provided under section 7704 and includes an insurer whose certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include the following:

(i) A fraternal benefit society.

(ii) A cooperative plan insurer authorized under chapter 64.

(iii) A health maintenance organization authorized or licensed under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21098 of the Michigan Compiled Laws.

(iv) A mandatory state pooling plan.

(v) A mutual assessment or any entity that operates on an assessment basis.

(vi) A nonprofit dental care corporation operating under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws.

(vii) A nonprofit health care corporation operating under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

(viii) An insurance exchange.

(ix) Any entity similar to the entities described in this subdivision.

(i) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or a successor to that service.

(j) "Person" means an individual, corporation, partnership, association, or voluntary organization.

(k) "Premiums" means amounts received in a calendar year on covered policies or contracts less premiums, considerations, and deposits returned and less dividends and experience credits. The term "premiums" does not include an amount received for a policy or contract, or a portion of a policy or contract for which coverage is not provided under section 7704. However, accessible premiums shall not be reduced on account of sections 7704(3)(c) relating to interest limitations and 7704(4)(b), (c), and (d) relating to limitations with respect to any 1 individual, any 1 participant, and any 1 contract holder. Premiums shall not include a premium in excess of \$5,000,000.00 on an unallocated annuity contract not issued under a governmental retirement plan established under section 401(k), 403(b), or 457 of the internal revenue code of 1986, 26 U.S.C. 401, 403, and 457.

(l) "Resident" means a person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed. A person shall be considered a resident of only 1 state, which in the case of a person other than a natural person, shall be its principal place of business.

(m) "Supplemental contract" means an agreement entered into for the distribution of policy or contract proceeds.

(n) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of an annuity benefit guaranteed to an individual by an insurer under the contract or certificate. The term shall also include, but not be limited to, guaranteed investment contracts, deposit administration contracts, and contracts qualified under section 403(b) of the internal revenue code of 1986, 26 U.S.C. 403.

Sec. 7706. (1) There is created a nonprofit legal entity to be known as the Michigan life and health insurance guaranty association. A member insurer shall be and remain a member of the association as a condition of authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 7710 and shall exercise its powers through a board of directors established under section 7707. For purposes of administration and assessment the association shall maintain the following 2 accounts:

(a) The health insurance account.

(b) The life insurance and annuity account which includes the following subaccounts:

(i) A life insurance subaccount.

(ii) An annuity subaccount.

(iii) An unallocated annuity subaccount.

(2) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be open to the public upon majority vote of the board of directors of the association.

Sec. 7911a. Notwithstanding section 7911, a life or disability insurer shall not be a member of the association.

Section 2. Chapter 25 of Act No. 218 of the Public Acts of 1956, being sections 500.2501 to 500.2517 of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.