

Act No. 208
Public Acts of 2003
Approved by the Governor
November 25, 2003
Filed with the Secretary of State
November 26, 2003
EFFECTIVE DATE: November 26, 2003

STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003

Introduced by Reps. Stahl, Julian, Hummel, Robertson, Hune and Garfield

ENROLLED HOUSE BILL No. 4907

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 section 602 (MCL 500.602), as amended by 1989 PA 35, and by adding section 603.

The People of the State of Michigan enact:

Sec. 602. (1) "Life" insurance is insurance upon the lives and health of persons and every insurance pertaining thereto, and to grant, purchase, or dispose of annuities. Notwithstanding any other provision of law, life insurance includes insurance upon the lives of persons which insurance prepays the death benefit.

(2) Transaction of life insurance includes the issuance of policies of life and endowment insurance and contracts for the payment of annuities and pure endowments, and contracts supplemental to those that contain only those provisions relating to accident and sickness insurance as provide additional benefits for death or dismemberment or loss of sight by accident or as operate to safeguard those policies or contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

(3) All corporations, associations, partnerships, or individuals, doing business in this state under any charter, compact, agreement, or statute of this or any other state, involving an insurance, guaranty, contract, or pledge, for the payment of annuities or endowments, or for the payment of money to families, or representatives of policy or certificate holders or members, are considered life insurance companies within the meaning of the laws relating to life insurance within this state.

Sec. 603. (1) As used in this section:

(a) "Accelerated benefits" means benefits payable under a life insurance contract to a policyowner or certificateholder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider that reduce the death benefit otherwise payable under the life insurance contract and that are payable upon the occurrence of a single qualifying event that results in the payment of a benefit amount fixed at the time of acceleration.

(b) "Qualifying event" means 1 or more of the following:

(i) A medical condition that would result in a drastically limited life span as specified in the contract.

(ii) A medical condition that has required or requires extraordinary medical intervention including, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die.

(iii) A condition that usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life.

(iv) A medical condition that would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, but are not limited to, coronary artery disease resulting in an acute infarction or requiring surgery, permanent neurological deficit resulting from cerebral vascular accident, end stage renal failure, acquired immune deficiency syndrome, or other medical conditions that the commissioner has approved for any particular filing.

(v) Other qualifying events that the commissioner approves for a particular filing.

(2) An accelerated benefit rider and a life insurance policy with accelerated benefit provisions are primarily mortality risks rather than morbidity risks and are life insurance benefits subject to all of the following:

(a) Chapters 40 and 44.

(b) Shall provide the option to take the benefit as a lump sum and not as an annuity contingent upon the life of the insured.

(c) Shall have no restrictions on the use of the proceeds.

(d) If any death benefit remains after payment of an accelerated benefit, shall not affect the accidental death benefit provision, if any, by the payment of the accelerated benefit.

(e) Shall include the terminology "accelerated benefit" in the descriptive title and not be described or marketed as long-term care insurance or as providing long-term care benefits.

(3) Except as otherwise provided, the insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions is required to obtain from an assignee or irrevocable beneficiary a signed acknowledgment of concurrence for payout prior to the payment of the accelerated benefit. If the insurer making the accelerated benefit is itself the assignee under the policy, an acknowledgment is not required.

(4) An insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions shall provide a disclosure statement at the time of application and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. If a policyowner or certificateholder of an accelerated benefit rider or life insurance policy with accelerated benefit provisions requests an acceleration, the insurer shall send a statement to the policyowner or certificateholder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements, may be taxable, and that assistance should be sought from a personal tax advisor. If a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificateholder and irrevocable beneficiary. If the insurer agrees to accelerate death benefits, the insurer shall issue an amended schedule page to the policyholder to

reflect, or shall notify the certificateholder under a group policy of, any new, reduced in-force face amount of the contract.

(5) A written disclosure, including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant for an accelerated benefit rider or life insurance policy with accelerated benefit provisions. The description shall include an explanation of any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. For agent solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application. Acknowledgment of the disclosure shall be signed by the applicant and writing agent. For a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a notice that a full premium refund shall be received if the policy is returned to the company within the free look period. For group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificateholder.

(6) If there is a premium or cost of insurance charge, the insurer shall give the applicant for an accelerated benefit rider or life insurance policy with accelerated benefit provisions a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. For agent solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application. For a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered. For group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificateholder.

(7) An insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions with financing options other than as described in subsection (12)(b) shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. The insurer shall make a reasonable effort to assure that the certificateholder is aware of any additional premium or cost of insurance charge if the certificateholder is required to pay a charge. Upon request of the commissioner, an insurer shall furnish an actuarial demonstration disclosing the method of arriving at its cost for the accelerated benefit.

(8) The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificateholder is aware of any administrative expense charge if the certificateholder is required to pay the charge.

(9) An accelerated benefit provision shall be effective as follows:

(a) On the effective date of the policy or rider for accidents.

(b) No more than 30 days after the effective date of the policy or rider for illness.

(10) The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions may offer a waiver of premium for the accelerated benefit provision in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

(11) An insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions shall not unfairly discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy. An insurer shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

(12) The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions may do any of the following:

(a) Require a premium charge or cost of insurance charge for the accelerated benefit if based on sound actuarial principles. For group insurance, the additional cost may also be reflected in the experience rating.

(b) Pay a present value of the face amount. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of the current yield on 90-day treasury bills or the current maximum statutory adjustable policy loan interest rate.

(c) Accrue an interest charge on the amount of the accelerated benefits. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of the current yield on 90-day treasury bills or the current maximum statutory adjustable policy loan interest rate. The interest rate accrued on the portion of the lien that is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract.

(13) Except as otherwise provided in this subsection, if an accelerated benefit on an accelerated benefit rider or life insurance policy with accelerated benefit provisions is payable, there shall be no more than a pro rata reduction in the

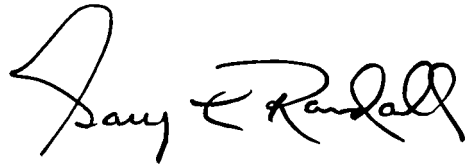
cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment. Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums, and any accrued interest may be considered a lien against the death benefit of the policy or rider and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans may be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

(14) If payment of an accelerated benefit on an accelerated benefit rider or life insurance policy with accelerated benefit provisions results in a pro rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

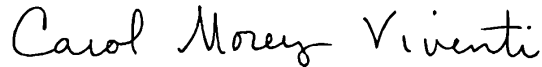
(15) For an accelerated benefit rider or life insurance policy with accelerated benefit provisions, a qualified actuary shall describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable. These descriptions and the actuarial memorandum shall be made available for examination by the commissioner upon request.

(16) If benefits are provided through the acceleration of benefits under group or individual life policies or riders to an accelerated benefit rider or life insurance policy with accelerated benefit provisions, policy reserves shall be determined in accordance with section 834. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American academy of actuaries. The actuary shall follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover policies upon which no claim has yet arisen and policies upon which an accelerated claim has arisen. For policies and certificates that provide actuarially equivalent benefits, additional reserves do not need to be established. Policy liens and policy loans, including accrued interest, represent assets of the insurer for statutory reporting purposes. For a policy on which the policy lien exceeds the policy's statutory reserve liability, the excess shall be held as a nonadmitted asset.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor