

Act No. 204
Public Acts of 2012
Approved by the Governor
June 26, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Rep. Shaughnessy

ENROLLED HOUSE BILL No. 4455

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 1910, 3171, 3172, 3173a, 3174, 3175, 3320, and 3330 (MCL 500.1910, 500.3171, 500.3172, 500.3173a, 500.3174, 500.3175, 500.3320, and 500.3330), section 1910 as added by 1980 PA 341, sections 3172 and 3175 as amended and section 3173a as added by 1984 PA 426, and section 3320 as amended by 1980 PA 461, and by adding sections 3101d and 3178; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1910. (1) Insurance shall not be placed by a licensee with an unauthorized insurer if coverage is available from an authorized insurer.

(2) There is a rebuttable presumption that the following coverages are available from an authorized insurer:

(a) No-fault automobile insurance, as required by section 3101, which is not written for a person who is self-insuring motor vehicles under section 3101d.

(b) Private passenger automobile physical damage coverage.

(c) Homeowners and property insurance on owner-occupied dwellings, the value of which is less than the maximum limits of coverage that are available for the property under the general rules of the Michigan basic property insurance association.

(d) Any coverage readily available from 3 or more authorized insurers, unless the authorized insurers quote a premium and terms not competitive with the premium and terms quoted by an unauthorized insurer.

(e) Worker's compensation insurance that is not written for an employer that is partially self-insured under section 611 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.611.

(3) There is a rebuttable presumption that the following coverages are unavailable from an authorized insurer:

(a) Coverages with respect to which 1 portion of the risk is acceptable to authorized insurers, but another portion of the same risk is not acceptable. The entire coverage may be placed with eligible unauthorized insurers if it can be shown that eligible unauthorized insurers will accept the entire coverage but not the rejected portion alone.

(b) Any coverage that the licensee is unable to procure after diligent search among authorized insurers.

(4) The commissioner shall maintain, on a current basis, a list of those lines of insurance for which coverages are determined by the commissioner to be generally unavailable in the authorized insurance market. Any person may request in writing that the commissioner add or remove a coverage from the current list. The commissioner shall grant or deny a request within 30 days after receiving the written request. The commissioner shall encourage dissemination of information regarding the availability of coverages for which the public interest necessitates additions to or deletions from the list. The list shall be published at least quarterly and shall be revised as required. The commissioner shall make the list available to all licensees and other members of the public, upon request.

Sec. 3101d. (1) A person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner under subsection (2).

(2) The commissioner may, in his or her discretion, on the application of a person who wishes to qualify under subsection (1), issue a certificate of self-insurance to the person if the commissioner is satisfied that the person has and will continue to have the ability to pay judgments obtained against the person.

(3) On not less than 5 days' notice and a hearing in accordance with the notice, the commissioner may on reasonable grounds cancel a certificate of self-insurance issued under this section. Failure to pay a judgment within 30 days after the judgment becomes final is a reasonable ground for the cancellation of a certificate of self-insurance.

Sec. 3171. (1) Until an assigned claims plan is approved under subsection (3), the secretary of state shall organize and maintain an assigned claims facility and plan. A self-insurer and insurer writing insurance as provided by this chapter in this state shall participate in the assigned claims plan. Costs incurred in the operation of the facility and the plan shall be allocated fairly among insurers and self-insurers. The secretary of state shall promulgate rules to implement the facility and plan in accordance with and subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After an assigned claims plan is approved under subsection (3), the secretary of state shall continue to maintain the assigned claims facility and plan organized under this subsection as required by the plan approved under subsection (3).

(2) The Michigan automobile insurance placement facility shall adopt and maintain an assigned claims plan. A self-insurer or insurer writing insurance as provided by this chapter in this state shall participate in the assigned claims plan. Costs incurred in the administration of the assigned claims plan shall be allocated fairly among insurers and self-insurers. On approval under subsection (3), the Michigan automobile insurance placement facility shall implement the assigned claims plan.

(3) By August 1, 2012, the Michigan automobile insurance placement facility board of governors shall adopt an assigned claims plan by majority vote and shall submit it to the commissioner for his or her approval. The commissioner shall review the plan within 30 days and respond in writing as provided in this subsection. If the commissioner finds that the plan meets the requirements of this chapter, he or she shall approve it. If the commissioner finds that the plan fails to meet the requirements of this chapter, he or she shall state in what respects the plan is deficient and shall afford the Michigan automobile insurance placement facility board of governors 10 days within which to correct the deficiency. If the commissioner and the Michigan automobile insurance placement facility board of governors fail to agree that the plan submitted, with any corrections, meets the requirements of this chapter, either party to the controversy may submit the issue to the circuit court for Ingham county for a determination. If the commissioner fails to render a written decision on the assigned claims plan within 30 days after receipt of the plan, the plan shall be considered approved. The Michigan automobile insurance placement facility shall forward a plan approved under this subsection to the secretary of state. The plan takes effect on approval by the commissioner.

(4) Amendments to the assigned claims plan approved under subsection (3) shall be adopted by the board of governors and approved by the commissioner as provided in subsection (3). Until the date established in the plan under subsection (5)(c), the board of governors shall give the secretary of state advance notice of any proposed amendments to the plan.

(5) The plan adopted under subsection (3) shall include all of the following:

(a) The date on and after which all claims for benefits through the assigned claims plan under section 3172 shall be filed with the Michigan automobile insurance placement facility.

(b) The date by which existing claims that have been assigned under the plan maintained by the secretary of state under subsection (1) will be transferred to the Michigan automobile insurance placement facility to be included in and administered under the adopted plan.

(c) A date by which all functions of the assigned claims plan maintained by the secretary of state, with the exception of driver license and vehicle sanctions, will be transferred to the Michigan automobile insurance placement facility.

(d) Requirements for the transfer of records relating to assigned claims from the secretary of state to the Michigan automobile insurance placement facility and the disposition by the secretary of state of records relating to assigned claims.

(e) Reimbursement of the secretary of state by the Michigan automobile insurance placement facility for all of the following:

(i) Expenses of developing the plan under subsection (6).

(ii) Expenses of transferring operations from the assigned claims facility to the Michigan automobile insurance placement facility.

(iii) Expenses incurred by the secretary of state after the transfer of operations from the assigned claims facility to the Michigan automobile insurance placement facility for operations performed by the secretary of state on behalf of the Michigan automobile insurance placement facility.

(6) The secretary of state and the Michigan automobile insurance placement facility shall cooperate and mutually develop the aspects of the plan to be adopted under subsection (3) that are required under subsection (5).

(7) The secretary of state shall provide the Michigan automobile insurance placement facility with all information necessary for the operation of the assigned claims fund.

(8) One year after the date established under subsection (5)(c), the commissioner shall report in writing to the senate and house of representatives standing committees on insurance issues on the cost of the transfer of the assigned claims plan to the Michigan automobile insurance placement facility and the effectiveness of operations under the new plan.

(9) As used in this section:

(a) "Michigan automobile insurance placement facility" means the Michigan automobile insurance placement facility created under chapter 33.

(b) "Michigan automobile insurance placement facility board of governors" means the board of governors created under section 3310.

Sec. 3172. (1) A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In that case, unpaid benefits due or coming due may be collected under the assigned claims plan and the insurer to which the claim is assigned is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

(2) Except as otherwise provided in this subsection, personal protection insurance benefits, including benefits arising from accidents occurring before March 29, 1985, payable through the assigned claims plan shall be reduced to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits, to a person claiming personal protection insurance benefits through the assigned claims plan. This subsection only applies if the personal protection insurance benefits are payable through the assigned claims plan because no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. As used in this subsection, "sources" and "benefit sources" do not include the program for medical assistance for the medically indigent under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or insurance under the health insurance for the aged act, title XVIII of the social security act, 42 USC 1395 to 1395kkk-1.

(3) If the obligation to provide personal protection insurance benefits cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, and if a method of voluntary payment of benefits cannot be agreed upon among or between the disputing insurers, all of the following apply:

(a) The insurers who are parties to the dispute shall, or the claimant may, immediately notify the Michigan automobile insurance placement facility of their inability to determine their statutory obligations.

(b) The claim shall be assigned by the Michigan automobile insurance placement facility to an insurer and the insurer shall immediately provide personal protection insurance benefits to the claimant or claimants entitled to benefits.

(c) An action shall be immediately commenced on behalf of the Michigan automobile insurance placement facility by the insurer to whom the claim is assigned in circuit court to declare the rights and duties of any interested party.

(d) The insurer to whom the claim is assigned shall join as parties defendant to the action commenced under subdivision (c) each insurer disputing either the obligation to provide personal protection insurance benefits or the equitable distribution of the loss among the insurers.

(e) The circuit court shall declare the rights and duties of any interested party whether or not other relief is sought or could be granted.

(f) After hearing the action, the circuit court shall determine the insurer or insurers, if any, obligated to provide the applicable personal protection insurance benefits and the equitable distribution, if any, among the insurers obligated, and shall order reimbursement to the Michigan automobile insurance placement facility from the insurer or insurers to the extent of the responsibility as determined by the court. The reimbursement ordered under this subdivision shall include all benefits and costs paid or incurred by the Michigan automobile insurance placement facility and all benefits and costs paid or incurred by insurers determined not to be obligated to provide applicable personal protection insurance benefits, including reasonable, actually incurred attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court.

Sec. 3173a. (1) The Michigan automobile insurance placement facility shall make an initial determination of a claimant's eligibility for benefits under the assigned claims plan and shall deny an obviously ineligible claim. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.

(2) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

Sec. 3174. A person claiming through the assigned claims plan shall notify the Michigan automobile insurance placement facility of his or her claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect. The Michigan automobile insurance placement facility shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned. An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later.

Sec. 3175. (1) The assignment of claims under the assigned claims plan shall be made according to procedures established in the assigned claims plan that assure fair allocation of the burden of assigned claims among insurers doing business in this state on a basis reasonably related to the volume of automobile liability and personal protection insurance they write on motor vehicles or the number of self-insured motor vehicles. An insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act. An insurer is entitled to reimbursement by the Michigan automobile insurance placement facility for the payments, the established loss adjustment cost, and an amount determined by use of the average annual 90-day United States treasury bill yield rate, as reported by the council of economic advisers as of December 31 of the year for which reimbursement is sought, as follows:

(a) For the calendar year in which claims are paid by the insurer, the amount shall be determined by applying the specified annual yield rate specified in this subsection to 1/2 of the total claims payments and loss adjustment costs.

(b) For the period from the end of the calendar year in which claims are paid by the insurer to the date payments for the operation of the assigned claims plan are due, the amount shall be determined by applying the annual yield rate specified in this subsection to the total claims payments and loss adjustment costs multiplied by a fraction, the denominator of which is 365 and the numerator of which is equal to the number of days that have elapsed between the end of the calendar year and the date payments for the operation of the assigned claims plan are due.

(2) The insurer to whom claims have been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties and account to the Michigan automobile insurance placement facility for the rights and shall assign the rights to the Michigan automobile insurance placement facility on reimbursement by the Michigan automobile insurance placement facility. This section does not preclude an insurer from entering into reasonable compromises and settlements with third parties against whom rights to indemnity or reimbursement exist. The insurer shall account to

the Michigan automobile insurance placement facility for any compromises and settlements. The procedures established under the assigned claims plan shall establish reasonable standards for enforcing rights to indemnity or reimbursement against third parties, including a standard establishing an amount below which actions to preserve and enforce the rights need not be pursued.

(3) An action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant.

(4) Payments for the operation of the assigned claims plan not paid by the due date shall bear interest at the rate of 20% per annum.

(5) The Michigan automobile insurance placement facility may enter into a written agreement with the debtor permitting the payment of the judgment or acknowledgment of debt in installments payable to the Michigan automobile insurance placement facility. A default in payment of installments under a judgment as agreed subjects the debtor to suspension or revocation of his or her motor vehicle license or registration in the same manner as for the failure by an uninsured motorist to pay a judgment by installments under section 3177.

Sec. 3178. After an assigned claims plan is approved under section 3171(3), the Michigan automobile insurance placement facility board of governors shall report annually to the commissioner and the commissioner shall report to the standing committees of the senate and house of representatives with primary jurisdiction over insurance matters on the effectiveness of the assigned claims plan, including detailed demographic information on the individuals who are submitting claims and whose claims are being assigned.

Sec. 3320. (1) The facility, with respect to private passenger nonfleet automobiles, shall provide for all of the following:

(a) The equitable distribution of applicants to designated participating members in accordance with the plan of operation.

(b) Issuance of policies of automobile insurance to qualified applicants as provided in the plan of operation.

(c) The appointment of a number of participating members appointed by the facility to act on behalf of the facility for the distribution of risks or for the servicing of insureds, as provided in the plan of operation and consistent with this section. The facility shall do all of the following:

(i) Appoint those members having the 5 highest participation ratios, as defined in section 3303(e)(i), to act on behalf of the facility.

(ii) Appoint other members to act on behalf of the facility who volunteer to so act and who meet reasonable servicing standards established in the plan of operation, up to a maximum of 5 in addition to those appointed pursuant to subparagraph (i).

(iii) Appoint additional members to act on behalf of the facility as necessary to do all of the following:

(A) Assure convenient access to the facility for all citizens of this state.

(B) Assure a reasonable quality of service for persons insured through the facility.

(C) Assure a reasonable representation of the various insurance marketing systems.

(D) Assure reasonable claims handling.

(E) Assure a reasonable range of choice of insurers for persons insured through the facility.

(d) Standards and monitoring procedures to assure that participating members acting on behalf of the facility do all of the following:

(i) Provide service to persons insured through the facility equivalent to the service provided to persons insured by the insurer voluntarily.

(ii) Handle claims in an efficient and reasonable manner.

(iii) Provide internal review procedures for persons insured through the facility identical to those established pursuant to chapter 21 for persons insured voluntarily.

(e) The establishment of procedures and guidelines for the issuance of binders by agents upon receipt of the application for coverage.

(f) Issuance of policies of automobile insurance to qualified applicants whose licenses to operate a vehicle have been suspended under section 310, 310d, 315, 321a, 324, 328, 512, 515, 625, 625b, 625f, 748, 801c, or 907 of the Michigan vehicle code, 1949 PA 300, MCL 257.310, 257.310d, 257.315, 257.321a, 257.324, 257.328, 257.512, 257.515, 257.625, 257.625b, 257.625f, 257.748, 257.801c, and 257.907, as provided in the plan of operation. These policies may be canceled after a period of not less than 30 days if the insured fails to produce proof that the suspended license has been reinstated.

(g) Administration of the assigned claims plan as required under chapter 31.

(2) Automobile insurance made available under this section shall be equivalent to the automobile insurance normally available in the voluntary competitive market in forms as approved by the commissioner with any changes, additions, and amendments adopted by the board of governors and approved by the commissioner.

Sec. 3330. (1) The board of governors has the power to direct the operation of the facility, including, at a minimum, the power to do all of the following:

(a) To sue and be sued in the name of the facility. A judgment against the facility shall not create any liabilities in the individual participating members of the facility.

(b) To delegate ministerial duties, to hire a manager, to hire legal counsel, and to contract for goods and services from others.

(c) To assess participating members on the basis of participation ratios pursuant to section 3303 to cover anticipated costs of operation and administration of the facility, to provide for equitable servicing fees, and to share losses, profits, and expenses pursuant to the plan of operation.

(d) To impose limitations on cancellation or nonrenewal by participating members of facility-placed business, in addition to the limitations imposed by chapters 21 and 32.

(e) To provide for a limited number of participating members to receive equitable distribution of applicants; or to provide for a limited number of participating members to service applicants in a plan of sharing of losses in accordance with section 3320(1)(c) and the plan of operation.

(f) To provide for standards of performance of service for the participating members designated under subdivision (e).

(g) To adopt a plan of operation and any amendments to the plan, consistent with this chapter, necessary to assure the fair, reasonable, equitable, and nondiscriminatory manner of administering the facility, including compliance with chapter 21, and to provide for any other matters necessary or advisable to implement this chapter, including matters necessary to comply with the requirements of chapter 21.

(h) To assess self-insurers and insurers consistent with chapter 31 and the assigned claims plan approved under section 3171.

(2) The board of governors shall institute or cause to be instituted by the facility or on its behalf an automatic data processing system for recording and compiling data relative to individuals insured through the facility. An automatic data processing system established under this subsection shall, to the greatest extent possible, be made compatible with the automatic data processing system maintained by the secretary of state, to provide for the identification and review of individuals insured through the facility.

Enacting section 1. Sections 3172, 3173a, 3174, and 3175 of the insurance code of 1956, 1956 PA 218, MCL 500.3172, 500.3173a, 500.3174, and 500.3175, as amended by this amendatory act, take effect on the date the assigned claims plan is approved by the insurance commissioner under section 3171(3) of the insurance code of 1956, 1956 PA 218, MCL 500.3171.

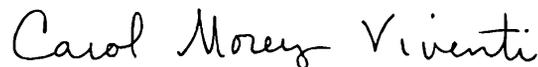
Enacting section 2. Section 1910 of the insurance code of 1956, 1956 PA 218, MCL 500.1910, as amended by this amendatory act, and section 3101d of the insurance code of 1956, 1956 PA 218, as added by this amendatory act, take effect January 1, 2013.

Enacting section 3. Section 531 of the Michigan vehicle code, 1949 PA 300, MCL 257.531, is repealed effective January 1, 2013.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor