

Act No. 219
Public Acts of 1995
Approved by the Governor
November 30, 1995
Filed with the Secretary of State
December 1, 1995

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Reps. Llewellyn and Bush

ENROLLED HOUSE BILL No. 5014

AN ACT to amend section 1343 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," as amended by Act No. 443 of the Public Acts of 1994, being section 500.1343 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 1343 of Act No. 218 of the Public Acts of 1956, as amended by Act No. 443 of the Public Acts of 1994, being section 500.1343 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 1343. (1) Each year the commissioner shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following those dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination, the commissioner shall consider the following factors in addition to the provisions of section 436a:

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments.

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(c) The quality and liquidity of investments in subsidiaries. The commissioner may discount any of those investments or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants.

(2) If the commissioner determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the commissioner shall limit or disallow the payment of shareholder dividends.

(3) Shareholder dividends shall be declared or paid only from earned surplus, unless the commissioner approves the dividend prior to payment. The commissioner shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer, or the insurer's net income if the insurer is not a life insurer, for the 12-month period ending December 31 of the immediately preceding year. For purposes of this subsection, earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets.

(4) Any domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the commissioner within 5 business days after declaring the dividend and at least 10 business days beginning from the date of receipt by the commissioner before the payment.

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration and has not disapproved or has approved the payment within that period. If the commissioner, applying the criteria in subsection (1), determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the commissioner may, prior to the expiration of the 30-day period described in this subsection, enter an order prohibiting the payment of the dividend.

(6) An extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31 of the immediately preceding year but shall not include pro rata distributions of any class of the insurer's own securities.

(7) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration shall confer no rights upon shareholders until the commissioner has approved or has not disapproved the payment of the dividend or distribution within the 30-day period.

(8) Notwithstanding subsections (5) through (7), a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards set forth in section 403.

(9) An insurer aggrieved by the commissioner's determination or order under this section is entitled to a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to be held no later than 10 days after receipt of the insurer's request. The commissioner's determination or order shall remain in effect except as modified by the commissioner during the pendency of the hearing and until a final decision by the commissioner. The commissioner shall render a final decision within 30 days after the conclusion of the hearing.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.