

**REPRINT  
SUBSTITUTE FOR  
HOUSE BILL NO. 4811**

(As passed the House, October 30, 2001)  
(As passed the Senate, December 5, 2001)

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 5028, 5412, and 7918 (MCL 500.5028,  
500.5412, and 500.7918), section 7918 as amended by 1980 PA 41,  
and by adding section 121.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 121. (1) A PERSON AND A SURETY MAY AGREE TO DEPOSIT  
2 ANY ASSET THAT THE SURETY MAY BE HELD RESPONSIBLE FOR INTO A  
3 FINANCIAL INSTITUTION THAT IS AUTHORIZED TO TRANSACT BUSINESS IN  
4 THIS STATE IN SUCH MANNER AS TO PREVENT THE WITHDRAWAL OF THE  
5 ASSET OR ANY PART OF THE ASSET EXCEPT WITH THE WRITTEN CONSENT OF  
6 THE SURETY OR AN ORDER OF THE COURT MADE ON SUCH NOTICE TO THE  
7 PERSON AND THE SURETY AS THE COURT DIRECTS.

8        (2) A PERSON ACTING IN A FIDUCIARY CAPACITY WHO IS REQUIRED  
9 TO OBTAIN A BOND MAY INCLUDE THE COST OF OBTAINING THE BOND AS

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1 PART OF THE EXPENSE OF ACTING AS A FIDUCIARY IF ALLOWED BY THE  
2 COURT TO WHICH THE FIDUCIARY IS REQUIRED TO ACCOUNT AND SO LONG  
3 AS THE COST DOES NOT EXCEED 1% ANNUALLY OF THE BOND AMOUNT OR AN  
4 AMOUNT OTHERWISE APPROVED BY THE COMMISSIONER. THE SURETY ON A  
5 BOND UNDER THIS SUBSECTION MAY APPLY TO THE COURT FOR AN ORDER  
6 RELIEVING THE SURETY OF LIABILITY FOR FUTURE ACTS OF THE  
7 FIDUCIARY. FOLLOWING NOTICE AND A HEARING, THE COURT MAY ENTER  
8 AN ORDER DISCHARGING THE SURETY FROM LIABILITY ARISING OUT OF  
9 ACTS OR OMISSIONS OCCURRING AFTER THE DATE OF THE ORDER ON SUCH  
10 TERMS AND CONDITIONS AS THE COURT CONSIDERS NECESSARY TO PROTECT  
11 THE FIDUCIARY ESTATE AND ITS BENEFICIARIES.

12 (3) A PERSON REQUIRED TO FURNISH A BOND MAY USE ANY SURETY  
13 THAT HOLDS A CERTIFICATE OF AUTHORITY ISSUED UNDER THIS CHAPTER  
14 AND SO LONG AS THE AMOUNT OF THE BOND IS WITHIN THE SURETY'S RISK  
15 LIMITATION UNDER SECTION 640.

16 (4) UPON PAYMENT OF THE OBLIGATION SECURED BY THE BOND, A  
17 SURETY IS SUBROGATED TO THE RIGHTS OF THE PARTY TO WHOM IT MADE  
18 PAYMENT INCLUDING ANY SECURITY OR PRIORITY TO WHICH ITS SUBROGOR  
19 WAS ENTITLED.

20 (5) THE CORPORATE SURETY ON A BOND SHALL BE RELEASED OR DIS-  
21 CHARGED FROM ITS LIABILITY ON THE SAME TERMS AND CONDITIONS AS  
22 ARE APPLICABLE TO THE RELEASE OR DISCHARGE OF INDIVIDUAL  
23 SURETIES. A SURETY HAS ALL RIGHTS, REMEDIES, AND RELIEF TO WHICH  
24 AN INDIVIDUAL GUARANTOR OR INDEMNITOR WOULD BE ENTITLED.

25 Sec. 5028. (1) The incorporators shall, after the filing  
26 and approval of ~~such~~ THE REQUIRED articles, ~~as aforesaid,~~

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1 proceed to the completion of organization of the proposed  
2 insurer.

3       (2) A stock corporation shall at once open its books of sub-  
4 scription to the capital stock, and ~~no~~ A certificate of author-  
5 ity shall NOT be issued by the commissioner to ~~any such~~ THE  
6 corporation until it ~~shall have~~ HAS issued stock certificates  
7 representing the minimum capitalization ~~as set forth in~~ UNDER  
8 its articles of incorporation ~~,~~ and ~~shall have~~ HAS collected  
9 in cash both its minimum capital ~~,~~ and any premium ~~thereon~~  
10 for surplus requirements. ~~;~~ and if such IF capital stock is not  
11 ~~so~~ subscribed and paid for ~~,~~ as above provided, AS PROVIDED  
12 IN THIS SUBSECTION within ~~the period of~~ 1 year from the opening  
13 of ~~such~~ THE books, ~~such~~ THE corporation ~~shall proceed fur-~~  
14 ~~ther in such sale of stock only~~ MAY ONLY SELL STOCK on petition  
15 to ~~,~~ and consent by the commissioner. ~~,~~ who may THE  
16 COMMISSIONER, if public policy warrants, MAY extend ~~such time~~  
17 THIS 1-YEAR PERIOD for a period of 3 months ~~;~~ and upon like  
18 AND, AFTER petition, ~~again extend such time~~ for a second period  
19 of 3 months. ~~;~~ and if IF at the expiration of 18 months ~~,~~ the  
20 corporation ~~shall not have~~ HAS NOT met the ~~above~~ requirements  
21 OF THIS SUBSECTION, the commissioner shall proceed to liquidate  
22 ~~such~~ THE corporation through receivership proceedings as pre-  
23 scribed by chapter ~~78~~ 81.

24       (3) A mutual corporation shall at once open books to receive  
25 propositions and enter into agreements as specified in the chap-  
26 ter under which it intends to operate. The acquisition of  
27 members shall proceed for ~~such~~ THE length of time, and be

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1 subject to ~~such~~ periods of time extension ~~,~~ and ~~such~~  
2 liquidation proceedings, as ~~is above provided for stock~~  
3 ~~corporations~~ PROVIDED IN SUBSECTION (2).

4       Sec. 5412. If at any time it ~~shall appear~~ APPEARS from an  
5 examination of the insurer or from any statement filed by ~~it~~  
6 THE INSURER that the number of risks insured, ~~or~~ the number of  
7 policies in force, or the number of members or the amount of pre-  
8 miums on insurance in force are below the number and amounts  
9 required under section 5408, ~~on organization,~~ the commissioner  
10 shall issue an order directing the insurer ~~,~~ within a period of  
11 90 days ~~thereafter~~ to secure bona fide applications for insur-  
12 ance in ~~such~~ THE insurer, together with the NECESSARY premiums,  
13 ~~therefor,~~ from persons who, together with the existing members,  
14 shall equal the number of members required under section 5408 and  
15 whose insurance policies, together with those in force, cover the  
16 number of risks and provide for the amount of insurance ~~so~~  
17 required upon organization. ~~In the event that~~ IF the insurer  
18 does not within ~~such~~ THIS period become entitled to issue poli-  
19 cies, the commissioner may in his OR HER discretion take proceed-  
20 ings for the liquidation of ~~such~~ THE insurer ~~under the provi-~~  
21 ~~sions of chapter 78~~ AS PROVIDED IN CHAPTER 81.

22       Sec. 7918. (1) The association may borrow funds when neces-  
23 sary to implement this act.

24       (2) The association, either in its own name or through a  
25 servicing facility, may sue or be sued, and may use the courts to  
26 assert or defend any rights the association may have under this

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1 chapter, to the extent necessary to fully exercise its rights and  
2 perform its duties under, and to implement, this chapter.

3       (3) The association may retain and employ legal counsel in  
4 its discretion to represent the association in all respects.

5       (4) Upon request of the commissioner, consent of the associ-  
6 ation, and appointment by the court, the association may act as  
7 deputy receiver in delinquency proceedings under chapter ~~78~~  
8 81.

9       Enacting section 1. This amendatory act does not take  
10 effect unless Senate Bill No. 494 of the 91st Legislature is  
11 enacted into law.