

Act No. 182  
Public Acts of 2001  
Approved by the Governor  
December 20, 2001  
Filed with the Secretary of State  
December 21, 2001  
EFFECTIVE DATE: December 21, 2001

**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2001**

Introduced by Rep. Hager

# **ENROLLED HOUSE BILL No. 4811**

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 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 repeal acts and parts of acts; and to provide penalties for the violation of this act," 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:*

Sec. 121. (1) A person and a surety may agree to deposit any asset that the surety may be held responsible for into a financial institution that is authorized to transact business in this state in such manner as to prevent the withdrawal

of the asset or any part of the asset except with the written consent of the surety or an order of the court made on such notice to the person and the surety as the court directs.

(2) A person acting in a fiduciary capacity who is required to obtain a bond may include the cost of obtaining the bond as part of the expense of acting as a fiduciary if allowed by the court to which the fiduciary is required to account and so long as the cost does not exceed 1% annually of the bond amount or an amount otherwise approved by the commissioner. The surety on a bond under this subsection may apply to the court for an order relieving the surety of liability for future acts of the fiduciary. Following notice and a hearing, the court may enter an order discharging the surety from liability arising out of acts or omissions occurring after the date of the order on such terms and conditions as the court considers necessary to protect the fiduciary estate and its beneficiaries.

(3) A person required to furnish a bond may use any surety that holds a certificate of authority issued under this chapter and so long as the amount of the bond is within the surety's risk limitation under section 640.

(4) Upon payment of the obligation secured by the bond, a surety is subrogated to the rights of the party to whom it made payment including any security or priority to which its subrogor was entitled.

(5) The corporate surety on a bond shall be released or discharged from its liability on the same terms and conditions as are applicable to the release or discharge of individual sureties. A surety has all rights, remedies, and relief to which an individual guarantor or indemnitor would be entitled.

Sec. 5028. (1) The incorporators shall, after the filing and approval of the required articles, proceed to the completion of organization of the proposed insurer.

(2) A stock corporation shall at once open its books of subscription to the capital stock, and a certificate of authority shall not be issued by the commissioner to the corporation until it has issued stock certificates representing the minimum capitalization under its articles of incorporation and has collected in cash both its minimum capital and any premium for surplus requirements. If capital stock is not subscribed and paid for as provided in this subsection within 1 year from the opening of the books, the corporation may only sell stock on petition to and consent by the commissioner. The commissioner, if public policy warrants, may extend this 1-year period for a period of 3 months and, after petition, for a second period of 3 months. If at the expiration of 18 months the corporation has not met the requirements of this subsection, the commissioner shall proceed to liquidate the corporation through receivership proceedings as prescribed by chapter 81.

(3) A mutual corporation shall at once open books to receive propositions and enter into agreements as specified in the chapter under which it intends to operate. The acquisition of members shall proceed for the length of time, and be subject to periods of time extension and liquidation proceedings, as provided in subsection (2).

Sec. 5412. If at any time it appears from an examination of the insurer or from any statement filed by the insurer that the number of risks insured, the number of policies in force, or the number of members or the amount of premiums on insurance in force are below the number and amounts required under section 5408, the commissioner shall issue an order directing the insurer within a period of 90 days to secure bona fide applications for insurance in the insurer, together with the necessary premiums, from persons who, together with the existing members, shall equal the number of members required under section 5408 and whose insurance policies, together with those in force, cover the number of risks and provide for the amount of insurance required upon organization. If the insurer does not within this period become entitled to issue policies, the commissioner may in his or her discretion take proceedings for the liquidation of the insurer as provided in chapter 81.

Sec. 7918. (1) The association may borrow funds when necessary to implement this act.

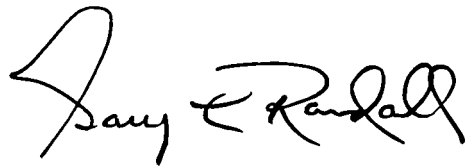
(2) The association, either in its own name or through a servicing facility, may sue or be sued, and may use the courts to assert or defend any rights the association may have under this chapter, to the extent necessary to fully exercise its rights and perform its duties under, and to implement, this chapter.

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

(4) Upon request of the commissioner, consent of the association, and appointment by the court, the association may act as deputy receiver in delinquency proceedings under chapter 81.

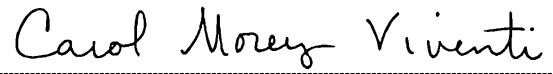
Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 494 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.