

Act No. 655
Public Acts of 2002
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Senator Sanborn

ENROLLED SENATE BILL No. 883

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," (MCL 500.100 to 500.8302) by adding chapter 16.

CHAPTER 16. Creditor-Placed Insurance

Sec. 1601. (1) This chapter applies to an insurer or producer transacting creditor-placed insurance as defined in this chapter.

(2) All creditor-placed insurance written in connection with credit transactions for personal, family, or household purposes is subject to the provisions of this chapter, except for the following:

- (a) Transactions involving extensions of credit primarily for business or commercial purposes.
- (b) Insurance on collateralized real property.
- (c) Insurance offered by the creditor and elected by the debtor at the debtor's option.
- (d) Insurance for which no specific charge is made to the debtor or the debtor's account.
- (e) Blanket insurance, whether paid for by the debtor or the creditor.

Sec. 1603. This chapter does not create or imply a private cause of action for violation of this chapter and does not extinguish any debtor rights available under common law or other state statute.

Sec. 1605. As used in this chapter:

(a) "Actual cash value" means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.

(b) "Blanket insurance" means insurance that provides coverage on collateral as defined in a policy issued to a creditor, without specifically listing the collateral covered.

(c) "Collateral" means personal property that is pledged as security for the satisfaction of a debt.

(d) "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.

(e) "Credit transaction" means a transaction by the terms of which the repayment of money loaned or credit commitment made, or payment of goods, services, or properties sold or leased, is to be made at a future date or dates.

(f) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of a lender, vendor, or lessor.

(g) "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense, or damage to collateralized personal property as a result of fire, theft, collision, or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by limited dual interest insurance. Creditor-placed insurance is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required physical damage insurance, with the cost of the coverage being charged to the debtor. It is either single interest insurance or limited dual interest insurance.

(h) "Debtor" means the borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction.

(i) "Insurance tracking" means monitoring evidence of insurance on collateralized credit transactions to determine whether insurance required by the credit agreement has lapsed, and communicating with debtors concerning the status of insurance coverage.

(j) "Lapse" means that the insurance coverage required by the credit agreement is not in force.

(k) "Limited dual interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing the debtor's credit transaction. Limited dual interest insurance waives the 3 conditions for loss payment under single interest insurance and extends coverage on the collateral while in the possession of the debtor.

(l) "Loss ratio" means the ratio of incurred losses to earned premium.

(m) "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned charges.

(n) "Producer" means a person who receives a commission for insurance placed or written or who, on behalf of an insurer or creditor, solicits, negotiates, effects, procures, delivers, renews, continues, or binds policies of insurance to which this chapter applies, but does not include the following:

(i) A regular salaried officer, employee, or other representative of an insurer who devotes substantially all working time to activities other than those specified in this subdivision and who receives no compensation that is directly dependent on the amount of insurance business written.

(ii) A regular salaried officer or employee of a creditor who receives no compensation that is directly dependent on the amount of insurance effected or procured.

(o) "Single interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing a debtor's credit transaction where the following 3 conditions must be met for payment of loss under the policy:

(i) The debtor has defaulted in payment.

(ii) The creditor has legally repossessed the collateral, unless collateral has been stolen from the debtor.

(iii) The creditor has suffered an impairment of interest.

Sec. 1607. (1) Creditor-placed insurance shall become effective on the latest of the following dates:

(a) The date of the credit transaction.

(b) The date prior coverage, including prior creditor-placed insurance coverage, lapsed.

(c) One year before the date on which the related insurance charge is made to the debtor's account.

(d) A later date provided for in the agreement between the creditor and insurer.

(2) Creditor-placed insurance shall terminate on the earliest of the following dates:

(a) The date other acceptable insurance becomes effective, subject to the debtor providing acceptable evidence of the other insurance to the creditor.

(b) The date the collateralized personal property is repossessed, unless the property is returned to the debtor within 10 days of the repossession.

(c) The date the collateralized personal property is determined by the insurer to be a total loss.

(d) The date the debt is completely extinguished.

(e) An earlier date specified in the individual policy or certificate of insurance.

(3) An insurance charge shall not be made to a debtor for a term longer than the scheduled term of the creditor-placed insurance when it becomes effective, and an insurance charge shall not be made to the debtor for creditor-placed insurance before the effective date of the insurance.

(4) If a charge is made to a debtor for creditor-placed insurance coverage that exceeds a term of 1 year, the debtor shall be notified at least annually that the insurance will be canceled and a refund or credit of unearned charges made if evidence of acceptable insurance secured by the debtor is provided.

Sec. 1609. (1) Premiums for creditor-placed insurance coverage may be calculated based on an amount not exceeding the net debt even though the coverage may limit the insurer's liability to the net debt, actual cash value, or cost of repair, or other premium calculation methods that more closely reflect the exposure of each item insured and approximate the premium calculation method of the coverage required by the credit agreement.

(2) An insurer shall not write creditor-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the commissioner. The premium or amount charged to the debtor for creditor-placed insurance shall not exceed the premiums charged by the insurer, computed at the time the charge to the debtor is determined.

(3) A method of billing insurance charges to the debtor on closed-end credit transactions that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date is prohibited, unless specifically disclosed at the time of the origination of the credit agreement and specifically agreed to by the debtor at the time the charge is added to the outstanding credit balance.

Sec. 1611. (1) Creditor-placed insurance coverage does not include any of the following:

(a) Coverage for the cost of repossession.

(b) Skip, confiscation, and conversion coverage.

(c) Coverage for payment of mechanics' or other liens that do not arise from a covered loss occurrence.

(d) Coverage that requires a debtor's insurance deductible to be less than \$250.00.

(e) Coverage that is broader than the insurance coverages that meet the minimum insurance requirements of the credit agreement.

(2) This section does not prohibit the issuance of a separate policy or endorsement providing the coverages listed in subsection (1). However, no charge shall be passed along to the debtor for these coverages.

Sec. 1613. Creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first-class mail, or delivered in person to the last known address of the debtor.

Sec. 1615. (1) All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining to them shall be filed with the commissioner.

(2) Within 30 days after the filing of the policy forms and certificates of insurance, the commissioner shall disapprove a form that does not conform to this act. Within 30 days of filing, the commissioner shall disapprove a schedule of premium rates pertaining to the form if it does not conform to the standard set forth in subsection (5).

(3) If the commissioner disapproves a form or schedule of premium rates, the commissioner shall promptly notify the insurer in writing of the disapproval, and the insurer shall not issue or use the form or schedule. The commissioner shall specify the reasons for disapproval in the notice and state that a hearing will be granted upon request pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Unless the commissioner disapproves the form or schedule of premium rates as provided in this section or gives written approval of the form or schedule within 30 days after the filing, the form or schedule is considered approved 31 days after the filing.

(5) A schedule of premium rates shall provide for premiums that are not unreasonable in relation to the benefits provided by the form to which the schedule applies. A premium rate or schedule of premium rates is reasonable for purposes of this section if the rate or schedule of rates produces or may reasonably be expected to produce a loss ratio of 60% or greater. This subsection does not prohibit the commissioner from approving other loss ratios he or she finds reasonable.

(6) The commissioner may withdraw approval of an approved form or schedule of premium rates when the commissioner would be required to disapprove the form or schedule of premium rates if it were filed at the time of the withdrawal. The withdrawal shall be in writing and shall specify the reasons for withdrawal and the effective date of the withdrawal. An insurer adversely affected by a withdrawal may, within 30 days after receiving the written notification of the withdrawal, request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to determine whether the withdrawal should be annulled, modified, or confirmed. Unless the commissioner grants an extension in writing in the withdrawal or subsequently grants an extension, the withdrawal, in the absence of a request for hearing, shall become effective prospectively and not retroactively, 91 days after delivery of the notice of withdrawal and, if the request for hearing is filed, 91 days after delivery of written notice of the commissioner's determination.

Sec. 1617. (1) Not later than 60 days after the termination of creditor-placed insurance coverage, and in accordance with sections 2833(1)(h) and 3020(1)(c), an insurer shall refund any unearned premium or other identifiable charges.

(2) Not later than 60 days after the termination date of creditor-placed insurance coverage, the insurer shall provide to the debtor a statement of refund disclosing the effective date, the termination date, the amount of premium being refunded, and the amount of premium charged for the coverage provided.

(3) If coverage under this chapter is not provided, the entire amount of premiums, minimum premiums, fees, or charges of any kind shall be refunded.

Sec. 1619. (1) If a loss is incurred under a creditor-placed insurance policy, the insurer shall pay, at a minimum, the lesser of the following, determined as of the date of loss:

(a) The cost to repair the collateral less any applicable deductible.

(b) The actual cash value of the collateral, less any applicable deductible.

(c) The net debt, less any applicable deductible. The method of calculation of net debt payable pursuant to this subdivision shall be identical to the method of calculation of net debt for payment of premiums pursuant to section 1609(1).

(d) If single interest insurance is provided, the amount by which the creditor's interest is impaired.

(2) The net debt or actual cash value amounts in subsection (1) may be reduced by the value of salvage if the insurer does not take possession of the insured property.

(3) In the event of a loss, no subrogation shall run against the debtor from the insurer.

(4) Whenever a claim is made on a creditor-placed insurance policy, the insurer shall furnish to the claimant a written statement of the loss explaining the settlement amount and the method of settlement.

(5) A creditor or insurer shall not abandon salvage to a towing or storage facility in lieu of payment of storage fees without the consent of the facility and the claimant. The insurer shall be responsible for the payment of towing and storage charges for a covered loss occurrence from the time the claim is reported to the insurer in accordance with the terms of the policy to the time the claim is paid. The insurer shall give written notice to the claimant when the claim is paid that the claimant may incur storage charges after the date the claim is paid.

Sec. 1621. (1) For a creditor to place insurance on collateral pledged by the debtor and pass the cost of the insurance on to the debtor, all of the following must be met:

- (a) The creditor must have a security interest in the collateral.
 - (b) The credit agreement must require the debtor to maintain insurance on the collateral to protect the creditor's interest.
 - (c) The credit agreement must authorize the creditor to place the insurance if the debtor fails to provide evidence of the insurance.
 - (d) The requirements listed in subdivisions (a) to (c) must be clearly disclosed to the debtor at the inception of the credit transaction.
- (2) A debtor has the right to provide required insurance through existing policies of insurance owned or controlled by the debtor or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within this state. However, a creditor may establish maximum acceptable deductibles, insurer solidity standards, and other reasonable conditions with respect to the required insurance.

Sec. 1623. (1) The entire amount of the premium due from a creditor shall be remitted to the insurer or its producer in accordance with the insurer's requirements. No commissions may be paid to, or retained by, a person or entity except a licensed and appointed producer.

(2) A creditor shall not retain unearned premiums upon cancellation of the insurance without crediting to the debtor's account the amount of unearned insurance charges.

(3) Rebates to the creditor of a portion of the premium charged to the debtor are prohibited as are other inducements provided to the creditor by an insurer or producer. All of the following activities are prohibited rebates or inducements:

(a) Allowing insurers or producers to purchase certificates of deposit from the creditor or to maintain accounts with the creditor at less than the market interest rates and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration.

(b) Paying a commission to a person, including a creditor, who is not appropriately licensed as a producer in this state.

(c) Purchasing or offering to purchase certificates of deposit from, or maintaining or offering to maintain deposit accounts or investment accounts with a creditor as part of a creditor-placed insurance solicitation.

(d) Any other activity identified by the commissioner and prohibited by rule, regulation, or order.

(4) Prohibited rebates or inducements do not include any of the following:

(a) The paying of commissions and other compensation to a duly licensed and appointed producer, whether or not affiliated with the creditor.

(b) The paying to the creditor policyholder of group experience rated refunds or policy dividends.

(c) The providing of insurance tracking and other services incidental to the creditor-placed insurance program.

(d) The paying to the creditor of amounts intended to reimburse the creditor for its expenses incurred incidental to the creditor-placed insurance program, such as costs of data processing, mail processing, telephone service, insurance tracking, billing, collection, and related activities, provided that these payments are approved in a manner consistent with the procedures in section 1615 and are calculated in a manner that does not exceed an amount reasonably estimated to equal the expenses incurred by the creditor.

(5) An insurer that pays commissions to producers for creditor-placed insurance that are greater than 20% of the net written premium shall demonstrate to the commissioner that the commissions are not unreasonably high in relation to the value of the services rendered.

(6) This section does not prohibit or restrict an insurer or producer from maintaining a demand, premium deposit, or other account or accounts with a creditor for which the insurer or producer provides insurance if the accounts pay the market interest rate and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration.

Sec. 1625. (1) A creditor shall not impose charges, including premium costs and related interest and finance charges, on a debtor for creditor-placed insurance coverage unless adequate disclosure of the requirement to maintain insurance has been made to the debtor. Adequate disclosure is accomplished if all of the following occur:

(a) The credit agreement sets forth the requirement that the debtor must maintain insurance on the collateral as provided for in section 1621.

(b) The creditor makes reasonable efforts to notify the debtor of the requirement to maintain insurance and allows a reasonable time for compliance with this requirement.

(c) A final notice as required by this chapter is sent to the debtor.

(d) If creditor-placed insurance coverage is issued, a copy of the policy or certificate is sent to the debtor as provided for in section 1613.

(2) After adequate disclosure of the request to maintain insurance has been made to the debtor as required by this section, a creditor may proceed to impose charges for creditor-placed insurance if the debtor fails to provide evidence of insurance. A creditor may impose charges no earlier than 10 days after sending the final notice.

(3) Reasonable efforts to notify the debtor under subsection (1)(b) are accomplished if the creditor does all of the following:

(a) Mails a notice by first-class mail to the debtor's last known address as contained in the creditor's records, stating that the creditor intends to charge the debtor for creditor-placed insurance coverage on the collateral if the debtor fails to provide evidence of the property insurance to the creditor.

(b) Allows the debtor at least 20 days to respond to the notice and provide evidence of acceptable insurance coverage before sending a final notice.

(c) Sends a final notice in compliance with this section by first-class mail to the debtor's last known address as contained in the creditor's records at least 10 days before the cost of insurance is charged to the debtor by the creditor. Proof of the mailing of the final notice shall be retained for at least 3 years following the expiration or termination of the coverage or as otherwise required by law.

(4) The initial notice under this section shall be in a form determined by the creditor to remind the debtor of the requirement to maintain insurance on the collateral. The final notice under this section shall be as complete as the following notice, printed in not less than 12-point type, and modified where necessary to fit the nature of the credit transaction:

FINAL NOTICE

Your credit agreement with us requires you to have property insurance on the collateral until you pay off your loan. You have not given us proof you have insurance on the property. You can ask your insurance company or agent to give us proof of insurance or you can send us proof you have property insurance within 10 calendar days after the date this letter was postmarked. If you do not, we will buy the insurance and charge the cost to you.

You must pay for the property insurance we buy. It may cost more than insurance you can buy on your own. The cost of the insurance we buy may be added to your loan balance and we may charge you interest on it. If we do, you will pay interest at the same rate you pay on your loan.

The insurance we buy will pay claims to us (the creditor) for physical damage to your property. It will not pay any claims made against you [and it may not pay you for any claims you make (delete if limited dual interest coverage)]. The insurance we buy will not give you any liability insurance coverage and will not meet the requirements of a state's financial responsibility law.

We may receive compensation for placing this insurance, which is included in the cost of coverage charged to you.

The property coverage we buy will start on the date shown in the policy or certificate, which may go back to the date of the loan or the date your prior coverage stopped. We will cancel the insurance we bought for you and give you a refund or credit of unearned charges if you give us proof you have bought property insurance somewhere else or if you have paid off the loan.

(5) All creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. Not earlier than the sending of the final notice nor 25 days after a charge is made to the debtor for creditor-placed insurance coverage, the creditor shall cause a copy of the individual policy, certificate, or other evidence of insurance coverage evidencing the creditor-placed insurance coverage to be sent, first-class mail, to the debtor's last known address.

(6) A creditor's compliance with or failure to comply with this chapter shall not be construed to require the creditor to purchase insurance coverage on the collateral, and the creditor is not liable to the debtor or a third party as a result of its failure to purchase the insurance.

Sec. 1627. (1) In addition to other powers under this act, the commissioner may conduct investigations or examinations of insurers and producers to ensure compliance with and enforcement of the provisions of this chapter.

(2) Upon finding that an insurer or producer has violated a provision of this chapter or a regulation promulgated under this chapter, the commissioner may issue an order directing that the insurer or producer cease and desist from committing the violations, impose a civil penalty for the violations, provide an equitable remedy for past violations, or any combination of these.

(3) Upon the issuance of an order under subsection (2), the insurer or producer may request a hearing. At the hearing, the burden shall be on the insurer or producer to show cause why an order issued pursuant to subsection (2) should be annulled, modified, or confirmed. Pending the hearing and the decision by the commissioner, the commissioner shall suspend the effective date of the order. Not more than 60 days after the hearing, the commissioner shall enter an order of final determination that shall specify all relevant findings of fact, conclusions of law, and orders. With the agreement of each affected insurer or producer, and in lieu of a hearing, the commissioner may enter into a consent agreement disposing of the matters that would be the subject of the hearing and order.

(4) The commissioner may bring an action in the circuit court for Ingham county for an injunction or other appropriate relief to enjoin threatened or existing violations of this chapter or of the commissioner's orders or regulations or for restitution on behalf of persons aggrieved by a violation of this chapter or of the commissioner's orders or regulations.

Sec. 1629. (1) A person aggrieved by a final order, decision, finding, ruling, action, or inaction provided for under this chapter may seek judicial review as provided in section 244.

(2) To the extent that the order or final determination of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order or final determination. If either party applies to the court for leave to produce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to produce the evidence in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be produced in a hearing in the manner and upon the terms and conditions the court considers proper. The commissioner may modify the findings of fact or make new findings by reason of the additional evidence taken and shall file the modified or new findings with a recommendation, if any, for the modification or setting aside of the original order or final determination, with the return of the additional evidence.

(3) An order issued by the commissioner under section 1627 shall become final upon the expiration of the time allowed for filing a petition for review if no petition has been duly filed within that time, except that the commissioner may thereafter modify or set aside the order to the extent provided in section 1627 or upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(4) An order of the commissioner under this chapter or an enforcement order of a court does not relieve or absolve any person affected by the order from liability under any other laws of this state.

Sec. 1631. An insurer that violates an order of the commissioner under this chapter shall be afforded a hearing before the commissioner under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the commissioner finds a violation has occurred, the commissioner may order either or both of the following:

(a) Payment of a monetary penalty of not more than \$1,000.00 for each violation, but not to exceed an aggregate penalty of \$100,000.00, unless the violation was committed in a conscious and flagrant disregard of this chapter, in which case the commissioner may order the payment of a monetary penalty of not more than \$25,000.00 for each violation, but not to exceed an aggregate penalty of \$250,000.00.

(b) Suspension or revocation of the insurer's license.

Enacting section 1. This amendatory act takes effect 90 days after it is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E Randall

Clerk of the House of Representatives.

Approved

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Governor.