

HOUSE BILL No. 5576

December 13, 2007, Introduced by Rep. Wojno and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 222 (MCL 500.222), as amended by 1994 PA 443.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 222. (1) The commissioner in person or by any of his or
2 her authorized deputies or examiners may examine any or all of the
3 books, records, documents, and papers of any insurer at any time
4 after its articles of incorporation have been executed and filed,
5 or after it has been authorized to do business in this state. The
6 commissioner in his or her discretion may examine the affairs of
7 any domestic insurer, and if he or she considers it expedient to
8 do, to examine the affairs of any foreign or alien insurer doing
9 business in this state.

10 (2) Instead of an examination under this act of any foreign or
11 alien insurer authorized to do business in this state, the

1 commissioner may accept an examination report on the insurer as
2 prepared by the insurance regulator for the insurer's state of
3 domicile or port-of-entry state if that state accepts examination
4 reports prepared by the commissioner. This subsection applies only
5 as follows:

6 (a) Until this state becomes accredited by the national
7 association of insurance commissioners' financial regulation
8 standards and accreditation program.

9 (b) If this state loses accreditation by the national
10 association of insurance commissioners' financial regulation
11 standards and accreditation program.

12 (3) Instead of an examination under this act of any foreign or
13 alien insurer authorized to do business in this state, the
14 commissioner may accept an examination report on the insurer as
15 prepared by the insurance regulator for the insurer's state of
16 domicile or port-of-entry state if that state accepts examination
17 reports prepared by the commissioner and if the insurance
18 regulatory agency of the state of domicile or port-of-entry state
19 was accredited by the national association of insurance
20 commissioners' financial regulation standards and accreditation
21 program at the time of the examination or if the examination is
22 performed under the supervision of an accredited insurance
23 regulatory agency or with the participation of 1 or more examiners
24 who are employed by an accredited insurance regulatory agency and
25 who, after a review of the examination work papers and report,
26 state under oath that the examination was prepared in a manner
27 consistent with the standards and procedures required by their

1 accredited regulatory agency. This subsection only applies during
2 the time this state is accredited by the national association of
3 insurance commissioners' financial regulation standards and
4 accreditation program.

5 (4) The commissioner in person or by any of his or her
6 authorized deputies or examiners shall once every 5 years examine
7 the books, records, documents, and papers of each authorized
8 insurer. The commissioner may examine an insurer more frequently
9 and upon its request shall examine a domestic insurer that has not
10 been examined for the 3 years immediately preceding the request.
11 This section does not authorize the examination of books, records,
12 documents, or papers if those items involve matters that are a
13 subject of a currently pending administrative or judicial
14 proceeding against the insurer from whom the information is sought,
15 unless the commissioner or judge specifically finds on the record
16 of the proceeding that the examination is reasonably necessary to
17 protect the interests of policyholders, creditors, or the public or
18 to make a determination of whether an insurer is safe, reliable,
19 and entitled to public confidence.

20 (5) The business affairs, assets, and contingent liabilities
21 of insurers shall be subject to examination by the commissioner at
22 any time. The commissioner may supervise and make the same
23 examination of the business and affairs of every foreign or alien
24 insurer doing business in this state as of domestic insurers doing
25 the same kind of business and of its assets, books, accounts, and
26 general condition. Every foreign or alien insurer and its agents
27 and officers are subject to the same obligations and are subject to

1 the same examinations, and, in case of default therein, to the same
2 penalties and liabilities as domestic insurers doing the same kind
3 of business, or any of the agents or officers thereof, are or may
4 be liable to under the laws of this state or the **RULES OR**
5 regulations of the **OFFICE OF FINANCIAL AND** insurance bureau
6 **SERVICES** of the department of ~~commerce~~**LABOR AND ECONOMIC GROWTH**.
7 The commissioner may, whenever he or she considers it expedient to
8 do so, either in person or by a proper person appointed by him or
9 her, repair to the general office or other offices of the foreign
10 or alien insurer, wherever the same may be, and make an
11 investigation and examination of its affairs and condition.

12 (6) Upon an examination under this section, the commissioner,
13 his or her deputy, or any examiner authorized by him or her may
14 examine in person, by writing, and if appropriate, under oath the
15 officers or agents of the insurer or all persons considered to have
16 material information regarding the insurer's property, assets,
17 business, or affairs. The commissioner may compel the attendance
18 and testimony of witnesses and the production of any books,
19 accounts, papers, records, documents, and files relating to the
20 insurer's business or affairs, and may sign subpoenas, administer
21 oaths and affirmations, examine witnesses, and receive evidence for
22 this purpose. The insurer and its officers and agents shall produce
23 its books and records and all papers in its or their possession
24 relating to its business or affairs, and any other person may be
25 required to produce any books, records, or papers considered
26 relevant to the examination for the inspection of the commissioner,
27 or his or her deputy or examiners, whenever required. The insurer's

1 officers or agents shall facilitate the examination and aid in
2 making the same so far as it is in their power to do so. If the
3 commissioner's order or subpoena is not followed, the commissioner
4 may request the Ingham county circuit court to issue an order
5 requiring compliance with the commissioner's order or subpoena.

6 (7) Not later than 60 days following completion of the
7 examination, the deputy or examiners shall make a full and true
8 report, and furnish the insurer a copy of the examination report
9 that shall comprise only facts appearing on the insurer's books,
10 records, or documents or ascertained from examination of its
11 officers or agents or other persons concerning its affairs and the
12 conclusions and recommendations as may be reasonably warranted from
13 the facts disclosed. An insurer examined, upon its request, shall
14 be granted a hearing before the commissioner or his or her designee
15 before the report is filed. Upon request of the insurer, the
16 hearing shall be closed to the public. A hearing under this
17 subsection is not subject to the administrative procedures act of
18 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.201~~
19 ~~to 24.328 of the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO~~
20 **24.328**. Each examination report shall be withheld from public
21 inspection until the report is final and filed with the
22 commissioner. In addition, the commissioner may withhold any
23 examination report or any analysis of an insurer's financial
24 condition from public inspection for such time as he or she ~~may~~
25 ~~consider~~ **CONSIDERS** proper. In any event, all information and
26 testimony furnished to the **OFFICE OF FINANCIAL AND** insurance bureau
27 **SERVICES** and the **OFFICE OF FINANCIAL AND** insurance bureau's

1 **SERVICES'S** work papers, correspondence, memoranda, reports,
2 records, and other written or oral information related to an
3 examination report or an investigation shall be withheld from
4 public inspection, shall be confidential, shall not be subject to
5 subpoena, and shall not be divulged to any person, except as
6 provided in this section. If assurances are provided that the
7 information will be kept confidential, the commissioner may
8 disclose confidential work papers, correspondence, memoranda,
9 reports, records, or other information as follows:

10 (a) To the governor or the attorney general.

11 (b) To any relevant regulatory agency ~~, including regulatory~~
12 ~~agencies of other states or the federal government~~ **OF THIS STATE,**
13 **ANY OTHER STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE**
14 **COMMONWEALTH OF PUERTO RICO, ANY TERRITORY OF OR POSSESSION OF THE**
15 **UNITED STATES, THE UNITED STATES GOVERNMENT, OR ANY FOREIGN COUNTRY**
16 **OR ANY POLITICAL SUBDIVISION OF A FOREIGN COUNTRY.**

17 (c) In connection with an enforcement action brought pursuant
18 to this or another applicable act.

19 (d) To law enforcement officials.

20 (e) To persons authorized by the Ingham county circuit court
21 to receive the information.

22 (f) To persons entitled to receive such information in order
23 to discharge duties specifically provided for in this act.

24 (8) The confidentiality requirements of subsection (7) do not
25 apply in any proceeding or action brought against or by the insurer
26 under this act or any other applicable act of this state, any other
27 state, or the United States.

1 (9) Notwithstanding the other provisions of this section, the
2 commissioner is not required to finalize and file an examination
3 report for an insurer for a year in which an examination report was
4 not finalized and filed, if the insurer is currently undergoing an
5 examination subsequent to the year for which an examination report
6 was not finalized and filed. Nothing contained in this section
7 shall be construed to limit the commissioner's authority to
8 terminate or suspend any examination in order to pursue other legal
9 or regulatory action pursuant to the insurance laws of this state.
10 Findings of fact and conclusions made pursuant to any examination
11 shall be prima facie evidence in any legal or regulatory action.

12 (10) The examination of an alien insurer is limited to its
13 United States business, except as otherwise required by the
14 commissioner.