

HOUSE BILL No. 5524

May 6, 2014, Introduced by Reps. Dianda, Driskell, Cochran, Segal, Hobbs, Rutledge, LaVoy, Slavens, Phelps, Faris, Darany, Lipton, Brown and Oakes and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 2109, 2115, 2403, and 2603 (MCL 500.2109, 500.2115, 500.2403, and 500.2603), section 2115 as amended by 1980 PA 461 and section 2403 as amended by 1993 PA 200.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2109. ~~(1)~~All rates for automobile insurance and home
2 insurance shall be made in accordance with the following
3 provisions:

4 (a) Rates shall not be excessive, inadequate, or unfairly
5 discriminatory. A rate shall not be held to be excessive unless the
6 rate is unreasonably high for the insurance coverage provided. ~~and~~
7 ~~a reasonable degree of competition does not exist for the insurance~~
8 ~~to which the rate is applicable.~~

1 (b) A rate shall not be held to be inadequate unless the rate
2 is unreasonably low for the insurance coverage provided and the
3 continued use of the rate endangers the solvency of the insurer; or
4 unless the rate is unreasonably low for the insurance provided and
5 the use of the rate has or will have the effect of destroying
6 competition among insurers, creating a monopoly, or causing a kind
7 of insurance to be unavailable to a significant number of
8 applicants who are in good faith entitled to procure that insurance
9 through ordinary methods.

10 (c) A rate for a coverage is unfairly discriminatory in
11 relation to another rate for the same coverage if the differential
12 between the rates is not reasonably justified by differences in
13 losses, expenses, or both, or by differences in the uncertainty of
14 loss, for the individuals or risks to which the rates apply. A
15 reasonable justification shall be supported by a reasonable
16 classification system; by sound actuarial principles when
17 applicable; and by actual and credible loss and expense statistics
18 or, in the case of new coverages and classifications, by reasonably
19 anticipated loss and expense experience. A rate is not unfairly
20 discriminatory because it reflects differences in expenses for
21 individuals or risks with similar anticipated losses, or because it
22 reflects differences in losses for individuals or risks with
23 similar expenses.

24 ~~—— (2) A determination concerning the existence of a reasonable~~
25 ~~degree of competition with respect to subsection (1)(a) shall take~~
26 ~~into account a reasonable spectrum of relevant economic tests,~~
27 ~~including the number of insurers actively engaged in writing the~~

1 ~~insurance in question, the present availability of such insurance~~
 2 ~~compared to its availability in comparable past periods, the~~
 3 ~~underwriting return of that insurance over a period of time~~
 4 ~~sufficient to assure reliability in relation to the risk associated~~
 5 ~~with that insurance, and the difficulty encountered by new insurers~~
 6 ~~in entering the market in order to compete for the writing of that~~
 7 ~~insurance.~~

8 Sec. 2115. (1) ~~If as~~ **AS** part of a decision in a proceeding
 9 under section 2114, or in a separate proceeding on the
 10 ~~commissioner's~~ **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND**
 11 **FINANCIAL SERVICES'** own motion, held pursuant to Act No. 306 of the
 12 Public Acts of 1969, as amended, ~~the commissioner finds that a~~
 13 ~~reasonable degree of competition does not exist on a statewide~~
 14 ~~basis with respect to automobile insurance or home insurance,~~ **UNDER**
 15 **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201**
 16 **TO 24.328,** ~~the commissioner shall by~~ **DIRECTOR OF THE DEPARTMENT OF**
 17 **INSURANCE AND FINANCIAL SERVICES MAY** order ~~require each~~ **AN**
 18 **AUTOMOBILE OR HOME** insurer which transacts that type of insurance
 19 in this state to comply with the provisions of chapter 24 or 26, as
 20 the case may be. ~~, with respect to that insurance which was the~~
 21 ~~subject of the commissioner's finding.~~ The order shall take effect
 22 not less than 90 nor more than 150 days after the order is issued.
 23 On or after the effective date of an order issued under this
 24 subsection, none of the provisions of this chapter ~~shall be~~ **IS**
 25 applicable to the insurance ~~which~~ **THAT** was the subject of the
 26 order.

27 (2) After an order issued pursuant to **UNDER** subsection (1) has

1 been in effect for 1 year, ~~if the commissioner has reason to~~
 2 ~~believe that there would be a reasonable degree of price~~
 3 ~~competition for the type of insurance affected by the order, THE~~
 4 **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES, ON**
 5 **HIS OR HER OWN MOTION,** or ~~if,~~ upon the petition of an insurer or a
 6 resident of this state, ~~there is a showing that there is reason to~~
 7 ~~believe that there would be a reasonable degree of price~~
 8 ~~competition for that type of insurance, the commissioner shall MAY~~
 9 hold a hearing pursuant to ~~Act No. 306 of the Public Acts of 1969,~~
 10 ~~as amended, UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969~~
 11 **PA 306, MCL 24.201 TO 24.328,** to determine ~~if a reasonable degree~~
 12 ~~of price competition would exist if WHETHER~~ the order were no
 13 longer ~~ISSUED UNDER SUBSECTION (1) SHOULD REMAIN~~ in effect. The
 14 hearing shall be held upon not less than 20 days' written notice to
 15 each insurer subject to the order **UNDER SUBSECTION (1)** and upon not
 16 less than 20 days' notice in not less than 3 newspapers of general
 17 circulation within this state.

18 (3) If the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT OF**
 19 **INSURANCE AND FINANCIAL SERVICES** finds after the hearing that a
 20 ~~reasonable degree of price competition would exist, AN ORDER ISSUED~~
 21 **UNDER SUBSECTION (1) SHOULD NOT REMAIN IN EFFECT,** the ~~commissioner~~
 22 **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**
 23 shall by order state when, not less than 90 nor more than 150 days
 24 after issuance of a new order, the ~~preceding order~~ **UNDER SUBSECTION**
 25 **(1)** will no longer be effective. On and after the effective date of
 26 an order issued under this subsection, the provisions of this
 27 chapter shall be applicable to the type of insurance ~~which THAT~~ was

1 the subject of the order **UNDER SUBSECTION (1)**.

2 Sec. 2403. (1) All rates shall be made in accordance with this
3 section and all of the following:

4 (a) Due consideration shall be given to past and prospective
5 loss experience within and outside this state; to catastrophe
6 hazards; to a reasonable margin for underwriting profit and
7 contingencies; to dividends, savings, or unabsorbed premium
8 deposits allowed or returned by insurers to their policyholders,
9 members, or subscribers; to past and prospective expenses, both
10 countrywide and those specially applicable to this state; to
11 underwriting practice, judgment, and to all other relevant factors
12 within and outside this state. For worker's compensation insurance,
13 in determining the reasonableness of the margin for underwriting
14 profit and contingencies, consideration shall be given to all
15 after-tax investment profit or loss from unearned premium and loss
16 reserves attributable to worker's compensation insurance, as well
17 as the factors used to determine the amount of reserves. For all
18 other kinds of insurance to which this chapter applies, all factors
19 to which due consideration is given under this subdivision shall be
20 treated in a manner consistent with the laws of this state that
21 existed on December 28, 1981.

22 (b) The systems of expense provisions included in the rates
23 for use by any insurer or group of insurers may differ from those
24 of other insurers or groups of insurers to reflect the requirements
25 of the operating methods of the insurer or group with respect to
26 any kind of insurance, or with respect to any subdivision or
27 combination thereof for which subdivision or combination separate

1 expense provisions are applicable.

2 (c) Risks may be grouped by classifications for the
3 establishment of rates and minimum premiums. Classification rates
4 may be modified to produce rates for individual risks in accordance
5 with rating plans that measure variations in hazards, expense
6 provisions, or both. The rating plans may measure any differences
7 among risks that may have a probable effect upon losses or expenses
8 as provided for in subdivision (a).

9 (d) Rates shall not be excessive, inadequate, or unfairly
10 discriminatory. A rate shall not be held to be excessive unless the
11 rate is unreasonably high for the insurance coverage provided. ~~and~~
12 ~~a reasonable degree of competition does not exist with respect to~~
13 ~~the classification, kind, or type of risks to which the rate is~~
14 ~~applicable.~~ Except as otherwise provided in this subdivision, a
15 rate shall not be held to be inadequate unless the rate is
16 unreasonably low for the insurance coverage provided and the
17 continued use of the rate endangers the solvency of the insurer; or
18 unless the rate is unreasonably low for the insurance coverage
19 provided and the use of the rate has or will have the effect of
20 destroying competition among insurers, creating a monopoly, or
21 causing a kind of insurance to be unavailable to a significant
22 number of applicants who are in good faith entitled to procure the
23 insurance through ordinary methods. For commercial liability
24 insurance a rate shall not be held to be inadequate unless the
25 rate, after consideration of investment income and marketing
26 programs and underwriting programs, is unreasonably low for the
27 insurance coverage provided and is insufficient to sustain

1 projected losses and expenses; or unless the rate is unreasonably
2 low for the insurance coverage provided and the use of the rate has
3 or will have the effect of destroying competition among insurers,
4 creating a monopoly, or causing a kind of insurance to be
5 unavailable to a significant number of applicants who are in good
6 faith entitled to procure the insurance through ordinary methods.
7 As used in this subdivision, "commercial liability insurance" means
8 insurance that provides indemnification for commercial, industrial,
9 professional, or business liabilities. For worker's compensation
10 insurance provided by an insurer that is controlled by a nonprofit
11 health care corporation formed pursuant to the nonprofit health
12 care corporation reform act, ~~Act No. 350 of the Public Acts of~~
13 ~~1980, being sections 550.1101 to 550.1704 of the Michigan Compiled~~
14 ~~Laws 1980 PA 350, MCL 550.1101 TO 550.1704~~, a rate shall not be
15 held to be inadequate unless the rate is unreasonably low for the
16 insurance coverage provided. A rate for a coverage is unfairly
17 discriminatory in relation to another rate for the same coverage,
18 if the differential between the rates is not reasonably justified
19 by differences in losses, expenses, or both, or by differences in
20 the uncertainty of loss for the individuals or risks to which the
21 rates apply. A reasonable justification shall be supported by a
22 reasonable classification system; by sound actuarial principles
23 when applicable; and by actual and credible loss and expense
24 statistics or, in the case of new coverages and classifications, by
25 reasonably anticipated loss and expense experience. A rate is not
26 unfairly discriminatory because the rate reflects differences in
27 expenses for individuals or risks with similar anticipated losses,

1 or because the rate reflects differences in losses for individuals
2 or risks with similar expenses. Rates are not unfairly
3 discriminatory if they are averaged broadly among persons insured
4 on a group, franchise, blanket policy, or similar basis.

5 (2) Except to the extent necessary to meet the provisions of
6 subsection (1)(d), uniformity among insurers in any matters within
7 the scope of this section is neither required nor prohibited.

8 Sec. 2603. (1) All rates shall be made in accordance with the
9 following provisions:

10 (a) Due consideration shall be given to past and prospective
11 loss experience within and outside this state; to catastrophe
12 hazards; to a reasonable margin for underwriting profit and
13 contingencies; to dividends, savings, or unabsorbed premium
14 deposits allowed or returned by insurers to their policyholders,
15 members, or subscribers; to past and prospective expenses, both
16 countrywide and those specially applicable to this state; and to
17 all other relevant factors within and outside this state. In the
18 case of fire insurance rates, consideration also shall be given to
19 the experience of the fire insurance business during a period of
20 not less than the most recent 5-year period for which that
21 experience is available.

22 (b) The systems of expense provisions included in the rates
23 for use by any insurer or group of insurers may differ from those
24 of other insurers or groups of insurers to reflect the requirements
25 of the operating methods of the insurer or group with respect to
26 any kind of insurance or with respect to any subdivision or
27 combination thereof for which subdivision or combination separate

1 expense provisions are applicable.

2 (c) Risks may be grouped by classifications for the
3 establishment of rates and minimum premiums. Classification rates
4 may be modified to produce rates for individual risks in accordance
5 with rating plans ~~which~~ **THAT** measure variations in hazards, expense
6 provisions, or both. The rating plans may measure any differences
7 among risks that may have a probable effect upon losses or expenses
8 as provided for in subdivision (a).

9 (d) Rates shall not be excessive, inadequate, or unfairly
10 discriminatory. A rate shall not be held to be excessive unless the
11 rate is unreasonably high for the insurance coverage provided. ~~and~~
12 ~~a reasonable degree of competition does not exist with respect to~~
13 ~~the classification, kind, or type of risks to which the rate is~~
14 ~~applicable.~~ A rate shall not be held to be inadequate unless the
15 rate is unreasonably low for the insurance coverage provided and
16 the continued use of the rate endangers the solvency of the
17 insurer; or unless the rate is unreasonably low for the insurance
18 provided and the use of the rate has or will have the effect of
19 destroying competition among insurers, creating a monopoly, or
20 causing a kind of insurance to be unavailable to a significant
21 number of applicants who are in good faith entitled to procure the
22 insurance through ordinary methods. A rate for a coverage is
23 unfairly discriminatory in relation to another rate for the same
24 coverage, if the differential between the rates is not reasonably
25 justified by differences in losses, expenses, or both, or by
26 differences in the uncertainty of loss for the individuals or risks
27 to which the rates apply. A reasonable justification shall be

1 supported by a reasonable classification system; by sound actuarial
2 principles when applicable; and by actual and credible loss and
3 expense statistics or, in the case of new coverages and
4 classifications, by reasonably anticipated loss and expense
5 experience. A rate is not unfairly discriminatory because the rate
6 reflects differences in expenses for individuals or risks with
7 similar anticipated losses, or because the rate reflects
8 differences in losses for individuals or risks with similar
9 expenses. Rates are not unfairly discriminatory if they are
10 averaged broadly among persons insured on a group, franchise,
11 blanket policy, or similar basis.

12 (2) Except to the extent necessary to meet the provisions of
13 subsection (1)(d), uniformity among insurers in any matters within
14 the scope of this section is neither required nor prohibited.