



SENATE BILL No. 997

January 26, 1994, Introduced by Senator FAXON and
referred to the Committee on Commerce

A bill to amend the title and section 124 of Act No 218 of
the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 124 as amended by Act No 1 of the Public Acts of 1990,
being section 500 124 of the Michigan Compiled Laws and to add
chapter 45

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 The title and section 124 of Act No 218 of the
2 Public Acts of 1956, section 124 as amended by Act No 1 of the
3 Public Acts of 1990, being section 500 124 of the Michigan
4 Compiled Laws, are amended and chapter 45 is added to read as
5 follows

TITLE

1
2 An act to revise, consolidate, and classify the laws relat-
3 ing to the insurance and surety business to regulate the incor-
4 poration or formation of domestic insurance and surety companies
5 and associations and the admission of foreign and alien companies
6 and associations to provide their rights, powers, and immunities
7 and to prescribe the conditions on which companies and associa-
8 tions organized, existing, or authorized under this act may exer-
9 cise their powers to provide the rights, powers, and immunities
10 and to prescribe the conditions on which other persons, firms,
11 corporations, associations, risk retention groups, and purchasing
12 groups engaged in an insurance or surety business may exercise
13 their powers to provide for the imposition of a privilege fee on
14 domestic insurance companies and associations and the state acci-
15 dent fund to provide for the imposition of a tax on the business
16 of foreign and alien companies and associations to provide for
17 the imposition of a tax on risk retention groups and purchasing
18 groups to provide for the imposition of a tax on the business of
19 surplus line agents to modify tort liability arising out of cer-
20 tain accidents to provide for limited actions with respect to
21 that modified tort liability and to prescribe certain procedures
22 for maintaining those actions to require security for losses
23 arising out of certain accidents to provide for the continued
24 availability and AFFORDABILITY OF AUTOMOBILE INSURANCE AND
25 HOMEOWNER'S INSURANCE IN THIS state — AND to facilitate the
26 purchase of that insurance by all residents of this state at fair
27 and reasonable rates, and to provide for certain powers and

1 duties, upon certain persons, as they affect the continued
2 availability and affordability of that insurance to provide for
3 certain reporting with respect to insurance and with respect to
4 certain claims against uninsured or self-insured persons to pre-
5 scribe duties for certain state departments and officers with
6 respect to that reporting to provide for certain assessments to
7 establish and continue certain state insurance funds to modify
8 and clarify the status, rights, powers, duties, and operations of
9 the nonprofit malpractice insurance fund TO PROVIDE FOR A
10 PHYSICIAN'S LIABILITY ASSOCIATION to provide for the departmen-
11 tal supervision and regulation of the insurance and surety busi-
12 ness within this state to provide for the conservation, rehabil-
13 itation, or liquidation of unsound or insolvent insurers to pro-
14 vide for the protection of policyholders, claimants, and credi-
15 tors of unsound or insolvent insurers to provide for associa-
16 tions of insurers to protect policyholders and claimants in the
17 event of insurer insolvencies to prescribe educational require-
18 ments for insurance agents and solicitors to provide for the
19 regulation of multiple employer welfare arrangements to create
20 an automobile theft prevention authority to reduce the number of
21 automobile thefts in this state to prescribe the powers and
22 duties of the automobile theft prevention authority to provide
23 certain powers and duties upon certain persons to provide cer-
24 tain powers and duties upon certain officials, departments, and
25 authorities of this state to provide an appropriation, to repeal
26 certain acts and parts of acts to repeal certain acts and parts
27 of acts on specific dates to repeal certain parts of this act on

1 specific dates and to provide penalties for the violation of
2 this act

3 Sec 124 This ~~code shall~~ ACT DOES not apply to

4 (a) Domestic farmers' and other special risk mutual property
5 insurers, as identified in chapter 68, except as stated in chap-
6 ter 68

7 (b) Fraternal benefit societies, except as stated in chapter
8 81a

9 (c) A multiple employer welfare arrangement regulated under
10 chapter 70, except as provided in chapter 70

11 (D) THE PHYSICIAN'S LIABILITY ASSOCIATION, EXCEPT AS PRO-
12 VIDED IN CHAPTER 45

13 CHAPTER 45

14 PHYSICIAN'S LIABILITY ASSOCIATION

15 SEC 4501 AS USED IN THIS CHAPTER

16 (A) "ASSOCIATION" MEANS THE PHYSICIAN'S LIABILITY ASSOCIA-
17 TION CREATED IN SECTION 4504

18 (B) "BOARD" MEANS THE ASSOCIATION'S BOARD OF DIRECTORS CRE-
19 ATED IN SECTION 4514

20 (C) "PHYSICIAN" MEANS THAT TERM AS DEFINED IN SECTION 17001
21 OR 17501 OF THE PUBLIC HEALTH CODE, ACT NO 368 OF THE PUBLIC
22 ACTS OF 1978, BEING SECTIONS 333 17001 AND 333 17501 OF THE
23 MICHIGAN COMPILED LAWS

24 SEC 4504 (1) AN UNINCORPORATED, NONPROFIT ASSOCIATION TO
25 BE KNOWN AS THE PHYSICIAN'S LIABILITY ASSOCIATION IS CREATED
26 EACH PHYSICIAN IN THIS STATE, AS A CONDITION OF LICENSURE, SHALL
27 BE A MEMBER OF THE ASSOCIATION AND SHALL BE BOUND BY THE

1 ASSOCIATION'S PLAN OF OPERATION THE ASSOCIATION SHALL NOT BE
2 SUBJECT TO THE OTHER CHAPTERS OF THIS ACT, BUT SHALL BE SUBJECT
3 TO THE OTHER LAWS OF THIS STATE TO THE EXTENT THAT THE ASSOCIA-
4 TION WOULD BE WERE IT AN INSURER ORGANIZED AND OPERATING UNDER
5 CHAPTER 50

6 (2) THE ASSOCIATION SHALL PROVIDE AND EACH MEMBER SHALL
7 ACCEPT INDEMNIFICATION FOR 100% OF THE AMOUNT OF ULTIMATE LOSS
8 SUSTAINED FOR PROFESSION LIABILITY OR MALPRACTICE CLAIMS IN
9 EXCESS OF \$100,000 00 IN EACH LOSS OCCURRENCE AS USED IN THIS
10 SECTION, "ULTIMATE LOSS" MEANS THE ACTUAL LOSS AMOUNTS AS A
11 RESULT OF AN INJURY OR DAMAGE FOR WHICH A MEMBER IS LEGALLY OBLI-
12 GATED TO PAY AN ULTIMATE LOSS IS INCURRED BY THE ASSOCIATION ON
13 THE DATE THAT THE LOSS OCCURS

14 (3) A PHYSICIAN MAY WITHDRAW FROM THE ASSOCIATION ONLY UPON
15 CEASING TO BE A LICENSED PHYSICIAN IN THIS STATE

16 (4) A PHYSICIAN WHOSE MEMBERSHIP IN THE ASSOCIATION HAS BEEN
17 TERMINATED BY WITHDRAWAL SHALL CONTINUE TO BE BOUND BY THE PLAN
18 OF OPERATION, AND UPON WITHDRAWAL, ALL UNPAID PREMIUMS THAT HAVE
19 BEEN CHARGED TO THE WITHDRAWING MEMBER SHALL BE PAYABLE AS OF THE
20 EFFECTIVE DATE OF THE WITHDRAWAL

21 (5) AN UNSATISFIED NET LIABILITY TO THE ASSOCIATION OF AN
22 INSOLVENT MEMBER SHALL BE ASSUMED BY AND APPORTIONED AMONG THE
23 ASSOCIATION'S REMAINING MEMBERS AS PROVIDED IN THE PLAN OF
24 OPERATION THE ASSOCIATION SHALL HAVE ALL RIGHTS ALLOWED BY LAW
25 ON BEHALF OF THE REMAINING MEMBERS AGAINST THE ESTATE OR FUNDS OF
26 THE INSOLVENT MEMBER FOR SUMS DUE THE ASSOCIATION

1 SEC 4508 THE ASSOCIATION SHALL DO ALL OF THE FOLLOWING ON
2 BEHALF OF THE ASSOCIATION'S MEMBERS

3 (A) ASSUME 100% OF ALL LIABILITY AS PROVIDED IN SECTION
4 4504

5 (B) ESTABLISH PROCEDURES BY WHICH MEMBERS SHALL PROMPTLY
6 REPORT TO THE ASSOCIATION EACH INCIDENT THAT, ON THE BASIS OF THE
7 INJURIES OR DAMAGES SUSTAINED, MAY REASONABLY BE ANTICIPATED TO
8 INVOLVE THE ASSOCIATION IF THE MEMBER IS ULTIMATELY HELD LEGALLY
9 LIABLE FOR THE INJURIES OR DAMAGES THE MEMBER SHALL ALSO ADVISE
10 THE ASSOCIATION OF SUBSEQUENT DEVELOPMENTS LIKELY TO MATERIALLY
11 AFFECT THE ASSOCIATION'S INTEREST IN THE INCIDENT

12 (C) MAINTAIN RELEVANT LOSS AND EXPENSE DATA RELATIVE TO ALL
13 ASSOCIATION LIABILITIES AND REQUIRE EACH MEMBER TO FURNISH STA-
14 TISTICS, IN CONNECTION WITH ASSOCIATION LIABILITIES, AT THE TIMES
15 AND IN THE FORM AND DETAIL AS MAY BE REQUIRED BY THE PLAN OF
16 OPERATION

17 (D) IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION, CAL-
18 CULATE AND CHARGE TO ASSOCIATION MEMBERS A TOTAL PREMIUM SUFFI-
19 CIENT TO COVER THE EXPECTED LOSSES AND EXPENSES OF THE ASSOCIA-
20 TION THAT THE ASSOCIATION WILL LIKELY INCUR DURING THE PERIOD FOR
21 WHICH THE PREMIUM IS APPLICABLE THE PREMIUM SHALL INCLUDE AN
22 AMOUNT TO COVER INCURRED BUT NOT REPORTED LOSSES FOR THE PERIOD
23 AND MAY BE ADJUSTED FOR ANY EXCESS OR DEFICIENT PREMIUMS FROM
24 PREVIOUS PERIODS EXCESSES OR DEFICIENCIES FROM PREVIOUS PERIODS
25 MAY BE FULLY ADJUSTED IN A SINGLE PERIOD OR MAY BE ADJUSTED OVER
26 SEVERAL PERIODS IN A MANNER PROVIDED FOR IN THE PLAN OF
27 OPERATION

1 (E) REQUIRE AND ACCEPT THE PAYMENT OF PREMIUMS FROM
2 ASSOCIATION MEMBERS AS PROVIDED FOR IN THE PLAN OF OPERATION
3 THE ASSOCIATION SHALL DO EITHER OF THE FOLLOWING

4 (1) REQUIRE PAYMENT OF THE PREMIUM IN FULL WITHIN 45 DAYS
5 AFTER THE PREMIUM CHARGE

6 (11) REQUIRE PAYMENT OF THE PREMIUMS TO BE MADE PERIODICALLY
7 TO COVER THE ASSOCIATION'S ACTUAL CASH OBLIGATIONS

8 (F) RECEIVE AND DISTRIBUTE ALL SUMS REQUIRED BY THE
9 ASSOCIATION'S OPERATION

10 (G) ESTABLISH PROCEDURES FOR REVIEWING INCIDENT REPORTING
11 PROCEDURES AND PRACTICES OF ASSOCIATION MEMBERS IF THE INCIDENT
12 REPORTING PROCEDURES OR PRACTICES OF A MEMBER ARE CONSIDERED
13 INADEQUATE TO PROPERLY SERVICE THE ASSOCIATION'S LIABILITIES, THE
14 ASSOCIATION MAY UNDERTAKE OR MAY CONTRACT WITH ANOTHER PERSON TO
15 ADJUST OR ASSIST IN THE ADJUSTMENT OF INCIDENT REPORTS FOR THE
16 MEMBER ON INCIDENTS THAT CREATE A POTENTIAL LIABILITY TO THE
17 ASSOCIATION AND MAY CHARGE THE COST OF THE ADJUSTMENT TO THE
18 MEMBER

19 SEC 4510 THE ASSOCIATION MAY DO ALL OF THE FOLLOWING

20 (A) SUE AND BE SUED IN THE NAME OF THE ASSOCIATION A JUDG-
21 MENT AGAINST THE ASSOCIATION SHALL NOT CREATE ANY DIRECT LIABIL-
22 ITY AGAINST THE INDIVIDUAL ASSOCIATION MEMBERS THE ASSOCIATION
23 MAY PROVIDE FOR THE INDEMNIFICATION OF ITS MEMBERS, MEMBERS OF
24 THE ASSOCIATION'S BOARD OF DIRECTORS, AND OFFICERS, EMPLOYEES,
25 AND OTHER PERSONS LAWFULLY ACTING ON THE ASSOCIATION'S BEHALF

1 (B) REINSURE ALL OR ANY PORTION OF ITS POTENTIAL LIABILITY
2 WITH REINSURERS LICENSED TO TRANSACT INSURANCE IN THIS STATE OR
3 APPROVED BY THE COMMISSIONER

4 (C) PROVIDE FOR APPROPRIATE HOUSING, EQUIPMENT, AND PERSON-
5 NEL AS MAY BE NECESSARY TO ASSURE THE ASSOCIATION'S EFFICIENT
6 OPERATION

7 (D) PURSUANT TO THE PLAN OF OPERATION, ADOPT REASONABLE
8 RULES FOR THE ASSOCIATION'S ADMINISTRATION, ENFORCE THOSE RULES,
9 AND DELEGATE AUTHORITY, AS THE BOARD CONSIDERS NECESSARY TO
10 ASSURE THE PROPER ADMINISTRATION AND OPERATION OF THE ASSOCIATION
11 CONSISTENT WITH THE PLAN OF OPERATION

12 (E) CONTRACT FOR GOODS AND SERVICES, INCLUDING INDEPENDENT
13 CLAIMS MANAGEMENT, ACTUARIAL, INVESTMENT, AND LEGAL SERVICES,
14 FROM OTHERS WITHIN OR WITHOUT THIS STATE TO ASSURE THE
15 ASSOCIATION'S EFFICIENT OPERATION

16 (F) HEAR AND DETERMINE COMPLAINTS CONCERNING THE
17 ASSOCIATION'S OPERATION

18 (G) PERFORM OTHER ACTS NOT SPECIFICALLY ENUMERATED IN THIS
19 SECTION THAT ARE NECESSARY OR PROPER TO ACCOMPLISH THE
20 ASSOCIATION'S PURPOSES AND THAT ARE NOT INCONSISTENT WITH THIS
21 ACT OR THE PLAN OF OPERATION

22 SEC 4515 (1) A BOARD OF DIRECTORS IS CREATED THAT SHALL
23 BE RESPONSIBLE FOR THE ASSOCIATION'S OPERATION CONSISTENT WITH
24 THE PLAN OF OPERATION AND THIS CHAPTER

25 (2) NOT MORE THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS
26 CHAPTER, THE COMMISSIONER SHALL CONVENE AN ORGANIZATIONAL MEETING
27 OF THE BOARD THE INITIAL BOARD SHALL BE COMPOSED OF 5 MEMBERS

1 OF THE ASSOCIATION APPOINTED BY THE COMMISSIONER TO SERVE AS
2 DIRECTORS, AND THE COMMISSIONER OR A DESIGNATED REPRESENTATIVE OF
3 THE COMMISSIONER SERVING AS AN EX OFFICIO MEMBER OF THE BOARD
4 WITHOUT VOTE EACH DIRECTOR SHALL BE ENTITLED TO 1 VOTE THE
5 INITIAL TERM OF OFFICE OF A DIRECTOR SHALL BE 2 YEARS

6 (3) AS PART OF THE PLAN OF OPERATION, THE BOARD SHALL ADOPT
7 RULES PROVIDING FOR THE COMPOSITION AND TERM OF SUCCESSOR BOARDS
8 TO THE INITIAL BOARD, CONSISTENT WITH THE MEMBERSHIP COMPOSITION
9 REQUIREMENTS IN SUBSECTION (2) TERMS OF THE DIRECTORS OF SUC-
10 CESSOR BOARDS SHALL BE STAGGERED SO THAT THE TERMS OF ALL THE
11 DIRECTORS DO NOT EXPIRE AT THE SAME TIME AND SO THAT A DIRECTOR
12 DOES NOT SERVE A TERM OF MORE THAN 4 YEARS

13 (4) EACH DIRECTOR OF SUCCESSOR BOARDS SHALL BE APPOINTED BY
14 THE COMMISSIONER AND SHALL SERVE UNTIL THAT DIRECTOR'S SUCCESSOR
15 IS SELECTED AND QUALIFIED THE CHAIRPERSON OF THE BOARD SHALL BE
16 ELECTED BY THE BOARD A VACANCY ON THE BOARD SHALL BE FILLED BY
17 THE COMMISSIONER CONSISTENT WITH THE PLAN OF OPERATION

18 (5) AFTER THE BOARD IS APPOINTED, THE BOARD SHALL MEET AS
19 OFTEN AS THE CHAIRPERSON, THE COMMISSIONER, OR THE PLAN OF OPERA-
20 TION SHALL REQUIRE, OR AT THE REQUEST OF ANY 3 DIRECTORS OF THE
21 BOARD THE CHAIRPERSON SHALL RETAIN THE RIGHT TO VOTE ON ALL
22 ISSUES FOUR DIRECTORS OF THE BOARD SHALL CONSTITUTE A QUORUM

23 (6) AN ANNUAL REPORT OF THE ASSOCIATION'S OPERATIONS IN A
24 FORM AND DETAIL AS MAY BE DETERMINED BY THE BOARD SHALL BE FUR-
25 NISHED TO EACH MEMBER

26 SEC 4520 (1) NOT MORE THAN 60 DAYS AFTER THE INITIAL
27 ORGANIZATIONAL MEETING OF THE BOARD, THE BOARD SHALL SUBMIT TO

1 THE COMMISSIONER FOR APPROVAL A PROPOSED PLAN OF OPERATION
2 CONSISTENT WITH THE OBJECTIVES AND PROVISIONS OF THIS CHAPTER,
3 WHICH SHALL PROVIDE FOR THE ECONOMICAL, FAIR, AND NONDISCRIMINA-
4 TORY ADMINISTRATION OF THE ASSOCIATION AND FOR THE PROMPT AND
5 EFFICIENT PROVISION OF INDEMNITY IF A PLAN IS NOT SUBMITTED
6 WITHIN THIS 60-DAY PERIOD, THEN THE COMMISSIONER, AFTER CONSULTA-
7 TION WITH THE BOARD, SHALL FORMULATE AND PLACE INTO EFFECT A PLAN
8 CONSISTENT WITH THIS CHAPTER

9 (2) THE PLAN OF OPERATION, UNLESS APPROVED SOONER IN WRIT-
10 ING, SHALL BE CONSIDERED TO MEET THE REQUIREMENTS OF THIS CHAPTER
11 IF IT IS NOT DISAPPROVED BY THE COMMISSIONER'S WRITTEN ORDER
12 WITHIN 30 DAYS AFTER THE DATE OF ITS SUBMISSION BEFORE DISAP-
13 PROVAL OF ALL OR ANY PART OF THE PROPOSED PLAN OF OPERATION, THE
14 COMMISSIONER SHALL NOTIFY THE BOARD IN WHAT RESPECT THE PLAN OF
15 OPERATION FAILS TO MEET THE REQUIREMENTS AND OBJECTIVES OF THIS
16 CHAPTER IF THE BOARD FAILS TO SUBMIT A REVISED PLAN OF OPERA-
17 TION THAT MEETS THE REQUIREMENTS AND OBJECTIVES OF THIS CHAPTER
18 WITHIN THE 30-DAY PERIOD, THE COMMISSIONER SHALL ENTER AN ORDER
19 ACCORDINGLY AND SHALL IMMEDIATELY FORMULATE AND PLACE INTO EFFECT
20 A PLAN CONSISTENT WITH THE REQUIREMENTS AND OBJECTIVES OF THIS
21 CHAPTER

22 (3) THE PROPOSED PLAN OF OPERATION OR AMENDMENTS TO THE PLAN
23 OF OPERATION SHALL BE SUBJECT TO MAJORITY APPROVAL BY THE BOARD,
24 RATIFIED BY A MAJORITY OF THE MEMBERSHIP HAVING A VOTE, WITH
25 VOTING RIGHTS BEING APPORTIONED ACCORDING TO THE PREMIUMS CHARGED
26 IN SECTION 4525(D) AND SHALL BE SUBJECT TO THE COMMISSIONER'S
27 APPROVAL

1 SEC 4522 UPON THE COMMISSIONER'S APPROVAL AND
2 RATIFICATION BY THE MEMBERS OF THE PLAN SUBMITTED, OR UPON THE
3 PROMULGATION OF A PLAN BY THE COMMISSIONER, EACH PHYSICIAN SHALL
4 BE BOUND BY AND SHALL FORMALLY SUBSCRIBE TO AND PARTICIPATE IN
5 THE PLAN APPROVED AS A CONDITION OF MAINTAINING HIS OR HER
6 LICENSE

7 SEC 4525 THE PLAN OF OPERATION SHALL PROVIDE FOR ALL OF
8 THE FOLLOWING

9 (A) THE ESTABLISHMENT OF NECESSARY FACILITIES

10 (B) THE MANAGEMENT AND OPERATION OF THE ASSOCIATION

11 (C) A PRELIMINARY PREMIUM, PAYABLE BY EACH MEMBER IN PROPOR-
12 TION TO ITS TOTAL FIRST-YEAR PREMIUM, FOR INITIAL EXPENSES NECES-
13 SARY TO COMMENCE OPERATION OF THE ASSOCIATION

14 (D) PROCEDURES AND CRITERIA TO BE UTILIZED IN CALCULATING
15 AND CHARGING PREMIUMS OF EACH MEMBER, INCLUDING ADJUSTMENTS FROM
16 EXCESS OR DEFICIENT PREMIUMS FROM PRIOR PERIODS

17 (E) PROCEDURES GOVERNING THE ACTUAL PAYMENT OF PREMIUMS TO
18 THE ASSOCIATION

19 (F) REIMBURSEMENT OF EACH MEMBER OF THE BOARD BY THE ASSOCI-
20 ATION FOR ACTUAL AND NECESSARY EXPENSES INCURRED ON ASSOCIATION
21 BUSINESS

22 (G) THE ASSOCIATION'S INVESTMENT POLICY

23 (H) ANY OTHER MATTERS REQUIRED BY OR NECESSARY TO EFFEC-
24 TIVELY IMPLEMENT THIS CHAPTER

25 SEC 4530 (1) THE ASSOCIATION IS SUBJECT TO ALL THE
26 REPORTING, LOSS RESERVE, AND INVESTMENT REQUIREMENTS OF THE
27 COMMISSIONER TO THE SAME EXTENT AS AN INSURER

1 (2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE
2 COMMISSIONER MAY VISIT THE ASSOCIATION AT ANY TIME AND EXAMINE
3 ANY AND ALL THE ASSOCIATION'S AFFAIRS

4 Section 2 This amendatory act shall not take effect unless
5 Senate Bill No 996
6 of the 87th Legislature is enacted into law