



# HOUSE BILL No. 5419

November 28, 1995, Introduced by Reps. Llewellyn, London, Bush, Law, Pitoniak, DeHart, Voorhees, Weeks, Vaughn and Schroer and referred to the Committee on Insurance.

A bill to amend sections 8114 and 8121 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 8114 as added by Act No. 302 of the Public Acts of 1989 and section 8121 as amended by Act No. 227 of the Public Acts of 1994, being sections 500.8114 and 500.8121 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 8114 and 8121 of Act No. 218 of the  
2 Public Acts of 1956, section 8114 as added by Act No. 302 of the  
3 Public Acts of 1989 and section 8121 as amended by Act No. 227 of  
4 the Public Acts of 1994, being sections 500.8114 and 500.8121 of  
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 8114. (1) The commissioner as rehabilitator may  
7 appoint 1 or more special deputies, including but not limited to

1 the Michigan life and health insurance guaranty association and  
2 the Michigan property and casualty guaranty association, who  
3 shall have all the powers and responsibilities of the rehabilita-  
4 tor granted under this section, and the commissioner may employ  
5 such counsel, clerks, and assistants as considered necessary.  
6 The compensation of the special deputy, counsel, clerks, and  
7 assistants and all expenses of taking possession of the insurer  
8 and of conducting the proceedings shall be fixed by the commis-  
9 sioner, with the approval of the court and shall be paid out of  
10 the funds or assets of the insurer. The persons appointed under  
11 this section shall serve at the pleasure of the commissioner. If  
12 the property of the insurer does not contain sufficient cash or  
13 liquid assets to defray the costs incurred, the commissioner may  
14 advance the incurred costs out of an appropriation for the main-  
15 tenance of the insurance bureau. Amounts advanced for expenses  
16 of administration shall be repaid to the commissioner for the use  
17 of the insurance bureau out of the first available money of the  
18 insurer.

19 (2) The rehabilitator may take such action as he or she con-  
20 sidered necessary or appropriate to reform and revitalize the  
21 insurer INCLUDING, BUT NOT LIMITED TO, ANY OF THE ACTIONS THAT  
22 MAY BE TAKEN BY A LIQUIDATOR UNDER THIS CHAPTER. ~~He or she~~  
23 ~~shall have~~ THE REHABILITATOR HAS all the powers of the direc-  
24 tors, officers, and managers, whose authority shall be suspended,  
25 except as they are redelegated by the rehabilitator. ~~He or she~~  
26 ~~shall have~~ THE REHABILITATOR HAS full power to direct and  
27 manage, to hire and discharge employees subject to any contract

1 rights they may have, and to deal with the property and business  
2 of the insurer.

3 (3) If it appears to the rehabilitator that there has been  
4 criminal or tortious conduct or breach of a contractual or fidu-  
5 ciary obligation detrimental to the insurer by an officer, manag-  
6 er, agent, broker, employee, or other person, he or she may  
7 pursue all appropriate legal remedies. ~~on behalf of the~~  
8 ~~insurer.~~

9 (4) If the rehabilitator determines that reorganization,  
10 consolidation, conversion, reinsurance, merger, or other trans-  
11 formation of the insurer is appropriate, he or she shall prepare  
12 a plan to effect those changes. Upon application of the rehabil-  
13 itator for approval of the plan, and after notice and hearings as  
14 the court may prescribe, the court may either approve or disap-  
15 prove the plan proposed, or may modify it and approve it as  
16 modified. A plan approved under this section shall be, in the  
17 court's judgment, fair and equitable to all parties concerned.  
18 If the plan is approved, the rehabilitator shall implement the  
19 plan. For a life insurer, the plan proposed may include the  
20 imposition of liens upon the policies of the company, if all  
21 rights of shareholders are first relinquished. A plan for a life  
22 insurer may also propose imposition of a moratorium upon loan and  
23 cash surrender rights under policies, for such period and to such  
24 an extent as may be necessary.

25 (5) The rehabilitator shall have the power under  
26 sections 8126 and 8127 to avoid fraudulent transfers.

1       Sec. 8121. (1) The liquidator shall have the power to do  
2 the following:

3       (a) To appoint a special deputy, including, but not limited  
4 to, the Michigan life and health insurance guaranty association  
5 with its consent or the Michigan property and casualty guaranty  
6 association with its consent to act for him or her under this  
7 chapter and to determine the special deputy's reasonable  
8 compensation. The special deputy shall have all powers of the  
9 liquidator granted by this chapter and shall serve at the plea-  
10 sure of the liquidator.

11       (b) To employ employees and agents, legal counsel, actu-  
12 aries, accountants, appraisers, consultants, and such other per-  
13 sonnel as he or she considers necessary to assist in the  
14 liquidation.

15       (c) To fix the reasonable compensation of employees and  
16 agents, legal counsel, actuaries, accountants, court's apprais-  
17 ers, and consultants with the court's approval.

18       (d) To pay reasonable compensation to persons appointed and  
19 to defray from the funds or assets of the insurer all expenses of  
20 taking possession of, conserving, conducting, liquidating, dis-  
21 posing of, or otherwise dealing with, the insurer's business and  
22 property. If the insurer's property does not contain sufficient  
23 cash or liquid assets to defray the costs incurred, the commis-  
24 sioner may advance the incurred costs out of an appropriation for  
25 the maintenance of the insurance bureau. Amounts advanced for  
26 expenses of administration shall be repaid to the commissioner

1 for the use of the insurance bureau out of the first available  
2 money of the insurer.

3 (e) To hold hearings, to subpoena witnesses to compel their  
4 attendance, to administer oaths, to examine a person under oath,  
5 and to compel a person to subscribe to his or her testimony after  
6 it has been correctly reduced to writing; and in connection with  
7 these powers to require the production of books, papers, records,  
8 or other documents that he or she considers relevant to the  
9 inquiry.

10 (f) To collect all debts and money due and claims belonging  
11 to the insurer, wherever located, and for the following  
12 purposes:

13 (i) To institute timely action in other jurisdictions to  
14 forestall garnishment and attachment proceedings against debts.

15 (ii) To do other acts as are necessary or expedient to col-  
16 lect, conserve, or protect the assets or property, including the  
17 power to sell, compound, compromise, or assign debts for purposes  
18 of collection upon terms and conditions as he or she considers  
19 best.

20 (iii) To pursue a creditor's remedies available to enforce  
21 the creditor's claims.

22 (g) To conduct public and private sales of the insurer's  
23 property.

24 (h) To use assets of the insurer's estate under a liquida-  
25 tion order to transfer policy obligations to a solvent assuming  
26 insurer, if the transfer can be arranged without prejudice to  
27 applicable priorities under section 8142.

1 (i) To acquire, hypothecate, encumber, lease, improve, sell,  
2 transfer, abandon, or otherwise dispose of, or deal with, insurer  
3 property at its market value or upon terms and conditions as are  
4 fair and reasonable. He or she shall also have power to execute,  
5 acknowledge, and deliver any and all deeds, assignments,  
6 releases, and other instruments necessary or proper to effectuate  
7 the sale of property or other transaction in connection with the  
8 liquidation except that for trusted assets, any instruments nec-  
9 essary or proper shall be executed only pursuant to court order.

10 (j) To borrow money on the security of the insurer's assets  
11 or to borrow money without security and to execute and deliver  
12 all documents necessary to that transaction for the purpose of  
13 facilitating the liquidation.

14 (k) To enter into contracts necessary to carry out the order  
15 to liquidate, and to affirm or disavow any contracts to which the  
16 insurer is a party.

17 (l) To continue to prosecute and to institute in the name of  
18 the insurer or in his or her own name suits and other legal pro-  
19 ceedings, in this state or elsewhere, and to abandon the prosecu-  
20 tion of claims he or she considers unprofitable to pursue  
21 further. If the insurer is dissolved under section 8120, he or  
22 she shall have the power to apply to any court in this state or  
23 elsewhere for leave to substitute himself or herself for the  
24 insurer as plaintiff.

25 (m) To prosecute an action that may exist on behalf of the  
26 creditors, members, policyholders, or shareholders of the insurer  
27 against an officer of the insurer or another person.

1 (n) To remove records and property of the insurer to the  
2 commissioner's offices or to such other place as may be conven-  
3 ient for the purposes of efficient and orderly execution of the  
4 liquidation. Guaranty associations and foreign guaranty associa-  
5 tions shall have such reasonable access to the records of the  
6 insurer as is necessary for them to carry out their statutory  
7 obligations.

8 (o) To deposit in 1 or more banks in this state such sums as  
9 are required for meeting current administration expenses and div-  
10 idend distributions.

11 (p) To invest all sums not currently needed, unless the  
12 court orders otherwise.

13 (q) To file any necessary documents for recording in the  
14 office of any register of deeds in this state or elsewhere where  
15 property of the insurer is located.

16 (r) To assert all defenses available to the insurer as  
17 against third persons, including statutes of limitation, statutes  
18 of frauds, and the defense of usury. A waiver of a defense by  
19 the insurer after a petition in liquidation has been filed  
20 ~~shall~~ DOES not bind the liquidator. If a guaranty association  
21 or foreign guaranty association has an obligation to defend a  
22 suit, the liquidator shall give precedence to that obligation and  
23 may defend only in the absence of a defense by the guaranty  
24 associations.

25 (s) To exercise and enforce all the rights, remedies, and  
26 powers of a creditor, shareholder, policyholder, or member,  
27 including the power to avoid a transfer or lien that may be given

1 by the general law and that is not included in sections 8126 to  
2 8128.

3 (t) To intervene in a proceeding wherever instituted that  
4 might lead to the appointment of a receiver or trustee and to act  
5 as the receiver or trustee whenever the appointment is offered.

6 (u) To enter into agreements with a receiver or commissioner  
7 of another state OR COUNTRY relating to the rehabilitation,  
8 liquidation, conservation, or dissolution of an insurer doing  
9 business in both states OR COUNTRIES.

10 (v) To exercise all powers now held or hereafter conferred  
11 upon receivers by the laws of this state not inconsistent with  
12 the provisions of this chapter.

13 (2) If a company placed in liquidation issued liability pol-  
14 icies on a claims made basis, which provided an option to pur-  
15 chase an extended period to report claims, then the liquidator  
16 may make available to holders of those policies, for a charge, an  
17 extended period to report claims as stated in this chapter. The  
18 extended reporting period shall be made available only to those  
19 insureds who have not secured substitute coverage. The extended  
20 period made available by the liquidator shall begin upon termina-  
21 tion of an extended period to report claims in the basic policy  
22 and shall end at the earlier of the final date for filing of  
23 claims in the liquidation proceeding or 18 months from the order  
24 of liquidation.

25 (3) The extended period to report claims made available by  
26 the liquidator ~~shall be~~ IS subject to the terms of the policy  
27 to which it relates. The liquidator shall make available the



1 extended period within 60 days after the order of liquidation at  
2 a charge to be determined by the liquidator subject to the  
3 court's approval. The offer shall be considered rejected unless  
4 the offer is accepted in writing and the charge is paid within  
5 90 days after the order of liquidation. Commissions, premium  
6 taxes, assessments, or other fees shall not be due on the charge  
7 pertaining to the extended period to report claims.

8       (4) The enumeration in this section of the powers and  
9 authority of the liquidator shall not be construed as a limita-  
10 tion upon him or her, and it shall not exclude in any manner his  
11 or her right to do other acts not specifically enumerated in this  
12 section or otherwise provided for if necessary or appropriate for  
13 the accomplishment of or in aid of the purpose of liquidation.

14       (5) The liquidator may delay the sale of the assets of the  
15 company if the liquidator determines a delay in the sale would be  
16 prudent in order to obtain a more favorable rate of return on the  
17 sale of the assets.