

HOUSE BILL No. 4532

April 28, 2015, Introduced by Reps. Lyons, LaFontaine and Franz and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 115, 416, 451, 505, 1829, 1902, 1903, 1905,
1906, 1910, 1911, 1912, 1915, 1916, 1920, 1922, 1930, 1940, 1951,
2091, and 2093 (MCL 500.115, 500.416, 500.451, 500.505, 500.1829,
500.1902, 500.1903, 500.1905, 500.1906, 500.1910, 500.1911,
500.1912, 500.1915, 500.1916, 500.1920, 500.1922, 500.1930,
500.1940, 500.1951, 500.2091, and 500.2093), section 115 as amended
and section 505 as added by 2001 PA 24, section 416 as amended by
1992 PA 182, sections 451, 1920, and 1951 as amended by 1994 PA
228, section 1829 as added by 1989 PA 214, sections 1902, 1906,
1911, 1912, 1916, 1922, 1930, and 1940 as added by 1980 PA 341,
section 1903 as amended by 1994 PA 226, section 1905 as amended by
2001 PA 228, section 1910 as amended by 2012 PA 204, and section
1915 as amended by 2006 PA 644; and to repeal acts and parts of

acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 115. As used in this act unless the context clearly
2 indicates otherwise:

3 (a) "Affiliate" or a person "affiliated" with a specific
4 person means a person that directly, or indirectly through 1 or
5 more intermediaries, controls, is controlled by, or is under common
6 control with the person specified.

7 (b) "Control" including the terms "controlling", "controlled
8 by", and "under common control with" mean the following:

9 (i) Except as otherwise provided in **SECTION 1903 OR**
10 subparagraph (ii), the possession or the contingent or noncontingent
11 right to acquire possession, direct or indirect, of the power to
12 direct or cause the direction of the management and policies of a
13 person, whether through the ownership of voting securities, by
14 contract including acquisition of assets or bulk reinsurance, other
15 than a commercial contract for goods or nonmanagement services, by
16 pledge of securities, or otherwise, unless the power is the result
17 of an official position with or corporate office held by the
18 person. Control is presumed to exist if any person, by formal or
19 informal arrangement, device, or understanding, directly or
20 indirectly, owns, controls, holds with the power to vote, or holds
21 proxies representing 10% or more of the voting securities of any
22 other person or for a mutual insurer owns 10% or more of the
23 insurer's surplus through surplus notes, guarantee fund
24 certificates, or other evidence of indebtedness issued by the
25 insurer. ~~This~~ **THE** presumption **IN THIS SUBPARAGRAPH** may be rebutted

1 by a showing made in the manner provided by section 1332 that
2 control does not in fact exist. The ~~commissioner~~**DIRECTOR** may
3 determine after furnishing to all persons in interest notice and an
4 opportunity to be heard and making specific findings of fact to
5 support the determination that control in fact exists
6 notwithstanding the absence of a presumption to that effect.

7 (ii) "Control", for the purpose of section 1243 and chapter 5
8 only, means 1 or more of the following:

9 (A) Ownership, control, or power to vote 25% or more of the
10 outstanding shares of any class of voting security of the company,
11 directly or indirectly, or acting through 1 or more other persons.

12 (B) Control in any manner over the election of a majority of
13 the directors, trustees, or general partners or individuals
14 exercising similar functions of the company.

15 (C) The power to exercise, directly or indirectly, a
16 controlling influence over the management or policies of the
17 company, as the ~~commissioner~~**DIRECTOR** determines.

18 (c) "Insurance holding company system" means 2 or more
19 affiliated persons, 1 or more of which is an insurer.

20 (d) "Securityholder" of a specified person means a person who
21 owns any security of the person, including common stock, preferred
22 stock, debt obligations, and any other security convertible into or
23 evidencing the right to acquire any of the foregoing.

24 (e) "Subsidiary" of a specified person means an affiliate
25 controlled by that person directly or indirectly through 1 or more
26 intermediaries.

27 (f) "Voting security" includes any security convertible into

1 or evidencing a right to acquire a voting security.

2 Sec. 416. As a condition of qualifying for and maintaining
3 authority to transact insurance in this state, ~~or for qualifying as~~
4 ~~an eligible unauthorized insurer,~~ the ~~commissioner~~ **DIRECTOR** may
5 require an **AUTHORIZED** insurer to maintain a special deposit with
6 the state treasurer in ~~such AN~~ amount as the ~~commissioner~~ **DIRECTOR**
7 considers necessary for the protection of ~~Michigan~~ policyholders
8 and claimants **IN THIS STATE**. The special deposit is subject to
9 special deposit claims ~~pursuant to~~ **UNDER** section 8141a.

10 Sec. 451. (1) ~~Any~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION**
11 **(2), AN** unauthorized insurer ~~transacting insurance in this state~~
12 ~~shall be~~ **IS** subject to a tax of 2% of premiums written in this
13 state and to an additional regulatory fee of 0.5% on premiums
14 written in this state. The tax required by this section ~~shall~~ **MUST**
15 ~~be considered delinquent if not paid within 30 days after a copy of~~
16 ~~the computation of the tax by the commissioner is delivered to the~~
17 ~~insurer in the manner prescribed by law for the service of~~
18 ~~process.~~ **PAID AS PROVIDED UNDER SECTIONS 1920 AND 1951.**

19 (2) **A NONADMITTED INSURER IS SUBJECT TO A TAX OF 2% OF**
20 **PREMIUMS FOR NONADMITTED INSURANCE POLICIES IF THIS STATE IS THE**
21 **HOME STATE OF THE INSURED AND TO AN ADDITIONAL REGULATORY FEE OF**
22 **0.5% ON PREMIUMS FOR NONADMITTED INSURANCE POLICIES IF THIS STATE**
23 **IS THE HOME STATE OF THE INSURED PAID AS PROVIDED UNDER SECTIONS**
24 **1920 AND 1951.**

25 (3) **AS USED IN THIS SECTION:**

26 (A) **"HOME STATE OF THE INSURED" MEANS THAT TERM AS DEFINED IN**
27 **SECTION 1903.**

1 (B) "NONADMITTED INSURANCE" MEANS ANY PROPERTY AND CASUALTY
2 INSURANCE PERMITTED TO BE PLACED DIRECTLY OR THROUGH A SURPLUS
3 LINES BROKER WITH A NONADMITTED INSURER ELIGIBLE TO ACCEPT THE
4 INSURANCE.

5 (C) "NONADMITTED INSURER" MEANS AN UNAUTHORIZED INSURER BUT
6 DOES NOT INCLUDE A RISK RETENTION GROUP AS DEFINED IN SECTION 1801.

7 (D) "SURPLUS LINES BROKER" MEANS A PERSON LICENSED UNDER
8 CHAPTER 19 TO SELL, SOLICIT, OR NEGOTIATE INSURANCE ON PROPERTIES,
9 RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED IN THIS STATE WITH
10 NONADMITTED INSURERS.

11 Sec. 505. (1) A licensee is not required to provide the notice
12 and opt out requirements for nonpublic personal financial
13 information under this chapter if the licensee is an employee,
14 agent, or other representative of a principal and all of the
15 following are met:

16 (a) The principal is another licensee.

17 (b) The principal otherwise complies with and provides the
18 notices required by this chapter.

19 (c) The licensee does not disclose any nonpublic personal
20 information to any person other than the principal or its
21 affiliates as provided in this chapter.

22 (2) A ~~surplus lines broker or surplus lines insurer~~ **LICENSED**
23 **UNDER CHAPTER 19 OR AN UNAUTHORIZED INSURER UNDER CHAPTER 19** is
24 ~~considered to be~~ in compliance with the notice and opt out
25 requirements for nonpublic personal financial information under
26 this chapter if all of the following are met:

27 (a) The broker or **UNAUTHORIZED** insurer does not disclose

1 nonpublic personal information of a consumer or a customer to
2 nonaffiliated third parties for any purpose, including joint
3 servicing or marketing under section 535, except as permitted by
4 section 537 or 539.

5 (b) The broker or **UNAUTHORIZED** insurer delivers a notice to
6 the consumer at the time a customer relationship is established on
7 which the following is printed in 16-point type:

8 PRIVACY NOTICE

9 "Neither the U.S. brokers that handled this insurance nor the
10 insurers that have underwritten this insurance will disclose
11 nonpublic personal information concerning the buyer to
12 nonaffiliates of the brokers or insurers except as permitted by
13 law."

14 Sec. 1829. (1) A purchasing group doing business in this state
15 may purchase insurance for risks resident or located in this state
16 only from a risk retention group chartered in a state, from an
17 insurer authorized in this state, or from an eligible ~~unauthorized~~
18 **SURPLUS LINES** insurer pursuant to ~~UNDER~~ chapter 19.

19 (2) A purchasing group ~~which~~ **THAT** obtains liability insurance
20 from an ~~insurer not authorized in this state~~ **UNAUTHORIZED INSURER**
21 **UNDER CHAPTER 19** or a risk retention group shall inform in writing
22 each of the members of the group ~~which~~ **THAT** have a risk resident or
23 located in this state that the risk is not protected by an
24 insurance insolvency guaranty fund in this state and that the risk
25 retention group or the **UNAUTHORIZED** insurer **UNDER CHAPTER 19** may
26 not be subject to all insurance laws and regulations of this state.

27 (3) A purchasing group shall not purchase insurance providing

1 for a deductible or self-insured retention, unless the deductible
2 or self-insured retention is the sole responsibility of each
3 individual member of the purchasing group.

4 Sec. 1902. This chapter ~~shall~~**MUST** be liberally construed and
5 applied to promote its underlying purposes, which include:

6 (a) Protecting persons seeking insurance in this state.

7 (b) Permitting ~~stable and reputable insurers to write surplus~~
8 ~~lines insurance in~~**TO BE PLACED WITH OR PROCURED FROM REPUTABLE AND**
9 **FINANCIALLY SOUND UNAUTHORIZED INSURERS AND EXPORTED FROM** this
10 state.

11 (c) Establishing a system of regulation ~~which~~**THAT** will permit
12 an orderly access to surplus lines insurance in this state.

13 Sec. 1903. (1) As used in this chapter:

14 (a) ~~"Eligible unauthorized insurer" means an insurer not~~
15 ~~authorized to transact insurance in this state but eligible to~~
16 ~~write insurance business under this chapter.~~**"AFFILIATED GROUP"**
17 **MEANS A GROUP OF 2 OR MORE ENTITIES IN WHICH EACH ENTITY IS AN**
18 **AFFILIATE OF THE OTHER.**

19 (b) "Association" means an association registered under
20 section 1930.

21 (C) **"CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR**
22 **ALL URBAN CONSUMERS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF**
23 **THE UNITED STATES DEPARTMENT OF LABOR AND AS CERTIFIED BY THE**
24 **DIRECTOR IN AN ADMINISTRATIVE BULLETIN.**

25 (D) **"CONTROL" MEANS 1 OR MORE OF THE FOLLOWING:**

26 (i) **OWNERSHIP, CONTROL, OR POWER TO VOTE 25% OR MORE OF THE**
27 **OUTSTANDING SHARES OF ANY CLASS OF VOTING SECURITY OF AN ENTITY,**

1 DIRECTLY OR INDIRECTLY, OR ACTING THROUGH 1 OR MORE OTHER PERSONS.

2 (ii) CONTROL IN ANY MANNER OVER THE ELECTION OF A MAJORITY OF
3 THE DIRECTORS, TRUSTEES, OR OTHER INDIVIDUALS EXERCISING SIMILAR
4 FUNCTIONS OF AN ENTITY.

5 (E) "HOME STATE OF THE INSURED" MEANS ALL OF THE FOLLOWING FOR
6 AN INSURED PERSON UNDER AN INSURANCE CONTRACT WITH AN UNAUTHORIZED
7 INSURER:

8 (i) IF THE INSURED PERSON IS AN INDIVIDUAL AND SUBPARAGRAPH
9 (iii) DOES NOT APPLY, THE STATE IN WHICH THE PRINCIPAL RESIDENCE OF
10 THE INDIVIDUAL IS LOCATED IF SOME OR ALL OF THE INSURED RISK IS
11 LOCATED IN THAT STATE. IF ALL OF THE INSURED RISK IS LOCATED
12 OUTSIDE OF THAT STATE, THE STATE TO WHICH THE GREATEST PERCENTAGE
13 OF THE TAXABLE PREMIUM FOR THE INSURANCE CONTRACT IS ALLOCATED.

14 (ii) IF THE INSURED PERSON IS NOT AN INDIVIDUAL AND
15 SUBPARAGRAPH (iii) DOES NOT APPLY TO THE INSURED PERSON, THE STATE IN
16 WHICH THE PRINCIPAL PLACE OF BUSINESS OF THE PERSON IS LOCATED IF
17 SOME OR ALL OF THE INSURED RISK IS LOCATED IN THAT STATE. IF ALL OF
18 THE INSURED RISK IS LOCATED OUTSIDE OF THAT STATE, THE STATE TO
19 WHICH THE GREATEST PERCENTAGE OF THE TAXABLE PREMIUM FOR THE
20 INSURANCE CONTRACT IS ALLOCATED.

21 (iii) IF MORE THAN 1 INSURED PERSON WITHIN AN AFFILIATED GROUP
22 IS A NAMED INSURED UNDER A SINGLE CONTRACT, 1 OF THE FOLLOWING:

23 (A) IF THE INSURED PERSON WITHIN THE AFFILIATED GROUP WITH THE
24 LARGEST PERCENTAGE OF PREMIUM ATTRIBUTABLE TO THE INSURED PERSON
25 UNDER THE INSURANCE CONTRACT IS AN INDIVIDUAL, THE STATE IN WHICH
26 THE PRINCIPAL RESIDENCE OF THE INDIVIDUAL IS LOCATED IF SOME OR ALL
27 OF THE INSURED RISK IS LOCATED IN THAT STATE. IF ALL OF THE INSURED

1 RISK IS LOCATED OUTSIDE OF THAT STATE, THE STATE TO WHICH THE
2 GREATEST PERCENTAGE OF THE INSURANCE PREMIUM FOR THE INSURANCE
3 CONTRACT IS ALLOCATED.

4 (B) IF THE INSURED PERSON WITHIN THE AFFILIATED GROUP WITH THE
5 LARGEST PERCENTAGE OF PREMIUM ATTRIBUTABLE TO THE INSURED PERSON
6 UNDER THE INSURANCE CONTRACT IS A PERSON OTHER THAN AN INDIVIDUAL,
7 THE STATE IN WHICH THE PRINCIPAL PLACE OF BUSINESS OF THE PERSON IS
8 LOCATED IF SOME OR ALL OF THE INSURED RISK IS LOCATED IN THAT
9 STATE. IF ALL OF THE INSURED RISK IS LOCATED OUTSIDE OF THAT STATE,
10 THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE TAXABLE PREMIUM
11 FOR THE INSURANCE CONTRACT IS ALLOCATED.

12 (F) ~~(e)~~—"Licensee" means a person licensed under this chapter.

13 (G) "PRINCIPAL PLACE OF BUSINESS" MEANS THE STATE IN WHICH A
14 PERSON OTHER THAN AN INDIVIDUAL MAINTAINS ITS HEADQUARTERS AND
15 WHERE THE PERSON'S HIGH-LEVEL OFFICERS DIRECT, CONTROL, AND
16 COORDINATE THE BUSINESS ACTIVITIES OF THE PERSON.

17 (H) "STATE" MEANS THIS STATE, ANOTHER STATE OF THE UNITED
18 STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO,
19 GUAM, THE NORTHERN MARIANA ISLANDS, THE VIRGIN ISLANDS, AND
20 AMERICAN SAMOA.

21 (I) ~~(d)~~—"Surplus lines insurance" means insurance ~~in~~ AS TO
22 WHICH this state IS THE HOME STATE OF THE INSURED AND THAT IS
23 procured from, PLACED WITH, or continued or renewed with an
24 ~~unauthorized~~ A NONADMITTED insurer. ~~and includes all of the~~
25 ~~following, whether effected by mail or otherwise:~~

26 ~~—— (i) Insurance for which applications are solicited from persons~~
27 ~~resident or located in this state.~~

~~1 (ii) Insurance for which contracts of insurance are issued or
2 delivered to persons resident or located in this state.~~

~~3 (iii) Insurance that is procured through negotiations or by an
4 application occurring in whole or in part in this state or made
5 within or from within this state.~~

~~6 (iv) Insurance for which premiums, in whole or in part, are
7 remitted directly or indirectly within or from within this state.~~

8 (J) "UNAUTHORIZED INSURER" MEANS THAT TERM AS DEFINED IN
9 SECTION 108 BUT DOES NOT INCLUDE A RISK RETENTION GROUP AS DEFINED
10 IN SECTION 1801.

11 (2) The definitions contained in subsection (1), unless the
12 context otherwise requires, ~~shall~~ apply to the use of the defined
13 terms in this chapter and ~~shall~~ control in the interpretation of
14 this chapter.

15 (3) The definitions contained in other chapters of this act
16 ~~shall~~ apply to the terms used in this chapter unless otherwise
17 specifically provided in this chapter.

18 (4) ~~Nothing contained in this~~ **THIS** section ~~shall~~ **DOES NOT**
19 ~~supersede the provisions of section 402b, and in the event of~~ **IF**
20 **THERE IS A** conflict between ~~the provision herein~~ **THIS SECTION** and
21 section 402b, ~~the latter shall govern.~~ **SECTION 402B CONTROLS FOR**
22 **POLICIES IF THIS STATE IS THE HOME STATE OF THE INSURED.**

23 Sec. 1905. (1) A person shall not solicit insurance, **SELL**
24 **INSURANCE, NEGOTIATE WITH AN INSURED,** bind coverage, or in any
25 other manner act as an agent or broker in the transaction of
26 surplus lines insurance **IF THIS STATE IS THE HOME STATE OF THE**
27 **INSURED** unless licensed under this chapter and section 1206a.

1 (2) A person shall not offer, solicit, ~~make a quotation on,~~
2 **QUOTE**, sell, **NEGOTIATE WITH AN INSURED**, or issue a policy of
3 insurance, binder, or any other evidence of insurance with an
4 unauthorized insurer ~~except in compliance~~ **IF THIS STATE IS THE HOME**
5 **STATE OF THE INSURED UNLESS THE PERSON COMPLIES** with this chapter.

6 (3) To obtain a ~~surplus lines~~ license under subsection (1), a
7 person shall do all of the following:

8 (a) File an application in the form and with the information
9 as the ~~commissioner~~ **DIRECTOR** may reasonably require to determine
10 the ability of the applicant to satisfactorily act in accordance
11 with this chapter.

12 (b) Complete an examination testing the applicant's
13 understanding of this chapter, the surplus lines insurance
14 business, and other chapters of this act, if required by the
15 ~~commissioner~~ **DIRECTOR**. The ~~commissioner~~ **DIRECTOR** may waive the
16 examination requirements for a person who has been licensed as a
17 ~~surplus lines~~ licensee **UNDER SUBSECTION (1)** within the preceding 12
18 months.

19 (c) Comply with sections 1204 to 1206.

20 (d) Agree to file with the ~~commissioner~~ **DIRECTOR**, not later
21 than February 15 and August 15 annually, a sworn statement of the
22 charges for insurance procured or placed, and the amounts returned
23 on the insurance canceled, under the license, for the preceding 6-
24 month period ending December 31 and June 30, respectively; and at
25 the time of filing the statement, paying to the ~~commissioner~~
26 **DIRECTOR** the 2% tax on premiums written and, instead of the costs
27 and expenses that may be imposed by the ~~commissioner pursuant to~~

1 **DIRECTOR UNDER** this chapter, a 0.5% regulatory fee on premiums
2 written as required by section 451.

3 (4) ~~A surplus lines~~ **IF THIS STATE IS THE HOME STATE OF THE**
4 **INSURED, A** licensee may do ~~any or all~~ **1 OR MORE** of the following:

5 (a) Place insurance on risks in this state with eligible
6 unauthorized insurers.

7 (b) Act in the capacity of an agent or broker, as determined
8 by the contractual relationship with the eligible unauthorized
9 insurer or that insurer's legal representative.

10 ~~—— (c) Place insurance on risks in this state, with unauthorized~~
11 ~~insurers that are not eligible unauthorized insurers, in strict~~
12 ~~compliance with section 1950. If the insurance is provided through~~
13 ~~the participation of several insurers and the licensee has reason~~
14 ~~to believe that a substantial portion of the insurance would be~~
15 ~~assumed by authorized or eligible unauthorized insurers, then, with~~
16 ~~respect to the unauthorized insurers not eligible, the insured or~~
17 ~~the insured's representative shall be informed as provided in~~
18 ~~section 1950(a).~~

19 (C) ~~(d)~~ Engage in any other acts expressly and implicitly
20 authorized by this chapter and this act.

21 (5) ~~Before~~ **IF THIS STATE IS THE HOME STATE OF THE INSURED,**
22 **BEFORE** placement of insurance with an eligible unauthorized
23 insurer, a licensee shall inform an insured or the insured's
24 representative that coverage is being placed with an insurer not
25 licensed in this state and **NOT SUBJECT TO REGULATION AND**
26 **ENFORCEMENT THAT APPLIES TO AUTHORIZED INSURERS AND** that payment of
27 loss may not be guaranteed in the event of insolvency of the

1 eligible unauthorized insurer.

2 (6) CONSISTENT WITH THE REQUIREMENTS OF THIS CHAPTER, THE
3 DIRECTOR MAY PARTICIPATE IN A NATIONAL INSURANCE PRODUCER DATABASE
4 OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ANY OTHER
5 EQUIVALENT UNIFORM DATABASE FOR THE LICENSURE AND RENEWAL OF
6 LICENSES UNDER THIS CHAPTER.

7 Sec. 1906. If the ~~commissioner~~DIRECTOR considers it
8 necessary, he or she may examine the books and records of a surplus
9 lines licensee to determine whether ~~IF~~ the licensee is conducting
10 its business in accordance with this chapter. For the purpose of
11 facilitating the examination, the licensee shall allow the
12 ~~commissioner~~DIRECTOR free access, at reasonable times, to all of
13 the licensee's books and records relating to transactions to which
14 this chapter applies.

15 Sec. 1910. (1) ~~Insurance~~EXCEPT AS PROVIDED IN SUBSECTION (5)
16 AND SECTION 1920, BOTH OF THE FOLLOWING APPLY:

17 (A) A LICENSEE shall not be placed by a licensee PROCURE
18 SURPLUS LINES INSURANCE FROM OR PLACE SURPLUS LINES INSURANCE with
19 an unauthorized insurer if coverage is available from an authorized
20 insurer.

21 (B) IF COVERAGE IS NOT AVAILABLE FROM AN AUTHORIZED INSURER
22 UNDER SUBDIVISION (A), AND SUBJECT TO THIS SUBDIVISION, A LICENSEE
23 MAY PROCURE SURPLUS LINES INSURANCE FROM OR PLACE SURPLUS LINES
24 INSURANCE WITH AN UNAUTHORIZED INSURER IF THE NONADMITTED INSURER
25 IS AN ELIGIBLE UNAUTHORIZED INSURER. BEFORE PLACING THE INSURANCE
26 WITH AN ELIGIBLE UNAUTHORIZED INSURER UNDER THIS SUBDIVISION, THE
27 LICENSEE SHALL CERTIFY TO THE DIRECTOR ON A FORM PRESCRIBED BY THE

1 DIRECTOR THAT THE LICENSEE FIRST ATTEMPTED TO PLACE THE INSURANCE
2 WITH AN AUTHORIZED INSURER BEFORE PLACING THE INSURANCE WITH AN
3 ELIGIBLE UNAUTHORIZED INSURER. IF THE INSURANCE IS PLACED WITH AN
4 ELIGIBLE UNAUTHORIZED INSURER UNDER THIS SUBDIVISION, ON OBTAINING
5 COVERAGE, THE LICENSEE SHALL MAIL OR DELIVER TO THE INSURED THE
6 FOLLOWING NOTICE: "THIS INSURANCE HAS BEEN PLACED WITH AN INSURER
7 NOT LICENSED BY THE STATE OF MICHIGAN. IF THERE IS A DISPUTE
8 RELATIVE TO THE TERMS OR CONDITIONS OF THE POLICY OR THE PRACTICES
9 OF THE INSURER, THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
10 MAY NOT BE ABLE TO ASSIST IN THE DISPUTE. IF THE INSURER IS
11 INSOLVENT, PAYMENT OF CLAIMS IS NOT GUARANTEED.". THE LICENSEE
12 SHALL FILE THE NOTICE REQUIRED UNDER THIS SUBDIVISION WITH THE
13 DIRECTOR.

14 (2) There is a rebuttable presumption that the following
15 coverages are available from an authorized insurer:

16 (a) No-fault automobile insurance, as required by section
17 3101, ~~which~~ **THAT** is not written for a person who is self-insuring
18 motor vehicles under section 3101d.

19 (b) Private passenger automobile physical damage coverage.

20 (c) Homeowners and property insurance on owner-occupied
21 dwellings, the value of which is less than the maximum limits of
22 coverage that are available for the property under the general
23 rules of the Michigan basic property insurance association.

24 (d) Any coverage readily available from 3 or more authorized
25 insurers, unless the authorized insurers quote a premium and terms
26 not competitive with the premium and terms quoted by an
27 unauthorized insurer.

1 (e) Worker's compensation insurance that is not written for an
2 employer that is partially self-insured under section 611 of the
3 worker's disability compensation act of 1969, 1969 PA 317, MCL
4 418.611.

5 (3) There is a rebuttable presumption that the following
6 coverages are unavailable from an authorized insurer:

7 (a) Coverages with respect to which 1 portion of the risk is
8 acceptable to authorized insurers, but another portion of the same
9 risk is not acceptable. The entire coverage may be placed with
10 eligible unauthorized insurers if it can be shown that eligible
11 unauthorized insurers will accept the entire coverage but not the
12 rejected portion alone.

13 (b) Any coverage that the licensee is unable to procure after
14 diligent search among authorized insurers.

15 (4) The ~~commissioner~~**DIRECTOR** shall maintain, on a current
16 basis, a list of those lines of insurance for which coverages are
17 determined by the ~~commissioner~~**DIRECTOR** to be generally unavailable
18 in the authorized insurance market. ~~Any~~**A** person may request in
19 writing that the ~~commissioner~~**DIRECTOR** add or remove a coverage
20 from the current list. The ~~commissioner~~**DIRECTOR** shall grant or
21 deny a request within 30 days after receiving the written request.
22 The ~~commissioner~~**DIRECTOR** shall encourage dissemination of
23 information regarding the availability of coverages for which the
24 public interest necessitates additions to or deletions from the
25 list. The **DIRECTOR SHALL PUBLISH THE** list ~~shall be published at~~
26 least quarterly and ~~shall be revised~~**REVISE THE LIST** as required
27 **UNDER THIS SUBSECTION.** The ~~commissioner~~**DIRECTOR** shall make the

1 list available to all licensees and other members of the public,
2 upon request.

3 (5) SUBSECTION (1) (A) DOES NOT APPLY TO A LICENSEE SEEKING TO
4 PROCURE SURPLUS LINES INSURANCE FROM OR PLACE SURPLUS LINES
5 INSURANCE WITH AN UNAUTHORIZED INSURER ON BEHALF OF AN EXEMPT
6 COMMERCIAL PURCHASER IF BOTH OF THE FOLLOWING APPLY:

7 (A) THE LICENSEE PROCURING OR PLACING THE SURPLUS LINES
8 INSURANCE DISCLOSES TO THE EXEMPT COMMERCIAL PURCHASER THAT THE
9 INSURANCE MAY BE AVAILABLE FROM AN AUTHORIZED INSURER THAT MAY
10 PROVIDE GREATER PROTECTION WITH GREATER REGULATORY OVERSIGHT.

11 (B) AFTER DISCLOSURE UNDER SUBDIVISION (A), THE EXEMPT
12 COMMERCIAL PURCHASER REQUESTS IN WRITING THAT THE LICENSEE PROCURE
13 THE SURPLUS LINES INSURANCE FROM OR PLACE THE SURPLUS LINES
14 INSURANCE WITH AN UNAUTHORIZED INSURER.

15 (6) AS USED IN THIS SECTION:

16 (A) "EXEMPT COMMERCIAL PURCHASER" MEANS A PERSON PURCHASING
17 COMMERCIAL INSURANCE THAT AT THE TIME OF PLACEMENT OF THE INSURANCE
18 SATISFIES ALL OF THE FOLLOWING:

19 (i) THE PERSON EMPLOYS OR RETAINS A QUALIFIED RISK MANAGER TO
20 NEGOTIATE INSURANCE COVERAGE.

21 (ii) THE PERSON HAS PAID AGGREGATE NATIONWIDE COMMERCIAL
22 PROPERTY AND CASUALTY INSURANCE PREMIUMS IN EXCESS OF \$100,000.00
23 IN THE IMMEDIATE PRECEDING 12 MONTHS.

24 (iii) THE PERSON SATISFIES 1 OR MORE OF THE FOLLOWING:

25 (A) THE PERSON POSSESSES A QUALIFIED NET WORTH.

26 (B) THE PERSON GENERATES QUALIFIED ANNUAL REVENUES.

27 (C) THE PERSON EMPLOYS MORE THAN 500 FULL-TIME EMPLOYEES OR

1 FULL-TIME EQUIVALENT EMPLOYEES PER INDIVIDUAL INSURED OR IS A
2 MEMBER OF AN AFFILIATED GROUP EMPLOYING MORE THAN 1,000 EMPLOYEES.

3 (D) THE PERSON IS A NONPROFIT ORGANIZATION OR PUBLIC ENTITY
4 GENERATING QUALIFIED ANNUAL BUDGET EXPENDITURES.

5 (E) THE PERSON IS A MUNICIPALITY WITH A POPULATION OF MORE
6 THAN 50,000.

7 (B) "QUALIFIED ANNUAL BUDGET EXPENDITURES" MEANS ANNUAL BUDGET
8 EXPENDITURES OF AT LEAST THE FOLLOWING AMOUNTS:

9 (i) BEFORE JANUARY 1, 2015, \$30,000,000.00.

10 (ii) AFTER DECEMBER 31, 2014 AND BEFORE JANUARY 1, 2020,
11 \$30,000,000.00 INCREASED OR DECREASED BY THE PERCENTAGE CHANGE IN
12 THE CONSUMER PRICE INDEX DURING THE 5-YEAR PERIOD BEGINNING ON
13 JANUARY 1, 2010.

14 (iii) BEGINNING ON JANUARY 1, 2020 AND EACH FOLLOWING JANUARY 1
15 AFTER THE EXPIRATION OF A 5-YEAR PERIOD, THE AMOUNT OF QUALIFIED
16 ANNUAL BUDGET EXPENDITURES ON THE IMMEDIATELY PRIOR DECEMBER 31
17 INCREASED OR DECREASED BY THE PERCENTAGE CHANGE IN THE CONSUMER
18 PRICE INDEX DURING THE PRIOR 5 YEARS.

19 (C) "QUALIFIED ANNUAL REVENUES" MEANS ANNUAL REVENUES
20 EXCEEDING THE FOLLOWING AMOUNTS:

21 (i) BEFORE JANUARY 1, 2015, \$50,000,000.00.

22 (ii) AFTER DECEMBER 31, 2014 AND BEFORE JANUARY 1, 2020,
23 \$50,000,000.00 INCREASED OR DECREASED BY THE PERCENTAGE CHANGE IN
24 THE CONSUMER PRICE INDEX DURING THE 5-YEAR PERIOD BEGINNING ON
25 JANUARY 1, 2010.

26 (iii) BEGINNING ON JANUARY 1, 2020 AND EACH FOLLOWING JANUARY 1
27 AFTER THE EXPIRATION OF A 5-YEAR PERIOD, THE AMOUNT OF QUALIFIED

1 ANNUAL REVENUES ON THE IMMEDIATELY PRIOR DECEMBER 31 INCREASED OR
2 DECREASED BY THE PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX
3 DURING THE PRIOR 5 YEARS.

4 (D) "QUALIFIED NET WORTH" MEANS A NET WORTH EXCEEDING AT LEAST
5 THE FOLLOWING AMOUNTS:

6 (i) BEFORE JANUARY 1, 2015, \$20,000,000.00.

7 (ii) AFTER DECEMBER 31, 2014 AND BEFORE JANUARY 1, 2020,
8 \$20,000,000.00 INCREASED OR DECREASED BY THE PERCENTAGE CHANGE IN
9 THE CONSUMER PRICE INDEX DURING THE 5-YEAR PERIOD BEGINNING ON
10 JANUARY 1, 2010.

11 (iii) BEGINNING ON JANUARY 1, 2020 AND EACH FOLLOWING JANUARY 1
12 AFTER THE EXPIRATION OF A 5-YEAR PERIOD, THE AMOUNT OF QUALIFIED
13 NET WORTH ON THE IMMEDIATELY PRIOR DECEMBER 31 INCREASED OR
14 DECREASED BY THE PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX
15 DURING THE PRIOR 5 YEARS.

16 (E) "QUALIFIED RISK MANAGER" MEANS A PERSON WHO MEETS ALL OF
17 THE FOLLOWING:

18 (i) IS AN EMPLOYEE OF, OR THIRD-PARTY CONSULTANT RETAINED BY, A
19 PERSON PURCHASING COMMERCIAL INSURANCE.

20 (ii) PROVIDES SKILLED SERVICES IN LOSS PREVENTION, LOSS
21 REDUCTION, OR RISK AND INSURANCE COVERAGE ANALYSIS, AND PURCHASE OF
22 INSURANCE.

23 (iii) HAS A BACHELOR'S DEGREE OR HIGHER FROM AN ACCREDITED
24 COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION,
25 FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY A STATE
26 INSURANCE COMMISSIONER, STATE INSURANCE DEPARTMENT DIRECTOR, OR
27 OTHER STATE REGULATORY OFFICIAL OR ENTITY TO DEMONSTRATE MINIMUM

1 COMPETENCE IN RISK MANAGEMENT.

2 (iv) HAS 3 YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS
3 ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE ANALYSIS, OR
4 PURCHASING COMMERCIAL LINES OF INSURANCE; OR HAS ANY 1 OF THE
5 FOLLOWING:

6 (A) DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY
7 UNDERWRITER ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE
8 INSTITUTE OF AMERICA.

9 (B) DESIGNATION AS AN ASSOCIATE IN RISK MANAGEMENT ISSUED BY
10 THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA.

11 (C) DESIGNATION AS A CERTIFIED RISK MANAGER ISSUED BY THE
12 NATIONAL ALLIANCE FOR INSURANCE EDUCATION AND RESEARCH.

13 (D) DESIGNATION AS A RIMS FELLOW ISSUED BY THE GLOBAL RISK
14 MANAGEMENT INSTITUTE.

15 (E) ANY OTHER DESIGNATION, CERTIFICATION, OR LICENSE
16 DETERMINED BY THE DIRECTOR TO DEMONSTRATE MINIMUM COMPETENCY IN
17 RISK MANAGEMENT.

18 (v) HAS AT LEAST 7 YEARS OF EXPERIENCE IN RISK FINANCING,
19 CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE
20 ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; AND HAS ANY
21 1 OF THE DESIGNATIONS SPECIFIED IN SUBPARAGRAPH (iv) OR HAS AT LEAST
22 10 YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION,
23 LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR
24 PURCHASING COMMERCIAL LINES OF INSURANCE; OR HAS A GRADUATE DEGREE
25 FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT,
26 BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD
27 DETERMINED BY THE DIRECTOR TO DEMONSTRATE MINIMUM COMPETENCE IN

1 **RISK MANAGEMENT.**

2 Sec. 1911. (1) Only a licensee ~~shall~~**MAY** issue evidence of
3 placement of insurance with an eligible unauthorized insurer. A
4 licensee shall not issue that evidence, cause or purport to cause
5 any risk to be insured by an eligible unauthorized insurer, or
6 advise any insured or applicant for insurance or the representative
7 of the insured or applicant that insurance has been or will be
8 obtained from an eligible unauthorized insurer unless at least 1 of
9 the following conditions is met:

10 (a) The licensee has prior written authority from the eligible
11 unauthorized insurer to cause the risk to be insured.

12 (b) The licensee has received a written or oral communication
13 in the ordinary course of business that the coverage has been
14 obtained.

15 (c) A policy of insurance covering the insured for the risk
16 has actually been issued by the eligible unauthorized insurer and
17 has been delivered to the insured or the insured's representative.

18 (2) A prior written authority, a communication showing that
19 insurance has been obtained, or a policy of insurance prescribed in
20 subsection (1) ~~shall~~**MUST** identify entities directly assuming any
21 risk of loss. If there is more than 1 insurer, any document issued
22 or certified by the licensee ~~pursuant to~~**UNDER** section 1912 ~~shall~~
23 **MUST** specify whether the obligation is joint or several, and if the
24 obligation is several, the proportion of the obligation assumed by
25 those insurers, if known.

26 Sec. 1912. If ~~the surplus lines~~**A** licensee acts in reliance on
27 prior written authority from an eligible unauthorized insurer in

1 accordance with section 1911(1) (a), or on a written or oral
2 communication received in accordance with section 1911(1) (b), the
3 licensee, within 30 days after the date on which the risk was bound
4 or the insured or applicant was advised that coverage has been or
5 will be obtained, shall deliver a policy, a written binder, a
6 certificate, or other written evidence of the insurance, to the
7 insured or the insured's representative.

8 Sec. 1915. (1) A licensee may not charge, in addition to the
9 premium charged by an unauthorized insurer, a fee to cover the
10 costs incurred in the placement of the indemnity ~~which~~**THAT** exceeds
11 \$50.00, unless all of the following conditions are met:

12 (a) The fee in excess of \$50.00 is filed with the ~~commissioner~~
13 **DIRECTOR** and not disapproved by the ~~commissioner~~**DIRECTOR** within 30
14 days of the date it is filed with the ~~commissioner~~**DIRECTOR**.

15 (b) The fee exceeds \$50.00 only to the extent that the actual
16 additional costs incurred for services performed by persons or
17 entities unrelated to the licensee exceed that amount.

18 (2) A fee charged ~~pursuant to~~**UNDER** subsection (1) ~~shall~~**MUST**
19 not be excessive or discriminatory. The licensee shall maintain
20 complete documentation of all fees charged ~~pursuant to~~**UNDER**
21 subsection (1) (b). Those fees ~~shall~~**MUST** not be included as a part
22 of the policy premium in the computation of premium taxes.

23 (3) The \$50.00 fee ~~prescribed~~**PROVIDED** in subsection (1) ~~shall~~
24 **MUST** be adjusted June 1, 2008 and annually thereafter to reflect
25 the percentage of change in the consumer price index.

26 ~~—— (4) As used in this section, "consumer price index" means the~~
27 ~~consumer price index for all urban consumers in the United States~~

~~eity average for all items, as most recently reported by the United States department of labor, bureau of labor statistics, and as certified by the commissioner in an administrative bulletin.~~

Sec. 1916. A licensee may be compensated by an unauthorized insurer and the licensee may compensate a licensed resident agent in this state for obtaining surplus lines insurance business. The licensed resident agent authorized by the licensee may collect a premium on behalf of a ~~surplus lines~~ licensee and, as between the insured and the licensee, the licensee ~~shall be~~ **IS** considered to have received the premium if the premium payment has been made to the agent.

Sec. 1920. (1) A licensee ~~shall offer surplus lines insurance only to insurers that are in a stable and unimpaired financial condition. An insurer recognized by the commissioner as an eligible surplus lines insurer pursuant to subsection (2) shall be considered to meet the requirements of this subsection. Recognition as an eligible surplus lines insurer shall be conditioned upon the insurer's continued compliance with this chapter and rules promulgated under this chapter.~~ **MAY PROCURE OR PLACE SURPLUS LINES INSURANCE WITH AN UNAUTHORIZED INSURER ONLY IF ALL OF THE FOLLOWING ARE SATISFIED:**

(A) FOR AN UNAUTHORIZED INSURER DOMICILED IN A STATE, THE UNAUTHORIZED INSURER IS AUTHORIZED TO PROVIDE THE INSURANCE IN THE STATE IN WHICH IT IS DOMICILED.

(B) FOR AN UNAUTHORIZED INSURER DOMICILED IN A STATE, THE UNAUTHORIZED INSURER HAS CAPITAL AND SURPLUS THAT SATISFY 1 OF THE FOLLOWING:

1 (i) THE CAPITAL AND SURPLUS OF THE UNAUTHORIZED INSURER OR THE
2 EQUIVALENT OF CAPITAL AND SURPLUS UNDER THE LAWS OF THE STATE IN
3 WHICH THE UNAUTHORIZED INSURER IS DOMICILED ARE EQUAL TO OR MORE
4 THAN \$15,000,000.00 OR THE MINIMUM CAPITAL AND SURPLUS REQUIREMENTS
5 OTHERWISE APPLICABLE UNDER THE LAWS OF THIS STATE, WHICHEVER IS
6 GREATER.

7 (ii) THE CAPITAL AND SURPLUS OF THE UNAUTHORIZED INSURER ARE
8 LESS THAN THE CAPITAL AND SURPLUS REQUIREMENTS UNDER SUBPARAGRAPH

9 (i) BUT THE UNAUTHORIZED INSURER HAS REQUESTED AND THE DIRECTOR HAS
10 ISSUED AN AFFIRMATIVE FINDING THAT THE CAPITAL AND SURPLUS OF THE
11 UNAUTHORIZED INSURER ARE ACCEPTABLE BASED UPON QUALITY OF
12 MANAGEMENT OF THE UNAUTHORIZED INSURER, CAPITAL AND SURPLUS OF ANY
13 PARENT COMPANY OF THE UNAUTHORIZED INSURER, UNDERWRITING PROFIT AND
14 INVESTMENT INCOME TRENDS OF THE UNAUTHORIZED INSURER, MARKET
15 AVAILABILITY OF THE INSURANCE, AND THE RECORD AND REPUTATION OF THE
16 UNAUTHORIZED INSURER WITHIN THE INDUSTRY. IF THE CAPITAL AND
17 SURPLUS OF THE UNAUTHORIZED INSURER ARE LESS THAN \$4,500,000.00,
18 THE DIRECTOR SHALL NOT ISSUE AN AFFIRMATIVE FINDING OF
19 ACCEPTABILITY UNDER THIS SUBPARAGRAPH.

20 (C) FOR AN UNAUTHORIZED INSURER NOT DOMICILED IN A STATE, THE
21 UNAUTHORIZED INSURER IS LISTED ON THE MOST RECENT QUARTERLY LISTING
22 OF ALIEN INSURERS MAINTAINED BY THE INTERNATIONAL INSURERS
23 DEPARTMENT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
24 AND MEETS ADDITIONAL REQUIREMENTS REGARDING THE USE OF THE LIST
25 ESTABLISHED BY THE DIRECTOR.

26 (2) An unauthorized insurer may apply for recognition as an
27 eligible ~~surplus lines~~ UNAUTHORIZED insurer by filing an

1 application in the form and with the information as reasonably
2 required by the ~~commissioner~~**DIRECTOR** regarding the insurer's
3 ~~financial stability, reputation, and integrity.~~ **REQUIREMENTS OF**
4 **THIS CHAPTER.** The ~~commissioner~~**DIRECTOR** may delegate to an
5 association the power to process and to make recommendations on
6 applications for recognition as an eligible surplus lines
7 **UNAUTHORIZED insurer UNDER THIS SUBSECTION.** Notwithstanding a
8 delegation by the ~~commissioner~~**DIRECTOR**, an applicant may file an
9 application for recognition directly with the
10 ~~commissioner~~**DIRECTOR.**

11 (3) The ~~commissioner~~ shall recognize an insurer making an
12 application in accordance with subsection (2) as an eligible
13 surplus lines insurer if he or she is satisfied that the insurer is
14 in a stable and unimpaired financial condition and that the insurer
15 is qualified to provide coverage in compliance with this chapter.
16 If filed **AN UNAUTHORIZED INSURER FILES AN APPLICATION UNDER**
17 **SUBSECTION (2)** with full supporting documentation before July 1 of
18 any year, an application submitted under subsection (2) shall be
19 acted upon by the ~~commissioner~~**DIRECTOR SHALL ACT ON THE**
20 **APPLICATION** before December 31 of the year of submission. **THE**
21 **APPLICATION IS FILED.**

22 ——— (4) The ~~commissioner~~ shall not recognize an insurer as an
23 eligible surplus lines insurer unless the insurer continuously
24 maintains capital and surplus of at least \$1,500,000.00, and is
25 safe, reliable, and entitled to public confidence. This subsection
26 shall not be construed to require an alien insurer to file
27 financial statements in the form required of authorized insurers

1 ~~under section 438. However, each alien applicant shall have current~~
2 ~~financial data filed with the national association of insurance~~
3 ~~commissioners.~~

4 (4) ~~(5) If the commissioner considers it necessary, he or she~~
5 **THE DIRECTOR** may request information about or examine the affairs
6 of any eligible unauthorized insurer, at the expense of the insurer
7 except as provided in sections 1905 and 1951, to determine whether
8 the insurer should continue to remain on the list of eligible
9 ~~surplus lines~~ **UNAUTHORIZED** insurers **UNDER THIS SECTION**. If the
10 ~~commissioner~~ **DIRECTOR** finds that it is in the public interest to
11 remove an insurer from the list because the insurer **IS IN UNSOUND**
12 **FINANCIAL CONDITION**, no longer meets the requirements of this
13 chapter or is no longer qualified **OR ELIGIBLE** to provide coverage
14 under this chapter, **HAS ENGAGED IN A PATTERN OF WILLFULLY VIOLATING**
15 **THE LAWS OF THIS STATE, OR HAS ENGAGED IN A PATTERN OF NOT PAYING**
16 **VALID CLAIMS IN A TIMELY MANNER**, the ~~commissioner~~ **DIRECTOR** shall do
17 so without the necessity of a hearing. **IF THE DIRECTOR FINDS THAT**
18 **AN INSURER SHOULD BE REMOVED FROM THE LIST UNDER THIS SUBSECTION,**
19 **THE DIRECTOR SHALL NOTIFY THE INSURER. THE DIRECTOR MAY MAINTAIN**
20 **AND MAKE PUBLIC A LIST OF ELIGIBLE UNAUTHORIZED INSURERS AND**
21 **INSURERS DESIGNATED AS INELIGIBLE UNDER THIS SUBSECTION.**

22 (5) **IF SURPLUS LINES INSURANCE IS PLACED UNDER THIS CHAPTER**
23 **WITH AN UNAUTHORIZED INSURER AND THIS STATE IS THE HOME STATE OF**
24 **THE INSURED, UPON OBTAINING COVERAGE, THE LICENSEE SHALL DO ALL OF**
25 **THE FOLLOWING:**

26 (A) **TRANSMIT TO THE INSURED THE FOLLOWING NOTICE: "THIS**
27 **INSURANCE HAS BEEN PLACED WITH AN INSURER NOT AUTHORIZED BY THE**

1 STATE OF MICHIGAN. IF THERE IS A DISPUTE RELATIVE TO THE TERMS OR
2 CONDITIONS OF THE POLICY OR THE PRACTICES OF THE INSURER, THE
3 MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES MAY NOT BE
4 ABLE TO ASSIST IN THE DISPUTE. IF THE INSURER IS INSOLVENT, PAYMENT
5 OF CLAIMS OR PROTECTION OF ASSETS MAY NOT BE GUARANTEED.". THE
6 LICENSEE SHALL FILE A COPY OF THE NOTICE WITH THE DIRECTOR.

7 (B) SUBMIT WITHIN 30 DAYS AFTER THE DATE THE INSURANCE WAS
8 PROCURED, CONTINUED, OR RENEWED, A REPORT REGARDING THE INSURANCE
9 WITH THE DIRECTOR ON A FORM PRESCRIBED BY THE DIRECTOR. THE REPORT
10 MUST BE ACCOMPANIED BY THE 2% TAX ON PREMIUMS UNDER SECTION 451
11 AND, INSTEAD OF THE COSTS AND EXPENSES THAT MAY BE IMPOSED BY THE
12 DIRECTOR UNDER THIS CHAPTER, THE 0.5% REGULATORY FEE ON PREMIUMS
13 UNDER SECTION 451. THE REPORT MUST SHOW ALL OF THE FOLLOWING:

14 (i) THE NAME AND ADDRESS OF THE INSURED.

15 (ii) THE HOME STATE OF THE INSURED.

16 (iii) THE NAME AND ADDRESS OF THE INSURER.

17 (iv) THE SUBJECT OF THE INSURANCE.

18 (v) A GENERAL DESCRIPTION OF THE COVERAGE.

19 (vi) THE AMOUNT OF PREMIUM CURRENTLY CHARGED FOR THE INSURANCE.

20 (vii) ANY ADDITIONAL PERTINENT INFORMATION, REASONABLY
21 REQUESTED BY THE DIRECTOR. IF THE INSURED FAILS TO PAY THE TAXES
22 WHEN DUE, THE INSURED IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN
23 \$1,000.00, PLUS ACCRUED INTEREST FROM THE INCEPTION OF THE
24 INSURANCE.

25 (6) THE DIRECTOR MAY REQUIRE AN UNAUTHORIZED INSURER OR A
26 LICENSEE UNDER THIS CHAPTER TO ANNUALLY FILE TAX ALLOCATION REPORTS
27 DETAILING THE PORTION OF UNAUTHORIZED INSURANCE PREMIUM

1 ATTRIBUTABLE TO PROPERTIES, RISKS, OR EXPOSURES LOCATED IN EACH
2 STATE AND FOR THE PAYMENT OF TAXES AND FEES UNDER THIS SECTION AND
3 SECTION 451.

4 (7) AS USED IN THIS SECTION:

5 (A) "CAPITAL" MEANS FUNDS PAID FOR IN STOCK OR OTHER EVIDENCE
6 OF OWNERSHIP.

7 (B) "SURPLUS" MEANS FUNDS OVER AND ABOVE LIABILITIES AND
8 CAPITAL OF AN INSURER FOR THE PROTECTION OF POLICYHOLDERS.

9 Sec. 1922. ~~Each~~ **IF THIS STATE IS THE HOME STATE OF THE**
10 **INSURED, EACH** policy, cover note, or other instrument evidencing
11 surplus lines insurance ~~which~~ **THAT** is to be delivered to an insured
12 or a representative of an insured ~~shall~~ **MUST** have printed, typed,
13 or stamped in red ink upon its face, in not less than 10-point
14 type, the following notice: "This insurance has been placed with an
15 **UNAUTHORIZED** insurer that is not ~~licensed~~ **AUTHORIZED** by the state
16 of Michigan. ~~In case of insolvency,~~ **THE INSURER IS NOT SUBJECT TO**
17 **THE REGULATION AND ENFORCEMENT THAT APPLY TO AUTHORIZED INSURERS.**
18 **IF THE INSURER IS INSOLVENT, payment of claims OR PROTECTION OF**
19 **ASSETS** may not be guaranteed.". This notice ~~shall~~ **MUST** not be
20 covered over or concealed. ~~in any manner.~~

21 Sec. 1930. (1) Licensees may associate **WITHIN AN ASSOCIATION,**
22 and the ~~commissioner~~ **DIRECTOR** may register an association for 1 or
23 more of the following purposes:

24 (a) Advising the ~~commissioner~~ **DIRECTOR** as to the availability
25 of surplus lines coverage and market practices and standards for
26 surplus lines insurers and licensees.

27 (b) Collecting and furnishing records, statistics, and

1 accounts.

2 (c) Submitting recommendations regarding administration of
3 this chapter.

4 (2) Each association shall file with the ~~commissioner~~,
5 **DIRECTOR**, for approval, all of the following:

6 (a) A copy of the association's constitution and articles of
7 agreement or association, or the association's certificate of
8 incorporation and bylaws, and any rules or regulations governing
9 the association's activities.

10 (b) An agreement that, as a condition of continued
11 registration under subsection (1), the ~~commissioner~~**DIRECTOR** may
12 examine the association.

13 (3) Each association shall file with the ~~commissioner~~**DIRECTOR**
14 and keep current all of the following:

15 (a) A list of members.

16 (b) The name and address of a resident of this state ~~upon~~**ON**
17 whom notices or orders of the ~~commissioner~~**DIRECTOR** or process
18 issued by the ~~commissioner~~**DIRECTOR** may be served.

19 (4) The ~~commissioner~~**DIRECTOR** may refuse to register, or may
20 suspend or revoke the registration of, an association for any of
21 the following reasons:

22 (a) It reasonably appears that the association will not be
23 able to carry out the purposes of this chapter.

24 (b) The association fails to maintain and enforce rules ~~which~~
25 **THAT** can reasonably be anticipated to assure that members of the
26 association and persons associated with those members comply with
27 this chapter, other applicable chapters of this ~~code~~**ACT**, and

1 rules promulgated under either.

2 (c) The rules of the association do not assure a fair
3 representation of its members in the selection of directors and in
4 the administration of its affairs.

5 (d) The rules of the association do not provide for an
6 equitable allocation of reasonable dues, fees, and other charges
7 among members.

8 (e) The rules of the association impose a burden on
9 competition not necessary or appropriate to the purposes of this
10 chapter.

11 (f) The association fails to meet other applicable
12 requirements prescribed in this chapter.

13 (5) An association shall deny membership to any person who is
14 not a licensee.

15 Sec. 1940. ~~The~~**AN** association may submit reports and make
16 recommendations to the ~~commissioner~~**DIRECTOR** regarding the
17 financial condition of any eligible unauthorized insurer. ~~These~~**THE**
18 reports and recommendations ~~shall~~**DESCRIBED IN THIS SECTION ARE** not
19 ~~be considered to be~~ public documents. There shall not be liability
20 on the part of, and a cause of action of any nature shall not arise
21 against, eligible unauthorized insurers, the association or its
22 agents or employees, the directors, or the ~~commissioner~~**DIRECTOR** or
23 authorized representatives of the ~~commissioner~~**DIRECTOR** for
24 statements made by them in any reports or recommendations made
25 under this section.

26 Sec. 1951. ~~An~~**IF THE HOME STATE OF THE INSURED IS THIS STATE,**
27 **AN** insured in this state who ~~, on behalf of himself or herself, or~~

1 ~~an employee in this state who, on behalf of his or her employer,~~
 2 procures, causes to be procured, or continues or renews insurance
 3 with an unauthorized insurer, or a self-insurer ~~in~~ **IF** this state **IS**
 4 **THE HOME STATE OF THE INSURED** who procures or continues excess
 5 loss, catastrophe, or other insurance with an unauthorized insurer,
 6 upon a subject of insurance ~~resident, located, or to be performed~~
 7 ~~within this state, other than insurance procured pursuant to~~ **UNDER**
 8 section 1905 or ~~1950, within~~ **1920, SHALL, WITHIN** 30 days after the
 9 date the insurance was procured, continued, or renewed, ~~shall file~~
 10 a written report regarding the insurance with the ~~commissioner~~
 11 **DIRECTOR** on ~~forms~~ **A FORM** prescribed by the ~~commissioner and~~
 12 ~~furnished to the insured upon request.~~ **DIRECTOR.** The report shall
 13 **MUST** be accompanied by a ~~THE~~ 2% tax on premiums ~~written~~ **UNDER**
 14 **SECTION 451** and, instead of the costs and expenses that may be
 15 imposed by the ~~commissioner pursuant to~~ **DIRECTOR UNDER** this
 16 chapter, a ~~THE~~ 0.5% regulatory fee on premiums ~~written.~~ **UNDER**
 17 **SECTION 451. IF THE INSURED FAILS TO PAY THE TAXES WHEN DUE, THE**
 18 **INSURED IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$1,000.00, PLUS**
 19 **ACCRUED INTEREST FROM THE INCEPTION OF THE INSURANCE.** The report
 20 ~~shall~~ **MUST** show all of the following:
 21 (a) The name and address of the insured. ~~or insureds.~~
 22 (B) **THE HOME STATE OF THE INSURED.**
 23 (C) ~~(b)~~ The name and address of the insurer.
 24 (D) ~~(c)~~ The subject of the insurance.
 25 (E) ~~(d)~~ A general description of the coverage.
 26 (F) ~~(e)~~ The amount of premium currently charged for the
 27 insurance.

1 (G) ~~(f)~~ Any additional pertinent information, reasonably
2 requested by the ~~commissioner~~. **DIRECTOR**.

3 Sec. 2091. ~~No~~ **A FOREIGN OR ALIEN** unauthorized ~~foreign or alien~~
4 insurer shall **NOT** make, issue, circulate, or cause to be made,
5 issued, or circulated to residents of this state ~~any~~ **AN** estimate,
6 illustration, circular, pamphlet, or letter, or cause to be made in
7 ~~any~~ **A** newspaper, magazine, or other publication, or over ~~any~~ **A**
8 radio or television station, ~~any~~ **AN** announcement or statement to
9 ~~such~~ residents **OF THIS STATE** misrepresenting its financial
10 condition or the terms of ~~any contracts~~ **A CONTRACT** issued or to be
11 issued or the benefits or advantages promised ~~thereby~~, **BY THE**
12 **CONTRACT**, or the dividends or share of the surplus to be received
13 ~~thereon~~ **FROM THE CONTRACT** in violation of sections 2001 to 2050. ~~of~~
14 ~~this act, and whenever the commissioner has reason to believe~~ **IF**
15 **THE DIRECTOR BELIEVES** that ~~any such~~ **THE** insurer is engaging in
16 unlawful advertising, ~~he~~ **THE DIRECTOR** shall give notice of ~~such~~
17 ~~fact~~ **HIS OR HER BELIEF** by certified mail to the insurer and to the
18 insurance supervisory official of the domiciliary state of the
19 insurer. For the purpose of this section, the domiciliary state of
20 an alien insurer is the state of entry or the state of the
21 principal office in the United States.

22 Sec. 2093. (1) ~~(a)~~ Any of the following acts in this state,
23 effected by mail or otherwise, by ~~any~~ **A FOREIGN OR ALIEN**
24 unauthorized ~~foreign or alien~~ insurer **IS CONSIDERED AN APPOINTMENT**
25 **BY THE INSURER OF THE DIRECTOR AS AGENT FOR SERVICE OF PROCESS FOR**
26 **AN ACTION ARISING OUT OF A VIOLATION OF SECTION 2091:**

27 (A) ~~(1) the~~ **THE** issuance or delivery of contracts or insurance

1 to residents of this state. ~~,(2) the~~

2 (B) THE solicitation of applications for ~~such~~ **INSURANCE**
3 contracts. ~~,(3) the~~

4 (C) THE collection of premiums, membership fees, assessments,
5 or other considerations for ~~such~~ **INSURANCE** contracts. ~~, or (4) any~~

6 (D) **ANY** other transaction of insurance business. ~~, is~~
7 ~~equivalent to and shall constitute an appointment by the insurer of~~
8 ~~the commissioner to be its true and lawful attorney, upon whom may~~
9 ~~be served all statements of charges, notices and lawful process in~~
10 ~~any proceeding instituted in respect to the misrepresentations set~~
11 ~~forth in section 2091 under the provisions of sections 2001 to~~
12 ~~2050, or in any action, suit or proceeding for the recovery of any~~
13 ~~penalty therein provided, and any such act shall be signification~~
14 ~~of its agreement that such service of statement of charges, notices~~
15 ~~or process is of the same legal force and validity as personal~~
16 ~~service of the statement of charges, notices or process in this~~
17 ~~state, upon the insurer.~~

18 (2) ~~(b) Service of a statement of charges and notices under~~
19 ~~sections 2001 to 2050 shall be made by any deputy or employee of~~
20 ~~the department delivering to and leaving with the commissioner, or~~
21 ~~some person in apparent charge of his office, 2 copies thereof.~~
22 ~~Service of process issued by any court in any action, suit or~~
23 ~~proceeding to collect any penalty provided under sections 2001 to~~
24 ~~2050, shall be made by delivering and leaving with the~~
25 ~~commissioner, or some person in apparent charge of his office, 2~~
26 ~~copies thereof. TWO COPIES OF A PROCESS DESCRIBED IN SUBSECTION (1)~~
27 **MUST BE SERVED ON THE DIRECTOR.** ~~The commissioner~~ **DIRECTOR** shall

~~forthwith cause to be mailed~~ **TRANSMIT** by certified mail 1 of the
~~copies of the statement of charges, notices or process~~ **COPY OF THE**
PROCESS to the defendant at its last known principal place of
business. ~~, and~~ **THE DIRECTOR** shall keep a record of all statement
of charges, notices, and process ~~so served~~ **UNDER THIS SECTION**. The
service of statement of charges, notices, or process ~~shall be~~ **IS**
sufficient if they have been so mailed and the defendant's receipt,
or receipt issued by the post office with which the letter is
certified, or showing the name of the sender of the letter and the
name and address of the person to whom the letter is addressed, and
the affidavit of the person mailing the letter showing ~~a compliance~~
~~herewith~~ **WITH THIS SUBSECTION** are filed with the ~~commissioner in~~
~~the case of~~ **DIRECTOR FOR** any statement of charges or notices, or
with the clerk of the court in which the action is pending ~~in the~~
~~case of~~ **FOR** any process, on or before the date the defendant is
required to appear or within ~~such~~ **ANY** further time as may be
allowed.

(3) ~~(c) Service of statement of charges, notices and process~~
~~in any such proceeding, action or suit shall in~~ **IN** addition to the
manner provided in subsection ~~(b) of this section be~~ (2), **SERVICE**
OF PROCESS IS valid if served ~~upon any~~ **ON A** person within this
state who on behalf of ~~such~~ **THE** insurer ~~is~~ **DOES ANY OF THE**
FOLLOWING:

(A) ~~(1) Soliciting~~ **SOLICITS** insurance. ~~, or~~

(B) ~~(2) Making, issuing or delivering any~~ **MAKES, ISSUES, OR**
DELIVERS A contract of insurance. ~~, or~~

(C) ~~(3) Collecting or receiving~~ **COLLECTS AND RECEIVES** in this

1 state ~~any~~**A** premium for insurance; and a copy of ~~such~~**THE** statement
 2 of charges, notices, or process is sent within 10 days ~~thereafter~~
 3 **AFTER THE SERVICE** by certified mail by or on behalf of the
 4 ~~commissioner~~**DIRECTOR** to the defendant at the last known principal
 5 place of business of the defendant, and the defendant's receipt, or
 6 the receipt issued by the post office with which the letter is
 7 certified, showing the name of the sender of the letter, the name
 8 and address of the person to whom the letter is addressed, and the
 9 affidavit of the person mailing the ~~same~~**LETTER** showing a
 10 compliance ~~herewith~~, **WITH THIS SUBDIVISION**, are filed with the
 11 ~~commissioner in the case of~~**DIRECTOR FOR** any statement of charges
 12 or notices, or with the clerk of the court in which ~~such~~**THE** action
 13 is pending ~~in the case of~~**FOR** any process, on or before the date
 14 the defendant is required to appear or within ~~such~~**ANY** further time
 15 ~~as THAT the court may allow~~**ALLOWES**.

16 (4) ~~(d) No~~**THE COURT SHALL NOT ISSUE A** cease or desist order
 17 or **ENTER A** judgment by default or a judgment pro confesso under
 18 this section ~~shall be entered until the expiration of 30 days from~~
 19 **AFTER** the date of the filing of the affidavit of compliance.

20 (5) ~~(e) Service of process and notice under the provisions of~~
 21 this act ~~shall be~~**IS** in addition to all other methods of service
 22 provided by law, and ~~nothing in this section shall~~**DOES NOT** limit
 23 or prohibit the right to serve any statement of charges, notices,
 24 or process ~~upon any~~**ON AN** insurer in any other manner ~~now or~~
 25 ~~hereafter permitted~~**PROVIDED** by law.

26 Enacting section 1. Sections 1921 and 1950 of the insurance
 27 code of 1956, 1956 PA 218, MCL 500.1921 and 500.1950, are repealed.

1 Enacting section 2. This amendatory act takes effect 90 days
2 after the date it is enacted into law.