

HOUSE BILL No. 6097

April 29, 2010, Introduced by Reps. Haveman, Young, Denby, Meekhof, Neumann, Lund, Walsh, Moore, Sheltroun, Womack, Lemmons, Green and Constan and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 7704 (MCL 500.7704), as amended by 2006 PA 671.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7704. (1) This chapter shall provide coverage for the
2 policies and contracts specified in subsection (2) to the following
3 persons:

4 (a) To a person, other than nonresident certificate holders
5 under group policies or contracts, who, regardless of where he or
6 she resides, is the beneficiary, assignee, or payee of a person
7 covered under subdivision (b).

8 (b) To a person who is an owner of, or certificate holder
9 under, a policy or contract described in subsection (2), other than

1 an unallocated annuity contract or structured settlement contract,
2 and which owner or certificate holder is 1 of the following:

3 (i) A resident.

4 (ii) Not a resident, if all of the following conditions are
5 met:

6 (A) The insurer that issued the policy or contract is
7 domiciled in this state.

8 (B) The state in which the person resides has an association
9 similar to the association created by this chapter.

10 (C) The person is not eligible for coverage by an association
11 in any other state because the insurer was not licensed in that
12 state at the time specified in the state's guaranty association
13 law.

14 (iii) Not a resident, if both of the following conditions are
15 met:

16 (A) The person would have been considered a resident at the
17 time the ~~coverage~~**CONTRACT** was obtained by the person.

18 (B) The person is not eligible for coverage by another
19 guaranty association.

20 (c) For an unallocated annuity contract, except as provided in
21 subsection (3), to either of the following:

22 (i) To a person who is the owner of an unallocated annuity
23 contract if the contract is issued to or in connection with a
24 specific plan whose sponsor has its principal place of business in
25 this state.

26 (ii) To a person who is the owner of an unallocated annuity
27 contract issued to or in connection with a government lottery if

1 the owner is a resident of this state.

2 (d) For a structured settlement annuity, except as provided in
3 subsection (3), to a person who is a payee under a structured
4 settlement annuity, or a beneficiary of a payee if the payee is
5 deceased, and the payee is either of the following:

6 (i) A resident, regardless of where the contract owner resides.

7 (ii) Not a resident, if either of the following conditions is
8 met:

9 (A) The contract owner of the structured settlement annuity is
10 a resident, and the payee or beneficiary is not eligible for
11 coverage from the association where the payee or beneficiary
12 resides.

13 (B) The contract owner of the structured settlement annuity is
14 not a resident, and both of the following conditions are met:

15 (I) The insurer that issued the structured settlement annuity
16 is domiciled in this state, and the state in which the contract
17 owner resides has an association similar to the association created
18 by this chapter.

19 (II) Neither the payee or beneficiary nor the contract owner
20 is eligible for coverage by the association of the state in which
21 the payee or contract owner resides.

22 (2) Except as provided in subsections (3), (4), and (5), this
23 chapter provides coverage to a person specified in subsection (1)
24 for direct, nongroup life, health, annuity, and supplemental
25 policies or contracts, for certificates under direct group life,
26 health, annuity, and supplemental policies and contracts, and for
27 unallocated annuity contracts issued by member insurers, except as

1 limited by this chapter.

2 (3) This chapter does not provide coverage to a person who is
3 a payee or beneficiary of a contract owner that is a resident of
4 this state, if the payee or beneficiary is afforded any coverage by
5 the association of another state or to a person otherwise covered
6 under subsection (1)(c), if any coverage is provided by the
7 association of another state to that person.

8 (4) This chapter is intended to provide coverage to a person
9 who is a resident of this state and, in special circumstances, to a
10 nonresident. To avoid duplicate coverage, if a person who would
11 otherwise receive coverage under this chapter is provided coverage
12 under the laws of any other state, the person shall not be provided
13 coverage under this chapter. In determining the application of the
14 provisions of this chapter in situations where a person could be
15 covered by the association of more than 1 state, whether as an
16 owner, payee, beneficiary, or assignee, this chapter shall be
17 construed in conjunction with other state laws to result in
18 coverage by only 1 association.

19 (5) This chapter does not provide coverage for the following:

20 (a) A portion of a policy or contract not guaranteed by the
21 insurer or under which the risk is borne by the policy or contract
22 owner, including, but not limited to, the nonguaranteed portion of
23 a variable or separate account product.

24 (b) A policy or contract of reinsurance, unless assumption
25 certificates have been issued pursuant to the reinsurance policy or
26 contract.

27 (c) A portion of a policy or contract to the extent that the

1 rate of interest on which it is based or the interest rate,
2 crediting rate, or similar factor determined by use of an index or
3 other external reference stated in the policy or contract employed
4 in calculating returns or changes in value exceeds the following:

5 (i) Averaged over the period of 4 years prior to the date on
6 which the member insurer becomes an impaired insurer or an
7 insolvent insurer, whichever occurs first, the rate of interest
8 determined by subtracting 2 percentage points from Moody's
9 corporate bond yield average averaged for that same 4-year period
10 or for a lesser period if the policy or contract was issued less
11 than 4 years before the member insurer becomes an impaired insurer
12 or an insolvent insurer, whichever occurs first.

13 (ii) On and after the date on which the member insurer becomes
14 an impaired insurer or an insolvent insurer, whichever occurs
15 first, the rate of interest determined by subtracting 3 percentage
16 points from Moody's corporate bond yield average as most recently
17 available.

18 (d) A portion of a plan or contract issued to a plan or
19 program of an employer, association, or other person to provide
20 life, health, or annuity benefits to its employees, members, or
21 others to the extent that the plan or program is self-funded or
22 uninsured, including, but not limited to, benefits payable by an
23 employer, association, or other person under any of the following:

24 (i) A multiple employer welfare arrangement as defined in
25 section 7001.

26 (ii) A minimum premium group insurance plan.

27 (iii) A stop-loss or excess-loss group insurance plan. This

1 subparagraph does not apply to the insured portion of a stop-loss
2 or excess-loss group insurance plan written pursuant to section
3 407a or 5208 or written by a member property casualty insurer if
4 the premiums were identified as disability insurance premiums in
5 its annual statement.

6 (iv) An administrative services only contract.

7 (e) A portion of a policy or contract to the extent that it
8 provides dividends or experience rating credits, voting rights, or
9 payment of any fees or allowances be paid to a person, including
10 the policy or contract owner, in connection with the service to or
11 administration of the policy or contract.

12 (f) A policy or contract issued in this state by an insurer at
13 a time when it did not have a certificate of authority to issue the
14 policy or contract in this state.

15 (g) An unallocated annuity contract issued to or in connection
16 with a benefit plan protected under the federal pension benefit
17 guaranty corporation regardless of whether the federal pension
18 benefit guaranty corporation has become liable to make any payments
19 with respect to the benefit plan.

20 (h) A portion of an unallocated annuity contract that is not
21 issued to or in connection with a specific employee, union, or
22 association of natural persons benefit plan or a government
23 lottery.

24 (i) An obligation that does not arise under the express
25 written terms of the policy or contract issued by the insurer to
26 the contract owner or policy owner, including, but not limited to,
27 any of the following:

1 (i) A claim based on marketing materials.

2 (ii) A claim based on side letters, riders, or other documents
3 that were issued by the insurer without meeting applicable policy
4 form filing or approval requirements.

5 (iii) A claim based on misrepresentations of or regarding policy
6 benefits.

7 (iv) An award of exemplary or punitive damages or statutory
8 interest and claims related to bad faith in the payment of claims,
9 and attorney fees and costs.

10 (v) A claim for penalties or consequential or incidental
11 damages.

12 (j) A contractual agreement that establishes the member
13 insurer's obligations to provide a book value accounting guaranty
14 for defined contribution benefit plan participants by reference to
15 a portfolio of assets that is owned by the benefit plan or its
16 trustee, which in each case is not an affiliate of the member
17 insurer.

18 (k) A portion of a policy or contract to the extent it
19 provides for interest or other changes in value to be determined by
20 the use of an index or other external reference stated in the
21 policy or contract, but which have not been credited to the policy
22 or contract, or as to which the policy or contract owner's rights
23 are subject to forfeiture, as of the date the member insurer
24 becomes an impaired insurer or an insolvent insurer, whichever
25 occurs first. If a policy's or contract's interest or changes in
26 value are credited less frequently than annually, then for purposes
27 of determining the values that have been credited and are not

1 subject to forfeiture under this subdivision, the interest or
2 change in value determined by using the procedures defined in the
3 policy or contract shall be credited as if the contractual date of
4 crediting interest or changing values was the date of impairment or
5 insolvency, whichever is earlier, and is not subject to forfeiture.

6 (l) A PORTION OF A POLICY OR CONTRACT TO THE EXTENT THAT THE
7 ASSESSMENTS REQUIRED BY SECTION 7709 FOR THE POLICY OR CONTRACT ARE
8 PREEMPTED BY FEDERAL OR STATE LAW.

9 (m) A POLICY OR CONTRACT PROVIDING ANY HOSPITAL, MEDICAL,
10 PRESCRIPTION DRUG, OR OTHER HEALTH CARE BENEFITS UNDER PART C OR
11 PART D OF TITLE XVIII OF THE SOCIAL SECURITY ACT, 42 USC 1395W-21
12 TO 1395W-29 AND 42 USC 1395W-101 TO 1395W-152, OR UNDER REGULATIONS
13 ISSUED UNDER PART C OR PART D OF TITLE XVIII OF THE SOCIAL SECURITY
14 ACT, 42 USC 1395W-21 TO 1395W-29 AND 42 USC 1395W-101 TO 1395W-152.

15 (6) The benefits that the association may become obligated to
16 cover shall not exceed the lesser of the following:

17 (a) The contractual obligations for which the insurer is
18 liable or would have been liable if it were not an impaired insurer
19 or an insolvent insurer.

20 (b) With respect to 1 life, regardless of the number of
21 policies or contracts:

22 (i) \$300,000.00 in life insurance death benefits, but not more
23 than \$100,000.00 in net cash surrender and net cash withdrawal
24 values for life insurance.

25 (ii) Except as otherwise provided in subparagraphs (iv) and (v),
26 \$100,000.00 in health insurance benefits, including any net cash
27 surrender and net cash withdrawal values.

1 (iii) ~~\$100,000.00~~ **\$250,000.00** in the present value of annuity
2 benefits, including net cash surrender and net cash withdrawal
3 values. ~~; however, for an individual qualified retirement annuity,~~
4 ~~\$250,000.00 in the present value of annuity benefits, including net~~
5 ~~cash surrender and net cash withdrawal values. As used in this~~
6 ~~subparagraph, "individual qualified retirement annuity" means an~~
7 ~~annuity issued to an individual or a custodian on behalf of the~~
8 ~~individual pursuant to section 408 or 408A of the internal revenue~~
9 ~~code of 1986, 26 USC 408 and 408A, or an annuity certificate issued~~
10 ~~to an individual pursuant to section 403(b) of the internal revenue~~
11 ~~code of 1986, 26 USC 403(b).~~

12 (iv) \$300,000.00 in disability income insurance benefits or
13 long-term care benefits.

14 (v) \$500,000.00 in basic hospital, medical, and surgical
15 insurance benefits.

16 (c) With respect to each individual participating in a
17 governmental retirement benefit plan established under section
18 401(k), 403(b), or 457 of the internal revenue code of 1986, 26 USC
19 401, 403, and 457, covered by an unallocated annuity contract or
20 the beneficiaries of each such individual, if deceased, in the
21 aggregate, ~~\$100,000.00~~ **\$250,000.00** in present value annuity
22 benefits, including net cash surrender and net cash withdrawal
23 values.

24 (d) With respect to each payee of a structured settlement
25 annuity, or the beneficiary or beneficiaries of a deceased payee,
26 ~~\$100,000.00~~ **\$250,000.00** in present value annuity benefits, in the
27 aggregate, including net cash surrender and net cash withdrawal

1 values, if any.

2 (e) For either 1 contract owner provided coverage under
3 subsection (1)(c)(ii) or 1 plan sponsor whose plans own directly or
4 in trust 1 or more unallocated annuity contracts not included in
5 subdivision (C), \$5,000,000.00 in benefits, irrespective of the
6 number of contracts with respect to the contract owner or plan
7 sponsor. However, if 1 or more unallocated annuity contracts are
8 covered contracts under this chapter and are owned by a trust or
9 other entity for the benefit of 2 or more plan sponsors, coverage
10 shall be afforded by the association if the largest interest in the
11 trust or entity owning the contract or contracts is held by a plan
12 sponsor whose principal place of business is in this state, but in
13 no event is the association obligated to cover more than
14 \$5,000,000.00 in benefits for all those unallocated contracts.

15 (7) In no event is the association obligated to cover more
16 than the following:

17 (a) An aggregate of \$300,000.00 in benefits for any 1 life
18 under subsection (6)(b)(i), (ii), (iii), and (iv), (c), and (d).

19 (b) An aggregate of \$500,000.00 in benefits for any 1 life
20 under subsection (6)(b)(v).

21 (c) For 1 owner of multiple nongroup policies of life
22 insurance, whether the policy owner is an individual, firm,
23 corporation, or other person, and whether the persons insured are
24 officers, managers, employees, or other persons, \$5,000,000.00 in
25 benefits, regardless of the number of policies and contracts held
26 by the owner.

27 (8) The limitations under subsections (6) and (7) are

1 limitations on the benefits for which the association is obligated
2 before taking into account either its subrogation and assignment
3 rights or the extent to which those benefits could be provided out
4 of the assets of the impaired insurer or insolvent insurer
5 attributable to covered policies. The costs of the association's
6 obligations under this act may be satisfied by the use of assets
7 attributable to covered policies or reimbursed to the association
8 pursuant to its subrogation and assignment rights.

9 (9) In performing its obligations to provide coverage under
10 section 7708, the association is not required to guarantee, assume,
11 reinsure, or perform, or cause to be guaranteed, assumed,
12 reinsured, or performed, contractual obligations of the insolvent
13 insurer or impaired insurer under a covered policy or contract that
14 do not materially affect the economic benefits of the covered
15 policy or contract.

16 Enacting section 1. This amendatory act's increase in the
17 maximum benefits under section 7704(6)(b)(iii), (c), and (d) of the
18 insurance code of 1956, 1956 PA 218, MCL 500.7704, does not apply to
19 a member insurer that is under either a rehabilitation or
20 liquidation order on the effective date of this amendatory act.