

Amendment No. 1 to SB1180

Stanley
Signature of Sponsor

AMEND Senate Bill No. 1180*

House Bill No. 1438

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-12-136 is amended by deleting that section in its entirety and replacing it with the following:

(a) For the purposes of this section:

(1) "Commissioner" means the commissioner of the department of commerce and insurance;

(2) "Department" means the department of commerce and insurance; and

(3) "Plan" means the Tennessee Automobile Insurance Plan.

(b)

(1) There is created a nonprofit, unincorporated legal entity to be known as the Tennessee Automobile Insurance Plan.

(2) All insurance companies licensed by the department to write direct automobile liability policies in this state shall be and remain members of the Plan as a condition of the companies' authority to transact insurance in this state.

(3) The Plan shall perform its functions under a plan of operation established and approved under subsection (e) and shall exercise its powers through a governing committee established under subsection (c).

(c)

(1) The governing committee of the Plan shall consist of eleven (11) individuals serving terms as established in the plan of operation. The members of the governing committee shall be appointed by the commissioner in accordance with procedures set forth in the Plan. Each member of the governing committee so selected shall represent an insurer licensed by the department to do business in this state, except that two (2) members of the governing committee shall be insurance producers licensed by the department. Vacancies on the governing committee shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) The members of the governing committee appointed under prior law and serving in that capacity upon the effective date of this act shall continue to serve on the governing committee for the purpose of forming the initial operating plan under subsections (d) and (e). Such members are eligible for reappointment to the governing committee upon approval of the initial operating plan by the commissioner.

(3) In making appointments to the governing committee, the commissioner shall consider, among other factors, whether all member insurers are fairly represented.

(d)

(1) The Plan shall:

(A) At a minimum, in a manner fair to the insurers and equitable to their policyholders, apportion among the member insurers those applicants for automobile liability policies who are in good faith entitled to, but are unable to, procure such policies through ordinary methods. All insurance companies licensed by the department to write automobile liability insurance in this state shall subscribe to and participate in the Plan;

(B) Assess member insurers the amounts necessary to pay the obligations of the Plan under this section;

(C) Employ or retain such persons as are necessary to handle claims and perform other duties required by the Plan;

(D) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section;

(E) Establish procedures whereby nominations for the governing committee will be submitted to the commissioner; and

(F) Perform such other acts as are necessary or proper to effectuate the purpose of this section.

(2) With respect to any suit involving the Plan:

(A) Any action relating to or arising out of this section against the Plan shall be brought in a court in this state. Such court shall have exclusive jurisdiction over any action relating to or arising out of this section against the Plan; and

(B) Exclusive venue in any action brought against the Plan is in the circuit or chancery court in Davidson County; provided that the Plan may waive such venue as to a specific action.

(e)

(1) The Plan shall submit to the commissioner a plan of operation and any amendments to such plan necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan. The plan of operation and any amendments to such plan shall become effective upon approval in writing by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall establish the procedures through which all the powers and duties of the Plan under this section shall be performed.

(4) The plan of operation may provide that any or all powers and duties of the Plan shall be delegated to a corporation, association, or other organization that performs or will perform functions similar to those of the Plan, or its equivalent, in two (2) or more states.

(f)

(1) Upon request of the governing committee, the commissioner shall provide the Plan with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may after notice and hearing:

(A) Suspend or revoke the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or that fails to comply with the plan of operation or

(B) Impose a civil penalty of not more than five percent (5%) of the unpaid assessment per month on any member insurer that fails to pay an assessment when due; provided, however, that no penalty shall be less than one hundred dollars (\$100) per month.

(g)

(1) The Plan shall be subject to examination by the commissioner. The commissioner may impose an examination fee to cover the costs of administering the examination.

(2) The governing committee shall submit to the department, not later than September 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

(3) The Plan shall submit all rates, supplementary rate information, supporting information, policy forms, and endorsements in

compliance with all applicable standards set forth in title 56, chapter 5, part 3.

(h) The Plan shall be exempt from payment of all fees, except examination fees under subdivision (g)(1), and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property.

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer; the Plan or its agents or employees; the governing committee; or the commissioner or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this section.

(j) Any insurance company that is aggrieved by any ruling or decision of the commissioner made pursuant to the provisions of this section, shall be entitled to a review of the decision in the manner provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For the purpose of forming the Plan, appointing the governing committee, and seeking approval of the plan of operation, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2010.