

SUBSTITUTE FOR
SENATE BILL NO. 1305

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 2110a, 2111, 2117, 2119, and 2121 (MCL
500.2110a, 500.2111, 500.2117, 500.2119, and 500.2121), section
2110a as added by 1996 PA 514, sections 2111, 2117, and 2121 as
amended by 2002 PA 492, and section 2119 as amended by 1980 PA 461.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2110a. If uniformly applied to all its insureds, an
2 insurer may ~~establish and maintain a premium discount plan~~
3 ~~utilizing~~ **USE** factors in addition to those permitted by section
4 2111 for insurance if the plan is consistent with the purposes of
5 this act and reflects reasonably anticipated reductions **OR**
6 **INCREASES** in losses or expenses. This section does not affect
7 benefits or obligations required under chapter 31. ~~Nothing in this~~
8 **THIS** section ~~authorizes~~ **DOES NOT AUTHORIZE** an insurer to offer or

~~prohibits~~ **PROHIBIT** an insurer from offering premium discount plans concerning any of the following:

(a) Health care services, health care providers, or health care facilities.

(b) Automobile repair providers.

(c) Materials used in the repair of an automobile.

Sec. 2111. (1) Notwithstanding any provision of this act ~~and~~ **OR** this chapter to the contrary, classifications and territorial base rates used by ~~any~~ **AN** insurer in this state with respect to automobile insurance or home insurance shall conform to the applicable requirements of this section.

(2) Classifications established ~~pursuant to~~ **UNDER** this section for automobile insurance shall be based only ~~upon~~ **ON** 1 or more of the following factors, which shall be applied by an insurer on a uniform basis throughout ~~the~~ **THIS** state:

(a) With respect to all automobile insurance coverages:

(i) Either the age of the driver; the length of driving experience; or the number of years licensed to operate a motor vehicle.

(ii) Driver primacy, based ~~upon~~ **ON** the proportionate use of each vehicle insured under the policy by individual drivers insured or to be insured under the policy.

(iii) Average miles driven weekly, annually, or both.

(iv) Type of use, such as business, farm, or pleasure use.

(v) Vehicle characteristics, features, and options, such as engine displacement, ability of **THE** vehicle and its equipment to protect passengers from injury, and other similar items, including

1 vehicle make and model.

2 (vi) Daily or weekly commuting mileage.

3 (vii) Number of cars insured by the insurer or number of
4 licensed operators in the household. However, number of licensed
5 operators shall not be used as an indirect measure of marital
6 status.

7 (viii) Amount of insurance.

8 (b) In addition to the factors prescribed in subdivision (a),
9 with respect to personal protection insurance coverage:

10 (i) Earned income.

11 (ii) Number of dependents of income earners insured under the
12 policy.

13 (iii) Coordination of benefits.

14 (iv) Use of a safety belt.

15 (c) In addition to the factors prescribed in subdivision (a),
16 with respect to collision and comprehensive coverages:

17 (i) The anticipated cost of vehicle repairs or replacement,
18 which may be measured by age, price, cost new, or value of the
19 insured automobile, and other factors directly relating to that
20 anticipated cost.

21 (ii) Vehicle make and model.

22 (iii) Vehicle design characteristics related to vehicle
23 damageability.

24 (iv) Vehicle characteristics relating to automobile theft
25 prevention devices.

26 (d) With respect to all automobile insurance coverage other
27 than comprehensive, successful completion by the individual driver

1 or drivers insured under the policy of an accident prevention
2 education course that meets the following criteria:

3 (i) The course shall include a minimum of 8 hours of classroom
4 instruction.

5 (ii) The course shall include, but not be limited to, a review
6 of all of the following:

7 (A) The effects of aging on driving behavior.

8 (B) The shapes, colors, and types of road signs.

9 (C) The effects of alcohol and medication on driving.

10 (D) The laws relating to the proper use of a motor vehicle.

11 (E) Accident prevention measures.

12 (F) The benefits of safety belts and child restraints.

13 (G) Major driving hazards.

14 (H) Interaction with other highway users, such as
15 motorcyclists, bicyclists, and pedestrians.

16 (3) Each insurer shall establish a secondary or merit rating
17 plan for automobile insurance, other than comprehensive coverage. A
18 secondary or merit rating plan required under this subsection shall
19 provide for premium surcharges for any or all coverages for
20 automobile insurance, other than comprehensive coverage, based upon
21 any or all of the following, when that information becomes
22 available to the insurer:

23 (a) Substantially at-fault accidents.

24 (b) Convictions for, determinations of responsibility for
25 civil infractions for, or findings of responsibility in probate
26 court for civil infractions for ~~7~~violations under chapter VI of
27 the Michigan vehicle code, 1949 PA 300, MCL 257.601 to 257.750.

1 However, ~~beginning 90 days after the effective date of this~~
2 ~~sentence~~, an insured shall not be merit rated for a civil
3 infraction under chapter VI of the Michigan vehicle code, 1949 PA
4 300, MCL 257.601 to 257.750, for a period of time longer than that
5 which the secretary of state's office carries points for that
6 infraction on the insured's motor vehicle record.

7 (4) An insurer shall not establish or maintain rates or rating
8 classifications for automobile insurance based ~~upon~~ **ON** sex or
9 marital status.

10 (5) Notwithstanding other provisions of this chapter,
11 automobile insurance risks may be grouped by territory.

12 (6) This section ~~shall~~ **DOES** not be construed as limiting **LIMIT**
13 insurers or rating organizations from establishing and maintaining
14 statistical reporting territories. This section ~~shall~~ **DOES** not be
15 ~~construed to~~ prohibit an insurer from establishing or maintaining,
16 for automobile insurance, a premium discount plan for senior
17 citizens in this state who are 65 years of age or older, if the
18 plan is uniformly applied by the insurer throughout this state. If
19 an insurer has not established and maintained a premium discount
20 plan for senior citizens, the insurer shall offer reduced premium
21 rates to senior citizens in this state who are 65 years of age or
22 older and who drive less than 3,000 miles per year, regardless of
23 statistical data.

24 (7) Classifications established ~~pursuant to~~ **UNDER** this section
25 for home insurance other than inland marine insurance provided by
26 policy floaters or endorsements shall be based only ~~upon~~ **ON** 1 or
27 more of the following factors:

1 (a) Amount and types of coverage.

2 (b) Security and safety devices, including locks, smoke
3 detectors, and similar, related devices.

4 (c) Repairable structural defects reasonably related to risk.

5 (d) Fire protection class.

6 (e) Construction of structure, based on structure size,
7 building material components, and number of units.

8 (f) Loss experience of the insured, based ~~upon~~ **ON** prior claims
9 attributable to factors under the control of the insured that have
10 been paid by an insurer. An insured's failure, after written notice
11 from the insurer, to correct a physical condition that presents a
12 risk of repeated loss shall be considered a factor under the
13 control of the insured for purposes of this subdivision.

14 (g) Use of smoking materials within the structure.

15 (h) Distance of the structure from a fire hydrant.

16 (i) Availability of law enforcement or crime prevention
17 services.

18 (8) Notwithstanding other provisions of this chapter, home
19 insurance risks may be grouped by territory.

20 ~~—— (9) An insurer may utilize factors in addition to those~~
21 ~~specified in this section, if the commissioner finds, after a~~
22 ~~hearing held pursuant to the administrative procedures act of 1969,~~
23 ~~1969 PA 306, MCL 24.201 to 24.328, that the factors would encourage~~
24 ~~innovation, would encourage insureds to minimize the risks of loss~~
25 ~~from hazards insured against, and would be consistent with the~~
26 ~~purposes of this chapter.~~

27 **(9) AN INSURER MAY USE FACTORS IN ADDITION TO THOSE PERMITTED**

1 BY THIS SECTION FOR INSURANCE IF THE PLAN IS CONSISTENT WITH THE
2 PURPOSES OF THIS ACT AND REFLECTS REASONABLY ANTICIPATED REDUCTIONS
3 OR INCREASES IN LOSSES OR EXPENSES.

4 Sec. 2117. (1) As a condition of maintaining its certificate
5 of authority, an insurer shall not refuse to insure, refuse to
6 continue to insure, or limit the coverage available to an eligible
7 person for home insurance, except in accordance with underwriting
8 rules established ~~pursuant to~~ **UNDER** this section and section 2119.
9 ~~An insurer shall not establish underwriting rules for home~~
10 ~~insurance for contracts providing identical coverages that differ~~
11 ~~from those of any affiliate of the insurer.~~

12 (2) The underwriting rules that an insurer may establish for
13 home insurance shall be based only on the following:

14 (a) Criteria identical to the standards set forth in section
15 2103(2).

16 (b) The physical condition of the property insured or to be
17 insured, ~~provided~~ **IF** the underwriting rules are objective, are
18 directly related to the perils insured against, and, without regard
19 to the age of the structure, are based ~~upon~~ **ON** the specific
20 provisions of a national, state, or local housing and safety code,
21 a manufacturer's specification, or standards of similar
22 specificity. If an applicant or insured obtains a certificate of
23 compliance or habitation issued by an appropriate governmental unit
24 or agency, certifying that a building is in substantial compliance
25 with local housing and safety codes, the certificate creates a
26 rebuttable presumption that the dwelling meets the insurer's
27 underwriting rules relating to physical condition.

1 (c) For the renewal of a home insurance policy, the claim
2 history of the person insured or to be insured during the 3-year
3 period immediately preceding renewal of the policy, if that history
4 is based on 1 or both of the following:

5 (i) Claim experience arising out of ~~an~~**THE** insured's
6 negligence.

7 (ii) Failure by the insured, after written notice from the
8 insurer, to correct a physical condition that is directly related
9 to a paid claim or that presents a clear risk of a significant loss
10 under the property or liability portions of a homeowners policy.

11 (d) The relationship between market value and replacement cost
12 of a dwelling insured or to be insured for a replacement cost
13 policy, if a repair cost policy is offered by ~~that~~**THE** insurer
14 ~~pursuant to~~**UNDER** subsection (3).

15 (e) For nonrenewal of **A** home insurance ~~policies~~**POLICY**, the
16 claim history under the policy, excluding liability claims, as
17 follows:

18 (i) If there has been 1 or more of the following:

19 (A) Three paid claims within the immediately preceding 3-year
20 period totaling \$3,000.00 or more, exclusive of weather-related
21 claims.

22 (B) Three paid claims within the immediately preceding 3-year
23 period totaling \$4,000.00 or more, including weather-related
24 claims.

25 (ii) A history of 3 or more paid claims within an immediately
26 preceding 3-year period if the insurer meets all of the following:

27 (A) Has an underwriting rule under subparagraph (i) in effect.

1 (B) The underwriting rule under this subparagraph is for a
2 paid claim history that totals not less than the amount in
3 subparagraph (i) (A) exclusive of weather-related claims and totals
4 not less than the amount in subparagraph (i) (B) including weather-
5 related claims.

6 (C) The underwriting rule under this subparagraph applies to
7 an insured who has had a home insurance policy with the insurer for
8 a continuous minimum period of time as determined by the insurer
9 that may be any period of time between 5 and 10 years.

10 (f) ~~The~~ **WHETHER THE** number of residences within the dwelling
11 are inconsistent with the policy forms approved by the commissioner
12 for the insurer.

13 (g) ~~The unoccupancy of~~ **WHETHER** a dwelling **HAS BEEN UNOCCUPIED**
14 for more than 60 days, if there is evidence of an intent to vacate
15 or keep the premises vacant or unoccupied, as to the applicant or
16 insured.

17 (h) The existence of an adjacent physical hazard, if the
18 hazard presents a significant risk of loss directly related to the
19 perils insured or to be insured against for which a rate surcharge
20 is not applicable. For purposes of this subdivision only,
21 residential property or traffic patterns shall not be considered to
22 cause a significant risk of loss. Nonrenewals based upon an
23 adjacent physical hazard shall be due to a change in the hazard
24 from that which existed at the original date of issuance of the
25 policy.

26 (i) The failure of the insured or applicant to purchase an
27 amount of insurance in excess of 80% of the replacement cost of the

1 property to be insured under a replacement cost policy, if both of
2 the following conditions are met:

3 (i) The purchase of an amount of insurance in excess of 80% of
4 the replacement cost is a condition for sale of the policy.

5 (ii) The insurer offers in this state at least 1 form of a
6 replacement cost policy for which the insurer requires only a
7 minimum amount of insurance equal to 80% of the replacement cost of
8 the dwelling as a condition of purchase.

9 (j) One or more incidents involving a threat, harassment, or
10 physical assault by the insured or applicant for insurance on an
11 insurer employee, agent, or agent employee while acting within the
12 scope of his or her employment, ~~so long as~~ **IF** a report of the
13 incident was filed with an appropriate law enforcement agency.

14 (3) If an insurer establishes an underwriting rule based ~~upon~~
15 **ON** the relationship between the market value and replacement cost
16 ~~pursuant to~~ **UNDER** subsection (2)(d), ~~all~~ **BOTH OF** the following
17 ~~shall apply as to~~ the repair cost policy:

18 (a) The insurer shall offer ~~for sale a~~ **THE** repair cost policy
19 with deductibles, terms and conditions, perils insured against, and
20 types and amounts of coverage, which are substantially equivalent
21 to the deductibles, terms and conditions, perils insured against,
22 and types and amounts of coverage provided by the replacement cost
23 policy of the insurer, at least equivalent to the HO-2 form
24 replacement cost policy filed and in effect in this state for the
25 principal rating organization as of October 1, 1979.

26 (b) The insurer shall not ~~utilize~~ **USE** an underwriting rule
27 based ~~upon~~ **ON** the relationship between the market value and

1 replacement cost for the repair cost policy.

2 (4) The rates of an insurer for a repair cost policy shall be
3 established so that the premium for a repair cost policy shall not
4 exceed 105% of the premium for an amount of insurance equal to 80%
5 of the replacement cost of the dwelling under the equivalent
6 replacement cost policy described in subsection (3)(a). Premiums
7 for dwellings with identical replacement costs shall vary on a
8 schedule determined by the insurer in accordance with the market
9 value of the dwellings.

10 (5) Off-premises claims may be aggregated for the purposes of
11 subsection ~~(2)(f)~~, **(2)(E)**, irrespective of the location of the
12 insured dwelling. All claims other than off-premises losses
13 ~~utilized~~**USED** in a determination for purposes of subsection ~~(2)(f)~~
14 **(2)(E)** shall be aggregated only as to an insured dwelling. The
15 minimum dollar amounts prescribed in subsection ~~(2)(f)(i)~~ **(2)(E)(i)**
16 shall be adjusted on January 1, 2006, and on January 1 **OF** every
17 sixth year thereafter ~~to~~ to reflect the aggregate annual average
18 percentage change in the consumer price index since the previous
19 adjustment, rounded to the nearest hundred dollars. As used in this
20 subsection, "consumer price index" means the consumer price index
21 for all urban consumers in the U.S. city average, as most recently
22 reported by the United States department of labor, bureau of labor
23 statistics, and after certification by the commissioner in an
24 administrative bulletin.

25 Sec. 2119. (1) Each insurer subject to this chapter shall put
26 in writing all underwriting rules used by the insurer. An insurer
27 shall not transact automobile or home insurance inconsistently with

1 its underwriting rules.

2 (2) An insurer shall apply its underwriting rules uniformly
3 and without exception throughout this state, so that every
4 applicant or insured conforming with the underwriting rules will be
5 insured or renewed, and so that every applicant or insured not
6 conforming with the underwriting rules will be refused insurance or
7 nonrenewed, when the information becomes available to the insurer.

8 ~~—— (3) Affiliated insurers shall not adopt underwriting rules for~~
9 ~~automobile insurance contracts providing identical coverages which~~
10 ~~would permit a person to be insured, for automobile insurance, with~~
11 ~~more than 1 of the affiliated insurers, unless the affiliated~~
12 ~~insurers use identical rates and rating plans and have adopted~~
13 ~~identical underwriting rules in compliance with this section.~~

14 (3) ~~(4)~~ An insurer with more than 1 rating plan for automobile
15 insurance contracts providing identical coverages shall not adopt
16 underwriting rules ~~which~~ **THAT** would permit a person to be insured,
17 for automobile insurance, under more than 1 of the rating plans.

18 (4) ~~(5)~~ An insurer may establish underwriting rules for new
19 applicants ~~which~~ **THAT** are different than **RULES** for renewals of
20 existing insureds only if the applicants or existing insureds are
21 not eligible persons. Underwriting rules pertaining to renewals of
22 existing insureds who are not eligible persons may be based on a
23 contractual obligation of the insurer not to cancel or nonrenew.

24 (5) ~~(6)~~ For informational purposes, an insurer shall file with
25 the commissioner its underwriting rules ~~prior to~~ **BEFORE** their use
26 in this state. All filed underwriting rules shall be available for
27 public inspection. If the commissioner finds that an underwriting

rule is inconsistent with ~~the provisions of this chapter, the~~
 commissioner, after a hearing held ~~pursuant to Act No. 306 of the~~
~~Public Acts of 1969, as amended,~~ **UNDER THE ADMINISTRATIVE**
PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, shall by
 order prohibit further use of ~~that~~ **THE** underwriting rule.

(6) ~~(7)~~ This section ~~shall~~ **DOES** not prohibit an insurer from
 insuring persons who are not eligible persons ~~pursuant to~~ **UNDER**
 underwriting rules established under this section and sections
 2117, 2118, and 2120.

Sec. 2121. (1) If an insurer uses an inspection of a dwelling
 to determine whether the insured or applicant is an eligible person
 for home insurance, criteria for selecting dwellings for inspection
 shall not be based ~~upon any of the following:~~

~~—— (a) Location, whether by political subdivision, census tract,
 zip code, neighborhood, or area which may be described as a block,
 set of blocks, or by street coordinates.~~

~~—— (b) The age of the dwelling or the age of its plumbing,
 heating, electrical, or structural components, or of any other
 components which form a part of the dwelling.~~

~~—— (c) The market value of a dwelling, unless the value is used
 as a minimum value above which all dwellings will be inspected.~~

~~—— (d) The amount of insurance, unless the amount is used as a
 minimum above which all dwellings will be inspected.~~

~~—— (e) Race,~~ **ON RACE,** color, creed, marital status, sex, national
 origin, residence, age, disability, or lawful occupation.

(2) If an insurer establishes an inspection program that
 provides for inspection of a portion of its existing business on a

1 periodic basis, the inspection program shall not be based ~~upon~~ **ON**
2 any of the criteria in subsection ~~(1)(a), (c), or (e).~~ **(1)**.

3 (3) Criteria for selecting dwellings for inspection shall be
4 filed with the commissioner for informational purposes only. The
5 commissioner, after a hearing held pursuant to the administrative
6 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, shall
7 disapprove the further use of inspection criteria, if the
8 commissioner finds that the criteria are inconsistent with ~~the~~
9 ~~provisions of this chapter.~~

10 (4) There ~~shall be~~ **IS** no civil liability, other than
11 contractual liability, ~~where~~ **IF** applicable, on the part of, and a
12 cause of action of any nature ~~shall~~ **DOES** not arise against, the
13 commissioner, an insurer, an inspection bureau, ~~or~~ an authorized
14 representative, agent, employee, **OR** affiliate of the commissioner,
15 an insurer, or an inspection bureau, or any licensed insurance
16 agent, for acts or omissions related solely to the physical
17 condition of the property in an inspection conducted for insurance
18 purposes ~~pursuant to~~ **UNDER** this chapter.