

Act No. 24
Public Acts of 1991
Approved by the Governor
May 20, 1991
Filed with the Secretary of State
May 20, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Senators Wartner, Faust, Cruce, DeGrow, O'Brien, Posthumus and Miller

ENROLLED SENATE BILL No. 138

AN ACT to amend the title and sections 2111, 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3315, 6115, and 6125 of Act No. 218 of the Public Acts of 1956, entitled as amended "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability, and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state, and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance, and with respect to certain claims against uninsured or self-insured persons; and to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; and to provide penalties for the violation of this act," section 2111 as amended by Act No. 88 of the Public Acts of 1990 and sections 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3315, 6115, and 6125 as added by Act No. 10 of the Public Acts of 1986, being sections 500.2111, 500.2111a, 500.2111b, 500.2111c, 500.2134, 500.2136, 500.2138, 500.3015, 500.3315, 500.6115, and 500.6125 of the Michigan Compiled Laws; and to repeal certain parts of the act on specific dates.

The People of the State of Michigan enact:

Section 1. The title and sections 2111, 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3315, 6115, and 6125 of Act No. 218 of the Public Acts of 1956, section 2111 as amended by Act No. 88 of the Public Acts of 1990 and sections 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3315, 6115, and 6125 as added by Act No. 10 of the Public Acts of 1986, being sections 500.2111, 500.2111a, 500.2111b, 500.2111c, 500.2134, 500.2136, 500.2138, 500.3015, 500.3315, 500.6115, and 500.6125 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act.

Sec. 2111. (1) Notwithstanding any provision of this act and this chapter to the contrary, classifications and territorial base rates used by any 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 this section for automobile insurance shall be based only upon 1 or more of the following factors, which shall be applied by an insurer on a uniform basis throughout the 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 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 vehicle and its equipment to protect passengers from injury and other similar items, including vehicle make and model.

(vi) Daily or weekly commuting mileage.

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

(viii) Amount of insurance.

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

- (i) Earned income.
- (ii) Number of dependents of income earners insured under the policy.
- (iii) Coordination of benefits.
- (iv) Use of a safety belt.

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

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

- (ii) Vehicle make and model.
- (iii) Vehicle design characteristics related to vehicle damageability.
- (iv) Vehicle characteristics relating to automobile theft prevention devices.

(d) With respect to all automobile insurance coverage other than comprehensive, successful completion by the individual driver or drivers insured under the policy of an accident prevention education course that meets the following criteria:

- (i) The course shall include a minimum of 8 hours of classroom instruction.
- (ii) The course shall include, but not be limited to, a review of all of the following:
 - (A) The effects of aging on driving behavior.
 - (B) The shapes, colors, and types of road signs.
 - (C) The effects of alcohol and medication on driving.
 - (D) The laws relating to the proper use of a motor vehicle.
 - (E) Accident prevention measures.
 - (F) The benefits of safety belts and child restraints.
 - (G) Major driving hazards.
 - (H) Interaction with other highway users such as motorcyclists, bicyclists, and pedestrians.

(3) Each insurer shall establish and maintain premium discount plans pursuant to the following:

(a) Until January 1, 1992, an automobile theft prevention premium discount plan. A premium discount plan required under this subdivision shall provide for a premium discount for automobile comprehensive coverage based upon the installation of an approved automobile theft prevention device. As used in this subdivision, "approved automobile theft prevention device" means a device that is designed to prevent the theft of an insured's automobile and that is approved by the board of directors of the automobile theft prevention authority.

(b) Until January 1, 1992, an automobile safety belt premium discount plan. A premium discount plan required under this subdivision shall provide for a premium discount for automobile personal protection insurance of not less than 20%. A premium discount plan established under this subdivision may require the insured individual to certify in writing that he or she will wear a safety belt while operating the insured motor vehicle in compliance with section 710e of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.710e of the Michigan Compiled Laws, as a condition to receiving the premium discount. If an insured receives a premium discount after providing such certification and is injured while operating a motor vehicle without wearing a safety belt at the time of the injury, an insurer may subsequently deny to the insured the right to participate in any premium discount plan established by the insurer pursuant to this subdivision for a period of 12 months. An insurer that reduces its personal protection insurance rates after December 1, 1985 by not less than 20% and does not increase those rates for a period of 12 months shall be considered to be in compliance with this subdivision.

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

(a) Substantially at-fault accidents.

(b) Convictions for, determinations of responsibility for civil infractions for, or findings of responsibility in probate court for civil infractions for, violations under chapter VI of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being sections 257.601 to 257.750 of the Michigan Compiled Laws.

(5) An insurer shall not establish or maintain rates or rating classifications for automobile insurance based upon sex or marital status.

(6) Notwithstanding other provisions of this chapter, automobile insurance risks shall be grouped by territory, and territorial base rates for coverages shall be established as provided in section 2111a and as follows:

(a) An insurer shall not be limited as to the number of territories employed in its rating plan.

(b) Except during the period of time from February 28, 1986 to January 1, 1992, an insurer shall not employ more than 20 different territorial base rates for an automobile insurance coverage.

(c) A territorial base rate may be made applicable in 1 or more territories contained in the rating plan of the insurer.

(d) Except during the period of time from February 28, 1986 to January 1, 1992, an insurer shall not employ a territorial base rate for an automobile insurance package policy that is less than 45% of the highest territorial base rate for the same policy, all other rating classifications being the same.

(e) Except during the period of time from February 28, 1986 to January 1, 1992, an insurer shall not employ a territorial base rate in a territory for an automobile insurance package policy that is less than 90% of the territorial base rate employed in any adjacent territory for the same policy, all other rating classifications being the same.

(7) Except during the period of time from February 28, 1986 to January 1, 1992, an insurer may elect at any time to exempt itself from the requirements of subsection (6) by filing for an exemption with the commissioner. An insurer electing this exemption shall initially file a rating plan in which no territorial base rate for an automobile insurance package policy is less than 45% of the highest territorial base rate for the same policy, all other rating classifications being the same. Five years from the date of the initial filing the insurer shall be prohibited from using a rating plan in which any territorial base rate for an automobile insurance package policy will be less than 67% of the highest territorial base rate for that same policy, all other rating classifications being the same. An insurer's election of an exemption under this subsection is permanent, final, and not subject to change.

(8) Except during the period of time from February 28, 1986 to January 1, 1992, if an insurer can demonstrate to the commissioner, after an opportunity for an evidentiary hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, that clear and significant financial impairment exists in the geographic territory or territories in question because of the need for an additional territorial base rate, or for a greater variance in the adjacent geographic territory differential contained in subsection (6)(e), the additional territorial base rate, a greater variance, or both, shall be permitted for use by the insurer or a licensed rating organization on behalf of that insurer, at such time as the need exists. Evidence shall not include financial impairment resulting from exemptions granted to other insurers.

(9) Except during the period of time from February 28, 1986 to January 1, 1992, if the commissioner finds, solely on the evidence presented, that a greater variance in the adjacent geographic territory differential than that authorized under subsection (6)(e) is justified, the increase in variance shall not exceed 100% of that authorized under that subsection. Except during the period of time from February 28, 1986 to January 1, 1992, if an increase in variance in the adjacent geographic territory differential greater than 100% of that authorized under subsection (6)(e) is justified, the commissioner shall require the creation of an additional territorial base rate.

(10) Except during the period of time from February 28, 1986 to January 1, 1992, an exemption granted under subsections (8) and (9) shall be applicable only to the geographic territory or territories in question, and only to the insurer requesting the exemption.

(11) Except during the period of time from February 28, 1986 to January 1, 1992, an insurer shall not have more than 5 exemptions in force at any 1 time. For purposes of determining the number of existing exemptions, each additional territorial base rate or each increase in variance in the adjacent geographic territory differential granted, shall be considered to be a separate exemption.

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

(13) Classifications established pursuant to this section for home insurance other than inland marine insurance provided by policy floaters or endorsements shall be based only upon 1 or more of the following factors:

(a) Amount and types of coverage.

- (b) Security and safety devices, including locks, smoke detectors, and similar, related devices.
- (c) Repairable structural defects reasonably related to risk.
- (d) Fire protection class.
- (e) Construction of structure, based on structure size, building material components, and number of units.
- (f) Loss experience of the insured, based upon prior claims attributable to factors under the control of the insured that have been paid by an insurer.
- (g) Use of smoking materials within the structure.
- (h) Distance of the structure from a fire hydrant.
- (i) Availability of law enforcement or crime prevention services.

(14) Notwithstanding other provisions of this chapter, home insurance risks shall be grouped by territory, and territorial base rates for coverages shall be established as follows:

(a) An insurer shall not be limited as to the number of territories employed in its rating plan. However, an insurer shall not employ more than 3 different territorial base rates for a home insurance coverage. A territorial base rate may be made applicable in 1 or more territories contained in the rating plan of the insurer.

(b) An insurer shall not employ a territorial base rate for home insurance for owner-occupied dwelling policies that is less than 70% of the highest territorial base rate for the same policy, all other rating classifications being the same.

(c) An insurer shall not employ a territorial base rate for home insurance for renter or tenant policies that is less than 65% of the highest territorial base rate for the same policy, all other rating classifications being the same.

(15) An insurer may utilize factors in addition to those specified in this section, if the commissioner finds, after a hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, that the factors would encourage innovation, would encourage insureds to minimize the risks of loss from hazards insured against, and would be consistent with the purposes of this chapter.

Sec. 2111a. (1) Except as otherwise provided in this section, before April 1, 1986, an insurer shall not charge a territorial base rate for an automobile insurance package policy in a territory within an urban area that exceeds the territorial base rate that would have been charged by the Michigan automobile insurance placement facility in that territory using the weighted average of the base rates charged in each facility territory by the 5 largest insurer groups, determined by voluntary net direct automobile insurance car years written in the state for the calendar year ending December 31, 1984 as reported to the statistical agent, and based upon the data used by the facility to determine the facility rates that were effective January 1, 1986. However, this subsection does not require an insurer to reduce its territorial base rates within an urban area that are in effect on February 28, 1986.

(2) On and after April 1, 1986, except as otherwise provided in subsection (3), an insurer shall not increase in any 12-month period the rates for automobile insurance package policies in territories within an urban area by an amount that is greater than 4% plus the consumer price index. The insurer may redefine rating territories for automobile insurance package policies in an urban area; however, such redefinition, at the time of the redefinition, shall not result in a weighted average rate in the urban area which is greater than the weighted average rate in the urban area without redefinition of the territories. The insurer shall not use more than 6 territories within an urban area. The sum of the percentage increases for an insurer in a 12-month period as permitted under this subsection shall be less than or equal to 4% plus the consumer price index and each percentage increase shall be computed in accordance with the following:

The difference between the total written premium at the proposed rates minus the total written premium at current rates, divided by total written premium at current rates, and multiplied by 100.

(3) On and after February 1, 1988, an insurer may elect to be subject to the limitations provided in this subsection instead of the limitations provided in subsection (2). An insurer electing to be subject to this subsection shall not increase the rates for automobile insurance package policies in territories within an urban area by a percentage that is greater than the insurer's nonurban average percentage increase, which nonurban average percentage increase shall be reduced by the sum of the percentage increases made by the insurer under subsection (2) during the 12 months immediately preceding the date of the filing of the proposed increase pursuant to this subsection. The insurer may redefine rating territories for automobile insurance package policies in an urban area; however, such redefinition, at the time of the redefinition, shall not result in a weighted average rate in the urban area that is greater than the weighted average rate in the urban area without redefinition of the territories. The insurer shall not use more than 6 territories within an urban area. An insurer that elects to be subject to the limitation under this subsection shall remain subject to this subsection.

(4) Any rate filing for automobile insurance package policies made after December 15, 1985 shall not be modified, changed, or altered for a period of 6 months after the effective date of such filing. This subsection shall not prohibit an insurer from making rate filings at any time that only provide changes to rates based upon assessments levied against insurers pursuant to section 3104 or 3330. Such rate filings shall not be considered rate filings for purposes of this subsection.

(5) As used in this section:

(a) "Consumer price index" means the annual average percentage increase in the Detroit consumer price index for all items for the prior 12-month period as reported by the United States department of labor and as certified by the commissioner.

(b) "Nonurban average percentage increase" means the percentage increase of an insurer's weighted average rate outside of an urban area, if any, which is obtained by dividing the weighted average of the proposed rates of the insurer outside an urban area by the highest weighted average rate of the insurer outside an urban area on file with the commissioner during the 6 months immediately preceding the date of the filing of the proposed increase, subtracting 1 from this quotient, and multiplying the difference by 100. The weights used in obtaining the weighted averages in this subdivision shall be the written car years of the insurer in each rating territory. If a negative percentage is calculated under this subdivision, there shall be no nonurban average percentage increase under this subdivision.

(c) "Urban area" means the area within the boundaries of a city in this state which has a population of 1,000,000 or more as determined by the latest of each succeeding federal decennial census and includes any city located wholly within the boundaries of a city in this state which has a population of 1,000,000 or more as determined by the latest of each succeeding federal decennial census.

(6) This section is repealed effective January 1, 1992.

Sec. 2111b. An insurer shall not utilize a territorial base rate for automobile insurance package policies for a territory outside of the boundaries of an urban area that is greater than the insurer's highest territorial base rate within an urban area. This section is repealed effective January 1, 1992.

Sec. 2111c. (1) Between January 1, 1987 and October 1, 1987, the commissioner shall prepare a report that details the theft of automobiles occurring in this state since February 1, 1986 and assesses the impact of the thefts on rates charged for automobile insurance. The director of the department of state police, insurers, the state court administrative office, and the automobile theft prevention authority shall cooperate in the development of the report as requested by the commissioner and shall make available records and statistics concerning automobile thefts, including the number of automobile thefts, number of prosecutions and convictions involving automobile thefts, and automobile theft recidivism. The commissioner shall evaluate the impact automobile theft has on the citizens of this state and the costs incurred by the citizens through insurance, police enforcement, prosecution, and incarceration due to automobile thefts. By July 1 of every odd year after 1987, the commissioner shall prepare a similar report reviewing the automobile theft data for the previous 2 years. The report required by this subsection shall be submitted to the legislature and the automobile theft prevention authority.

(2) Between January 1, 1989 and October 1, 1989, the commissioner shall prepare a report to the legislature which does both of the following:

(a) Reviews and evaluates the effect of the 1986 amendatory act which added this section on the rating structure for automobile insurance in this state.

(b) Recommends existing or alternative mechanisms or regulatory schemes to assure that automobile insurance is available at fair and equitable rates.

(3) This section is repealed effective January 1, 1992.

Sec. 2134. (1) Each insurer transacting automobile insurance in this state shall do both of the following:

(a) Be a paying member of the national automobile theft bureau.

(b) Secure from each insured the vehicle identification number for each vehicle insured by the insurer.

(2) This section is repealed effective January 1, 1992.

Sec. 2136. Each insurer, when writing automobile comprehensive insurance coverage for a person who was not previously a policyholder with the insurer or when insuring an automobile that was not previously insured by the insurer for a person who was previously a policyholder with the insurer but who has filed a claim with the insurer within the preceding 3 years to recover for the theft of an automobile, shall verify the existence of the automobile being insured. To comply with this section, an insurer shall either make a personal inspection of the automobile or obtain not less than 2 photographs of the automobile that depict the automobile diagonally from the front and rear. This section shall not apply when an agent subject to section 1209(2) transfers a

person's automobile comprehensive insurance coverage from an insurer that has authorized the agent to another insurer that has authorized the agent. This section is repealed effective January 1, 1992.

Sec. 2138. An insurer shall not make a claim payment on an automobile insurance policy for a loss arising from the theft of an automobile covered under the policy unless the insured has filed a report of the theft to the state police or the law enforcement agency within whose jurisdiction the theft occurred. This section is repealed effective January 1, 1992.

Sec. 3015. (1) Each automobile insurance policy delivered or issued for delivery in this state that provides coverage for the theft of an automobile may include either or both of the following provisions:

(a) A provision that imposes a \$500.00 deductible to the theft loss of the automobile if the automobile was unattended when stolen and was stolen while the keys to the automobile were located in the passenger compartment of the automobile. The deductible shall not apply if the automobile is the subject of a bailment contract.

(b) A provision that reduces the recovery under the policy by 10% for the theft loss of the automobile if the automobile was unattended when stolen and was stolen while the keys to the automobile were located in the passenger compartment of the automobile. The reduction under this subdivision shall not apply if the automobile is the subject of a bailment contract.

(2) If an insurer includes either or both of the provisions provided in subsection (1) in an automobile insurance policy that provides coverage for the theft of an automobile, the insurer shall include the provision or provisions in each automobile insurance policy providing coverage for the theft of an automobile that is thereafter delivered or issued for delivery by the insurer.

(3) This section is repealed effective January 1, 1992.

Sec. 3315. The facility shall establish as part of its plan of operation a program to reduce the participation ratio of an insurer under section 3303(e)(i) based upon the number of private passenger nonfleet automobiles voluntarily written in an urban area. The program shall also include reductions to the participation ratio for any increases in the number of private passenger nonfleet automobiles voluntarily written in an urban area. However, an insurer's participation ratio shall not be increased by more than 10% annually as a result of this section. As used in this section "urban area" means the area within the boundaries of a city in this state that has a population of 1,000,000 or more as determined by the latest of each succeeding federal decennial census and includes any city located wholly within the boundaries of a city in this state that has a population of 1,000,000 or more as determined by the latest of each succeeding federal decennial census. This section is repealed effective January 1, 1992.

Sec. 6115. On January 1, 1992, the authority shall be dissolved and the assets of the authority shall be liquidated. The proceeds of the liquidation shall be returned to insurers writing automobile insurance in this state in proportion to each insurer's assessment payment pursuant to section 6107 in the immediately preceding calendar year.

Sec. 6125. This chapter is repealed effective January 1, 1992.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved

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Governor.