

# SENATE BILL No. 488

September 19, 1991, Introduced by Senators V. SMITH,  
ARTHURHULTZ, GEAKE, MC MANUS, POSTHUMUS, CARL, VAUGHN,  
FAUST, HART, KELLY and DINGELL and referred to the  
Committee on Commerce.

A bill to amend section 2845 of Act No. 218 of the Public  
Acts of 1956, entitled as amended  
"The insurance code of 1956,"  
as amended by Act No. 305 of the Public Acts of 1990, being sec-  
tion 500.2845 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2845 of Act No. 218 of the Public Acts  
2 of 1956, as amended by Act No. 305 of the Public Acts of 1990,  
3 being section 500.2845 of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 2845. (1) Except as otherwise provided in this sec-  
6 tion, ~~with respect to~~ FOR insured real property located in a  
7 city, village, or township ~~which~~ THAT has elected to apply this  
8 section as provided in subsection ~~(11)~~ (13), ~~when~~ IF a claim  
9 is filed for a loss to insured real property due to fire or

1 explosion and a final settlement is reached on the loss to the  
2 insured real property, an insurer shall withhold from payment 15%  
3 of the actual cash value of the insured real property at the time  
4 of the loss or 15% of the final settlement, whichever is less.

5 (2) FOR INSURED RESIDENTIAL REAL PROPERTY LOCATED IN A CITY,  
6 VILLAGE, OR TOWNSHIP THAT HAS ELECTED TO APPLY THIS SECTION AS  
7 PROVIDED IN SUBSECTION (13), IF A CLAIM IS FILED FOR A LOSS TO  
8 INSURED RESIDENTIAL REAL PROPERTY DUE TO FIRE OR EXPLOSION AND A  
9 FINAL SETTLEMENT IS REACHED ON THE LOSS TO THE INSURED RESIDEN-  
10 TIAL REAL PROPERTY, AN INSURER SHALL WITHHOLD FROM PAYMENT THE  
11 FINAL SETTLEMENT, THE AVERAGE COST OF DEMOLITION OR DEBRIS  
12 REMOVAL IN THE CITY, VILLAGE, OR TOWNSHIP WHERE THE INSURED RESI-  
13 DENTIAL REAL PROPERTY IS LOCATED, OR \$5,000.00, WHICHEVER IS  
14 LESS.

15 (3) At the time that ~~15% of the settlement or judgment~~ THE  
16 AMOUNT UNDER SUBSECTION (1) OR (2) is withheld, the insurer shall  
17 give notice of the withholding to the treasurer of the city, vil-  
18 lage, or township in which the insured real property is located,  
19 to the insured, and to any mortgagee having an existing lien or  
20 liens against the insured real property, if the mortgagee is  
21 named on the policy. ~~In the case of~~ FOR a judgment, notice  
22 shall also be provided to the court in which judgment was  
23 entered. The notice shall include all of the following:

24 (a) The identity and address of the insurer.

25 (b) The name and address of each policyholder, including any  
26 mortgagee.

1 (c) Location of the insured real property.

2 (d) The date of loss, policy number, and claim number.

3 (e) The amount of money withheld.

4 (f) A statement that the city, village, or township may have  
5 the withheld amount paid into a trust or escrow account estab-  
6 lished for the purposes of this section if it shows cause, pursu-  
7 ant to subsection ~~—(2)—~~ (4), within 15 days that the money should  
8 be withheld to protect the public health and safety, otherwise  
9 the withheld amount shall be paid to the insured at the expira-  
10 tion of 15 days.

11 (g) An explanation of the provisions of this section.

12 (4) ~~—(2)—~~ In order for a city, village, or township to  
13 escrow the amount withheld by the insurer, and to retain that  
14 amount, the following procedure shall be used:

15 (a) An affidavit prepared by the chief fire official or  
16 another authorized representative of the city, village, or town-  
17 ship designated by the governing body of the city, village, or  
18 township that the damaged insured structure violates existing  
19 named health and safety standards requiring the escrow of the  
20 withheld amount as surety for the repair, replacement, or removal  
21 of the damaged structure AND, FOR RESIDENTIAL REAL PROPERTY, A  
22 STATEMENT AS TO THE AVERAGE COST OF DEMOLITION OR DEBRIS REMOVAL  
23 IN THE CITY, VILLAGE, OR TOWNSHIP WHERE THE INSURED RESIDENTIAL  
24 REAL PROPERTY IS LOCATED shall constitute cause for the escrowing  
25 of the withheld amount.

26 (b) ~~—In the case of—~~ FOR a settlement, the affidavit shall  
27 be sent to the insurer, the insured, and any mortgagees. Upon

1 receipt of the affidavit, the insurer shall forward the withheld  
2 amount to the treasurer of the city, village, or township, and  
3 shall provide notice of the forwarding to the insured and any  
4 mortgagees.

5       (c) ~~In the case of~~ FOR a judgment, the affidavit shall be  
6 sent to the insurer, the insured, any mortgagees, and the court  
7 in which judgment was entered. Upon the motion of the city, vil-  
8 lage, or township, the court shall order the withheld amount to  
9 be transmitted to the treasurer of the city, village, or  
10 township.

11       (d) Within 30 days after the escrowing of the withheld  
12 amount under this section, the city, village, or township may  
13 apply to the circuit court for declaratory relief in order to  
14 establish its rights to the policy proceeds held in escrow by the  
15 city, village, or township. The city, village, or township shall  
16 have such a right to the proceeds upon a showing that the health,  
17 safety, and welfare of the inhabitants of the city, village, or  
18 township will be jeopardized unless such proceeds are retained by  
19 the city, village, or township. If declaratory relief is grant-  
20 ed, the court shall issue an order permitting the city, village,  
21 or township to retain the proceeds as requested, in accordance  
22 with the provisions of this section, to be used as provided in  
23 this section. If the city, village, or township fails to apply  
24 for declaratory relief within the 30-day period, or if declara-  
25 tory relief is denied, the city, village, or township shall imme-  
26 diately return to the insured the proceeds held in escrow.

1       (5) ~~-(3)-~~ Upon receipt of money and information from an  
2 insurer as prescribed in subsections (1), ~~and~~ (2), (3), AND (4)  
3 the local treasurer shall record the information and the date of  
4 receipt of the money and shall immediately deposit the money in a  
5 trust or escrow account established for purposes of this  
6 section. The account may be interest-bearing. If the mortgage  
7 on the insured property is in default, the treasurer of the city,  
8 village, or township, upon written request from a first mortgagee  
9 of property with respect to which policy proceeds were withheld  
10 and placed into a trust or escrow account under subsections (1),  
11 ~~and~~ (2), (3), AND (4) and this subsection, shall release to the  
12 mortgagee all or any part of the policy proceeds received by the  
13 city, village, or township ~~with respect to~~ FOR that property,  
14 not later than 10 days after receipt of the written request by  
15 the mortgagee, to the extent necessary to satisfy any outstanding  
16 lien of the mortgagee.

17       (6) ~~-(4)-~~ Except as provided in subsection ~~-(7)-~~ (9), money  
18 deposited in an account pursuant to subsection (3) shall not be  
19 commingled with city, village, or township funds. Any interest  
20 earned on money placed in a trust or escrow account shall be  
21 retained by the city, village, or township to defray expenses  
22 incurred under this section.

23       (7) ~~-(5)-~~ Except as provided in subdivision (c), the policy  
24 proceeds deposited under subsection ~~-(3)-~~ (5) shall immediately  
25 be forwarded to the insured when the chief fire official or  
26 another authorized representative of the city, village, or  
27 township designated by the governing body of the city, village,

1 or township receives or is shown reasonable proof of any of the  
2 following:

3 (a) That the damaged or destroyed portions of the insured  
4 structure have been repaired or replaced, except to the extent  
5 that the amount withheld under this subsection is needed to com-  
6 plete repair or replacement.

7 (b) That the damaged or destroyed structure and all remnants  
8 of the structure have been removed from the land on which the  
9 structure or the remnants of the structure were situated, in com-  
10 pliance with the local code requirements of the city, village, or  
11 township in which the structure was located.

12 (c) That the insured has entered into a contract to perform  
13 repair, replacement, or removal services ~~with respect~~ to the  
14 insured real property and that the insured consents to payment of  
15 funds directly to the contractor performing the services. Funds  
16 released under this subdivision may be forwarded only to a con-  
17 tractor performing services on the insured property.

18 (8) ~~-(6)-~~ Reasonable proof required under subsection ~~-(5)-~~  
19 (7) shall include any of the following:

20 (a) Originals or copies of pertinent contracts, invoices,  
21 receipts, and other similar papers evidencing both the work per-  
22 formed or to be performed and the materials used or to be used by  
23 all contractors performing repair, replacement, or removal serv-  
24 ices with respect to the insured real property, other than a con-  
25 tractor subject to subdivision (b).

26 (b) An affidavit executed by the contractor ~~which~~ THAT has  
27 performed the greatest amount of repair or replacement work on

1 the structure ~~—~~ or ~~which~~ THAT has done most of the clearing  
2 and removal work if structure repair or replacement is not to be  
3 performed. The contractor shall attach to the affidavit all per-  
4 tinent contracts, invoices, and receipts and shall swear that  
5 these attached papers correctly indicate the nature and extent of  
6 the work performed to date by the contractor and the materials  
7 used.

8 (c) An inspection of the insured real property to verify  
9 that repair, replacement, or clearing has been completed in  
10 accordance with subsection ~~—(5)—~~ (7).

11 (9) ~~—(7)—~~ If with respect to a loss, reasonable proof is not  
12 received by or shown to a fire official or another authorized  
13 representative of the city, village, or township designated by  
14 the governing body of the city, village, or township within ~~—445—~~  
15 45 days after the policy proceeds portion was received by the  
16 treasurer, the city, village, or township shall use the retained  
17 proceeds to secure, repair, or demolish the damaged or destroyed  
18 structure and clear the property in question, so that the struc-  
19 ture and property are in compliance with local code requirements  
20 and applicable ordinances of the city, village, or township. Any  
21 unused portion of the retained proceeds shall be returned to the  
22 insured.

23 (10) ~~—(8)—~~ A final settlement shall not include the payment  
24 of policy proceeds for personal property or contents damage or  
25 for additional coverage not contained in the fire coverage por-  
26 tion of the fire insurance policy.

1       (11) ~~-(9)-~~ There shall not be liability on the part of, and  
2 a cause of action shall not arise against, an insurer or an agent  
3 or employee of an insurer for withholding or transferring money  
4 in the course of complying or attempting to comply with this  
5 section.

6       (12) ~~-(10)-~~ This section ~~shall apply~~ APPLIES only to final  
7 settlements ~~which~~ THAT exceed 49% of the insurance on the  
8 insured real property.

9       (13) ~~-(11)-~~ This section shall apply only to property  
10 located in a city, village, or township if the city, village, or  
11 township pursuant to a resolution by the governing body notifies  
12 the commissioner in writing that the city, village, or township  
13 has established a trust or escrow account to be used as pre-  
14 scribed in this section and intends to uniformly apply this sec-  
15 tion with respect to all property located within the city, vil-  
16 lage, or township following written notification to the  
17 commissioner. The commissioner shall prepare and distribute a  
18 list of all cities, villages, and townships ~~which~~ THAT have  
19 elected to apply this section to all insurance companies trans-  
20 acting property insurance in this state.

21       (14) ~~-(12)-~~ A city, village, or township shall remain on the  
22 list until a written request for deletion has been received by  
23 the commissioner and the amended list has been prepared pursuant  
24 to this subsection.

25       (15) ~~-(13)-~~ A city, village, or township may apply to be  
26 added to the list by making a written request for addition to the  
27 commissioner. When a written request for addition from a city,



1 village, or township has been received by the commissioner, an  
2 amended list shall be prepared and distributed indicating the  
3 addition. The addition shall be effective on the date specified  
4 by the commissioner in the amendment. The commissioner shall  
5 notify the city, village, township, and insurance companies of  
6 the effective date of the addition which shall be effective not  
7 less than 30 days after receipt of notice by the insurance  
8 company. A city, village, or township shall not apply this sec-  
9 tion with respect to any loss ~~which~~ THAT occurred before the  
10 effective date of the addition.

11 (16) ~~-(14)-~~ A city, village, or township may cease to apply  
12 this section for a period of not less than 6 months upon not less  
13 than 30 days' written notice to the commissioner. After receipt  
14 of request to be deleted from the list, the commissioner shall  
15 prepare and distribute an amendment to the list indicating the  
16 deletion. The deletion shall be effective on the date specified  
17 by the commissioner in the amendment. The commissioner shall  
18 notify the city, village, township, and insurance companies of  
19 the effective date of the deletion which shall be effective not  
20 less than 30 days after receipt of the notice by the insurance  
21 company. A city, village, or township shall continue to apply  
22 this section with respect to any loss ~~which~~ THAT occurred  
23 before the effective date of the deletion, notwithstanding the  
24 deletion.

25 (17) ~~-(15)-~~ The commissioner shall promulgate rules to  
26 implement and administer this section pursuant to the  
27 administrative procedures act of 1969, Act No. 306 of the Public

1 Acts of 1969, as amended, being sections 24.201 to 24.328 of the  
2 Michigan Compiled Laws.

3 (18) ~~—(16)—~~ The withholding requirements of this section  
4 shall not apply if all of the following occur:

5 (a) Within 15 days after agreement on a final settlement  
6 between the insured and the insurer, the insured has filed with  
7 the insurer evidence of a contract to repair as described in sub-  
8 section ~~—(6)—~~ (8).

9 (b) The insured consents to the payment of funds directly to  
10 the contractor performing the repair services. Funds released  
11 under this subdivision may be forwarded only to a contractor per-  
12 forming the repair services on the insured property.

13 (c) On receipt of the contract to repair, the insurer gives  
14 notice to the city, village, or township in which the property is  
15 situated that there will not be a withholding under this section  
16 because of the repair contract.

17 (19) ~~—(17)—If—~~ EXCEPT AS PROVIDED IN SUBSECTION (18), IF the  
18 insured and the insurer have agreed on the demolition costs or  
19 the debris removal costs as part of the final settlement of the  
20 real property insured claim, the insurer shall withhold 1 of the  
21 following sums, whichever sum is the largest and shall pay that  
22 sum in accordance with this section:

23 (a) The agreed cost of demolition or debris removal.

24 (b) Fifteen percent of the actual cash value of the insured  
25 real property at the time of loss.

26 (c) Fifteen percent of the final settlement of the insured  
27 real property claim.

1 (20) IF THE INSURED AND THE INSURER HAVE AGREED ON THE  
 2 DEMOLITION COST OR THE DEBRIS REMOVAL COSTS AS PART OF THE FINAL  
 3 SETTLEMENT OF A RESIDENTIAL REAL PROPERTY INSURED CLAIM, THE  
 4 INSURER SHALL WITHHOLD 1 OF THE FOLLOWING SUMS, WHICHEVER SUM IS  
 5 LESS, AND SHALL PAY THAT SUM IN ACCORDANCE WITH THIS SECTION:

6 (A) THE FINAL SETTLEMENT.

7 (B) THE AGREE COST OF DEMOLITION OR DEBRIS REMOVAL.

8 (C) \$5,000.00.

9 (21) ~~-(18)-~~ As used in this section, "final settlement"  
 10 means a determination of the amount due and owing to the insured,  
 11 for a loss to insured real property, by any of the following  
 12 means:

13 (a) Acceptance of a proof of loss by the insurer.

14 (b) Execution of a release by the insured.

15 (c) Acceptance of an arbitration award by both the insured  
 16 and the insurer.

17 (d) Judgment of a court of competent jurisdiction.