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**SFA**



**BILL ANALYSIS**

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House Bill 5224 (Substitute H-1 as passed by the House)  
House Bill 5344 (Substitute H-1 as passed by the House)  
Sponsor: Representative Vera Rison (House Bill 5224)  
Representative Samuel Buzz Thomas (House Bill 5344)  
House Committee: Insurance  
Senate Committee: Financial Services

Date Completed: 5-27-98

### **CONTENT**

**House Bill 5224 (H-1)** would amend Section 2845 of the Insurance Code, which allows cities, villages, and townships to escrow 15% of fire insurance proceeds until there is evidence that the damaged property has been or will be repaired or replaced, and to use the money to perform the work if certain requirements are met. The bill would increase the percentage that may be escrowed to 25%; limit the escrowed amount to \$6,000 for residential property; require the city, village, or township to notify the insured that he or she could object to the retention of the money (rather than providing that the city, village, or township may seek a declaratory judgment of its right to the proceeds); and allow a municipality to use escrowed funds after 120 (rather than 445) days. The bill specifies that Section 2845 would apply only to insured real property located in a city, village, or township in a county with a population under 425,000, unless the city, village, or township had a population of 50,000 or more.

**House Bill 5344 (H-1)** would add to the Insurance Code a new section containing provisions parallel to those in Section 2845. The new section would apply to a city, village, or township in a county with a population of 425,000 or more, and to a city, village, or township located in a county with a population under 425,000 if the city, village, or township had a population of at least 50,000.

House Bill 5224 (H-1), and most of the provisions of House Bill 5344 (H-1), would take effect on January 1, 1999. The bills would apply to losses that occurred on or after that date. Losses that occurred before January 1, 1999, would be governed by the current language of Section 2845.

### **House Bill 5224 (H-1)**

Currently, when a claim is filed for a loss to insured real property due to fire or explosion and a final settlement is reached on the loss, an insurer must withhold from payment 15% of the actual cash value of the property at the time of the loss or 15% of the final settlement, whichever is less. The bill would increase the percentage to 25%. For residential property, the 25% settlement or judgment withheld could not exceed \$6,000 adjusted annually beginning June 1, 1999, according to the consumer price index. The Insurance Commissioner would have to notify all insurers transacting property insurance in this State of the new adjusted amount.

Currently, the insurer must give notice of the withholding to the local treasurer, the insured, any named mortgagee with an existing lien against the property, and, in the case of a judgment, the court in which the judgment was entered. The notice must contain specific information as well as a statement that the city, village, or township may have the withheld amount paid into a trust or escrow account if it shows cause that the money should be withheld to protect the public health and safety; otherwise the withheld amount must be paid to the insured. The bill would retain these provisions but delete the requirement that the city, village, or township show cause.

Currently, an affidavit of the chief fire official or another authorized representative of the city, village, or township that the damaged structure violates existing health and safety standards requiring the escrow of the withheld amount as surety for the repair, replacement, or removal of the structure, constitutes cause for escrowing the withheld amount. The bill provides, instead, that an authorized representative of the city, village, or township would have to request the insurer to pay the withheld amount into an escrow account maintained by the treasurer of the city, village, or township. A final settlement that exceeded 49% of the insurance on the insured real property would be prima facie evidence that the damaged structure violated existing health and safety standards of the city, village, or township, and would constitute cause for the escrowing of the withheld amount as surety for the repair, replacement, or removal of the structure.

The request, rather than the affidavit, would have to be sent to the insurer, the insured, any mortgagees, and, in the case of a judgment, the court in which the judgment was entered. The copy to the insured would have to contain the notice required in the bill (described below).

Under the Act, within 30 days after the withheld amount is escrowed, the city, village, or township may apply to the circuit court for declaratory relief in order to establish its rights to the policy proceeds. The city, village, or township has a right to the proceeds upon a showing that the health, safety, and welfare of its inhabitants will be jeopardized unless the proceeds are retained by the local unit. If declaratory relief is granted, the court must issue an order permitting the city, village, or township to retain the proceeds. If the local unit fails to apply for declaratory relief within the 30-day period, or if declaratory relief is denied, the city, village, or township must immediately return the proceeds to the insured. The bill would delete these provisions.

Under the bill, the city, village, or township would have to notify the insured that he or she had 10 days from the date the notice was mailed to object to the local unit's retention of the withheld amount. The notice would have to identify the authorized representative of the city, village, or township to whom the insured should address his or her objections, and would have to state that the insured could either seek relief in the circuit court, or seek resolution with the local unit's representative designated to receive and resolve objections. The city, village, or township would have to make a final determination and notify the insured of that determination within 30 days after receiving notice that the insured wished to seek resolution. The final determination would have to include notice to the insured that if he or she were still dissatisfied with the local unit's determination, the insured could seek relief in circuit court.

Currently, the proceeds must be forwarded immediately to the insured when the chief fire official or another authorized representative of the city, village, or township receives or is shown proof that the damaged or destroyed portions of the insured structure have been repaired or replaced (except to the extent that the amount withheld is needed to complete repair or replacement), that the damaged or destroyed structure and all remnants of it have been removed, or that the insured has entered into a contract to perform repair, replacement, or removal services and consents to payment of the funds directly to the contractor. The bill would retain these provisions but delete reference to the chief fire official.

If reasonable proof is not received by or shown to an authorized representative of the city, village, or township within 445 days after the proceeds were received by the local treasurer, the local unit must use the proceeds to secure, repair, or demolish the structure and clear the property. Any unused portion must be returned to the insured. The bill would change the 445 days to 120 days, and would allow the city, village, or township to extend that time period.

The Code states that there is no liability on the part of, and a cause of action may not arise against, an insurer or an agent or employee of an insurer for withholding or transferring money in the course of complying or attempting to comply with Section 2845. The bill would add that, if there were a dispute with a lienholder concerning the distribution of an amount withheld, the insurer could file an action in circuit court to identify all parties that could have a financial interest in the withheld amount and to determine how that amount should be distributed.

The Code states that Section 2845 applies only to property located in a city, village, or township if the local unit, pursuant to a resolution by its governing body, notifies the Commissioner that the city, village, or township has established a trust or escrow account to be used as prescribed in the section and intends to apply it uniformly with respect to all property located in the local unit. The Commissioner must prepare a list of all such cities, villages, and townships and distribute it to all insurers transacting property insurance in this State. The bill would retain these provisions but delete a provision under which a city, village, or township must remain on the list until a written request for deletion has been received by the Commissioner and the amended list has been prepared.

The Code provides that a city, village, or township may cease to apply Section 2845 for a period of not less than six months upon at least 30 days' written notice to the Commissioner. Under the bill, a city, village, or township also could request to be deleted from the list. In addition, the bill would retain provisions under which a city, village, or township may apply to be added to the list, and the Commissioner must prepare and distribute an amended list.

The bill would retain a provision that Section 2845 applies only to final settlements that exceed 49% of the insurance on the insured real property.

The bill provides that if an insurer withheld payment under a policy in good faith because of suspected arson, fraud, or other question concerning coverage, Section 2845 would not apply until the issue or question was resolved and final settlement was made.

Currently, "final settlement" means a determination (made by means specified in the Code) of the amount due and owing to the insured for a loss to insured real property. The bill also provides that "final settlement" would not include contents damage, losses to personal property, or additional coverage not contained in the building coverage portion of the fire insurance policy.

### **House Bill 5344 (H-1)**

The bill contains provisions parallel to those in Section 2845, but would apply if a claim were filed for a loss to insured real property due to fire, explosion, vandalism, malicious mischief, wind, hail, riot, or civil commotion.

The bill would apply to cities, villages, and townships that met the proposed population criteria and that elected to apply the new section as provided in the bill. In addition, a city, village, township that met the population criteria and that was on the list prepared by the Commissioner under Section 2845 on October 1, 1998, would be automatically included as a participant in the procedure established in the bill, unless the city, village, or township made a written request to be deleted.

The bill would require the Commissioner to prepare and distribute to all insurers transacting property insurance in this State, by November 1, 1998, new lists indicating which cities, villages, and townships were subject to the new section and which were subject to Section 2845. This provision would take effect on October 1, 1998.

MCL 500.2845 (H.B. 5224)  
Proposed MCL 500.2227 (H.B. 5344)

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

The bill would have no fiscal impact on State government.

The bill would allow local units to increase from 15% to 25% the insurance withholding to remove blighted property. The 25% insurance withholding would be limited to \$6,000 for residential property, which would be adjusted annually for inflation.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.