

**REPRINT**

**SUBSTITUTE FOR**

**HOUSE BILL NO. 5224**

(As passed the House, February 26, 1998)

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending section 2845 (MCL 500.2845), as amended by 1990 PA  
305.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2845. (1) ~~Except as otherwise provided in this sec-~~  
2 ~~tion, with respect to insured real property located in a city,~~  
3 ~~village, or township which has elected to apply this section as~~  
4 ~~provided in subsection (11), when~~ IF a claim is filed for a loss  
5 to insured real property due to fire or explosion and a final  
6 settlement is reached on the loss to the insured real property,  
7 an insurer shall withhold from payment ~~15%~~ 25% of the actual  
8 cash value of the insured real property at the time of the loss  
9 or ~~15%~~ 25% of the final settlement, whichever is less. FOR  
10 RESIDENTIAL PROPERTY, THE 25% SETTLEMENT OR JUDGMENT WITHHELD

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1 SHALL NOT EXCEED \$6,000.00 ADJUSTED ANNUALLY BEGINNING JUNE 1,  
2 1999 IN ACCORDANCE WITH THE CONSUMER PRICE INDEX. THE COMMIS-  
3 SIONER SHALL NOTIFY ANNUALLY ALL INSURANCE COMPANIES TRANSACTING  
4 PROPERTY INSURANCE IN THIS STATE AS TO THE NEW ADJUSTED AMOUNT.  
5 At the time that ~~15%~~ 25% of the settlement or judgment is with-  
6 held, the insurer shall give notice of the withholding to the  
7 treasurer of the city, village, or township in which the insured  
8 real property is located, to the insured, and to any mortgagee  
9 having an existing lien or liens against the insured real proper-  
10 ty, if the mortgagee is named on the policy. In the case of a  
11 judgment, notice shall also be provided to the court in which  
12 judgment was entered. The notice shall include all of the  
13 following:

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

15 (b) The name and address OR FORWARDING ADDRESS of each poli-  
16 cyholder, including any mortgagee.

17 (c) Location of the insured real property.

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

19 (e) The amount of money withheld.

20 (f) A statement that the city, village, or township may have  
21 the withheld amount paid into a trust or escrow account estab-  
22 lished for the purposes of this section if ~~it shows cause, pur-~~  
23 ~~suant to subsection (2),~~ within 15 days AFTER THE MAILING OF THE  
24 NOTICE THE CITY, VILLAGE, OR TOWNSHIP STATES that the money  
25 should be withheld to protect the public health and safety; ~~—~~  
26 otherwise, the withheld amount shall be paid to the insured ~~at~~  
27 ~~the expiration of~~ 15 days AFTER THE MAILING OF THE NOTICE.

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

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

5 (a) ~~An affidavit prepared by the chief fire official or~~  
6 ~~another~~ AN authorized representative of the city, village, or  
7 township ~~designated by the governing body of the city, village,~~  
8 ~~or township that the damaged insured structure violates existing~~  
9 ~~named health and safety standards requiring the escrow of the~~  
10 ~~withheld amount as surety for the repair, replacement, or removal~~  
11 ~~of the damaged structure shall constitute cause for the escrowing~~  
12 ~~of the withheld amount~~ SHALL REQUEST THE INSURER TO PAY THE  
13 WITHHELD AMOUNT INTO AN ESCROW ACCOUNT MAINTAINED BY THE TREA-  
14 SURER OF THE CITY, VILLAGE, OR TOWNSHIP. A FINAL SETTLEMENT THAT  
15 EXCEEDS 49% OF THE INSURANCE ON THE INSURED REAL PROPERTY IS  
16 PRIMA FACIE EVIDENCE THAT THE DAMAGED INSURED STRUCTURE VIOLATES  
17 EXISTING HEALTH AND SAFETY STANDARDS OF THE CITY, VILLAGE, OR  
18 TOWNSHIP AND CONSTITUTES CAUSE FOR THE ESCROWING OF THE WITHHELD  
19 AMOUNT AS SURETY FOR THE REPAIR, REPLACEMENT, OR REMOVAL OF THE  
20 DAMAGED STRUCTURE.

21 (b) In the case of a settlement, the ~~affidavit~~ REQUEST  
22 UNDER SUBDIVISION (A) shall be sent to the insurer ~~,~~ WITH A  
23 COPY TO the insured ~~,~~ and any mortgagees. THE COPY TO THE  
24 INSURED SHALL CONTAIN THE NOTICE REQUIRED UNDER SUBDIVISION (D).  
25 Upon receipt of the ~~affidavit~~ REQUEST, the insurer shall for-  
26 ward the withheld amount to the treasurer of the city, village,

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1 or township, and shall provide notice of the forwarding to the  
2 insured and any mortgagees.

3       (c) In the case of a judgment, the ~~affidavit~~ REQUEST UNDER  
4 SUBDIVISION (A) shall be sent to the insurer ~~—~~ WITH A COPY TO  
5 the insured, any mortgagees, and the court in which judgment was  
6 entered. THE COPY TO THE INSURED SHALL CONTAIN THE NOTICE  
7 REQUIRED UNDER SUBDIVISION (D). 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. THE~~  
27 CITY, VILLAGE, OR TOWNSHIP SHALL NOTIFY THE INSURED THAT THE

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1 INSURED HAS 10 DAYS FROM THE DATE OF THE MAILING OF THE NOTICE TO  
2 OBJECT TO THE CITY'S, VILLAGE'S, OR TOWNSHIP'S RETENTION OF THE  
3 WITHHELD AMOUNT. THE NOTICE SHALL IDENTIFY THE AUTHORIZED REPRESENTATIVE OF THE CITY, VILLAGE, OR TOWNSHIP THAT THE INSURED  
4 SHOULD ADDRESS HIS OR HER OBJECTIONS TO AND SHALL STATE THAT THE  
5 INSURED MAY DO EITHER OF THE FOLLOWING:

7       (i) SEEK RESOLUTION WITH THE REPRESENTATIVE OF THE CITY,  
8 VILLAGE, OR TOWNSHIP DESIGNATED TO RECEIVE AND RESOLVE OBJECTIONS  
9 UNDER THIS SECTION. THE CITY, VILLAGE, OR TOWNSHIP SHALL MAKE A  
10 FINAL DETERMINATION AND SHALL NOTIFY THE INSURED OF THAT DETERMINATION NOT LATER THAN 30 DAYS AFTER RECEIPT OF NOTICE THAT THE  
11 INSURED WISHES TO SEEK RESOLUTION UNDER THIS SUBPARAGRAPH. THIS  
12 FINAL DETERMINATION SHALL INCLUDE NOTICE TO THE INSURED THAT IF  
13 THE INSURED IS STILL DISSATISFIED WITH THE CITY'S, VILLAGE'S, OR  
14 TOWNSHIP'S DETERMINATION, THE INSURED MAY SEEK RELIEF IN CIRCUIT  
15 COURT.

17       (ii) SEEK RELIEF IN THE CIRCUIT COURT.

18       (3) Upon receipt of money and information from an insurer as  
19 prescribed in subsections (1) and (2), the local treasurer shall  
20 record the information and the date of receipt of the money and  
21 shall immediately deposit the money in a trust or escrow account  
22 established for THE purposes of this section. The account may be  
23 interest-bearing. If the mortgage on the insured property is in  
24 default, the treasurer of the city, village, or township, upon  
25 written request from a first mortgagee of property with respect  
26 to which policy proceeds were withheld and placed into a trust or  
27 escrow account under subsections (1) and (2) and this subsection,

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1 shall release to the mortgagee all or any part of the policy  
2 proceeds received by the city, village, or township with respect  
3 to that property, not later than 10 days after receipt of the  
4 written request by the mortgagee, to the extent necessary to sat-  
5 isfy any outstanding lien of the mortgagee.

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

12 (5) Except as provided in subdivision (c), the policy pro-  
13 ceeds deposited under subsection (3) shall immediately be for-  
14 warded to the insured when the ~~chief fire official or another~~  
15 authorized representative of the city, village, or township des-  
16 ignated by the governing body of the city, village, or township  
17 receives or is shown reasonable proof of any of the following:

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

22 (b) That the damaged or destroyed structure and all remnants  
23 of the structure have been removed from the land on which the  
24 structure or the remnants of the structure were situated, in com-  
25 pliance with the local code requirements of the city, village, or  
26 township in which the structure was located.

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1 (c) That the insured has entered into a contract to perform  
2 repair, replacement, or removal services ~~with respect to~~ FOR  
3 the insured real property and that the insured consents to pay-  
4 ment of funds directly to the contractor performing the services  
5 UPON COMPLETION. Funds released under this subdivision may be  
6 forwarded only to a contractor performing services on the insured  
7 property.

8 (6) Reasonable proof required under subsection (5) ~~shall~~  
9 ~~include~~ INCLUDES any of the following:

10 (a) Originals or copies of pertinent VERIFIABLE contracts,  
11 invoices, receipts, and other similar papers evidencing both the  
12 work performed or to be performed and the materials used or to be  
13 used by all contractors performing repair, replacement, or  
14 removal services with respect to the insured real property, other  
15 than a contractor subject to subdivision (b).

16 (b) An affidavit executed by the contractor ~~which~~ THAT has  
17 performed the greatest amount of repair or replacement work on  
18 the structure, or ~~which~~ THAT has done most of the clearing and  
19 removal work if structure repair or replacement is not to be  
20 performed. The contractor shall attach to the affidavit all per-  
21 tinent contracts, invoices, and receipts and shall swear that  
22 these attached papers correctly indicate the nature and extent of  
23 the work performed to date by the contractor and the materials  
24 used.

25 (c) An inspection of the insured real property to verify  
26 that repair, replacement, or clearing has been completed in  
27 accordance with subsection (5).

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1 (7) If with respect to a loss, reasonable proof is not  
2 received by or shown to ~~a fire official or another~~ AN autho-  
3 rized representative of the city, village, or township designated  
4 by the governing body of the city, village, or township within  
5 ~~445~~ 120 days after the policy proceeds portion was received by  
6 the treasurer, the city, village, or township shall use the  
7 retained proceeds to secure, repair, or demolish the damaged or  
8 destroyed structure and clear the property in question, so that  
9 the structure and property are in compliance with local code  
10 requirements and applicable ordinances of the city, village, or  
11 township. Any unused portion of the retained proceeds shall be  
12 returned to the insured. THE CITY, VILLAGE, OR TOWNSHIP MAY  
13 EXTEND THE 120-DAY TIME PERIOD LISTED IN THIS SUBSECTION.

14 ~~(8) A final settlement shall not include the payment of~~  
15 ~~policy proceeds for personal property or contents damage or for~~  
16 ~~additional coverage not contained in the fire coverage portion of~~  
17 ~~the fire insurance policy.~~

18 (8) ~~(9)~~ There ~~shall not be~~ IS NO liability on the part  
19 of, and a cause of action shall not arise against, an insurer or  
20 an agent or employee of an insurer for withholding or transfer-  
21 ring money in the course of complying or attempting to comply  
22 with this section. IF THERE IS A DISPUTE WITH A LIENHOLDER CON-  
23 CERNING THE DISTRIBUTION OF AN AMOUNT WITHHELD FROM PAYMENT UNDER  
24 THIS SECTION, THE INSURER MAY FILE AN ACTION IN CIRCUIT COURT TO  
25 IDENTIFY ALL PARTIES THAT MAY HAVE A FINANCIAL INTEREST IN THE  
26 WITHHELD AMOUNT AND TO DETERMINE HOW THE WITHHELD AMOUNT SHOULD  
27 BE DISTRIBUTED.

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1       ~~(10) This section shall apply only to final settlements~~  
2 ~~which exceed 49% of the insurance on the insured real property.~~

3       (9) ~~(11)~~ This section ~~shall apply~~ APPLIES only to prop-  
4 erty located in a city, village, or township DESCRIBED IN SUBSEC-  
5 TION (12) if the city, village, or township pursuant to a resolu-  
6 tion by ~~the~~ ITS governing body notifies the commissioner in  
7 writing that the city, village, or township has established a  
8 trust or escrow account to be used as prescribed in this section  
9 and intends to uniformly apply this section with respect to all  
10 property located within the city, village, or township following  
11 written notification to the commissioner. The commissioner shall  
12 prepare and distribute a list of all cities, villages, and town-  
13 ships ~~which~~ THAT have elected to apply this section to all  
14 insurance companies transacting property insurance in this  
15 state.

16       ~~(12) A city, village, or township shall remain on the list~~  
17 ~~until a written request for deletion has been received by the~~  
18 ~~commissioner and the amended list has been prepared pursuant to~~  
19 ~~this subsection.~~

20       (10) ~~(13)~~ A city, village, or township may apply to be  
21 added to the list by making a written request for addition to the  
22 commissioner. When a written request for addition from a city,  
23 village, or township has been received by the commissioner, an  
24 amended list shall be prepared and distributed indicating the  
25 addition. The addition shall be effective on the date specified  
26 by the commissioner in the amendment. The commissioner shall  
27 notify the city, village, township, and insurance companies of

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1 the effective date of the addition which shall be effective not  
2 less than 30 days after receipt of notice by the insurance  
3 company. A city, village, or township shall not apply this sec-  
4 tion ~~with respect~~ to any loss ~~which~~ THAT occurred before the  
5 effective date of the addition.

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

20 ~~(15) The commissioner shall promulgate rules to implement~~  
21 ~~and administer this section pursuant to the administrative proce-~~  
22 ~~dures act of 1969, Act No. 306 of the Public Acts of 1969, as~~  
23 ~~amended, being sections 24.201 to 24.328 of the Michigan Compiled~~  
24 ~~Laws.~~

25 (12) THIS SECTION APPLIES ONLY TO INSURED REAL PROPERTY  
26 LOCATED IN CITIES, VILLAGES, AND TOWNSHIPS THAT ARE LOCATED IN  
27 COUNTIES WITH A POPULATION OF LESS THAN 425,000 EXCEPT THAT THIS

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1 SECTION DOES NOT APPLY TO INSURED REAL PROPERTY LOCATED IN  
2 CITIES, VILLAGES, AND TOWNSHIPS THAT ARE LOCATED IN COUNTIES WITH  
3 A POPULATION OF LESS THAN 425,000 IF THE CITY, VILLAGE, OR TOWN-  
4 SHIP HAS A POPULATION OF 50,000 OR MORE. THIS SECTION APPLIES TO  
5 INSURED REAL PROPERTY LOCATED IN A CITY, VILLAGE, OR TOWNSHIP  
6 THAT HAS ELECTED TO APPLY THIS SECTION AS PROVIDED IN  
7 SUBSECTION (9) OR (10).

8 (13) ~~(16)~~ The withholding requirements of this section  
9 ~~shall~~ DO not apply if all of the following occur:

10 (a) Within 15 days after agreement on a final settlement  
11 between the insured and the insurer, the insured has filed with  
12 the insurer evidence of a contract to repair as described in sub-  
13 section (6).

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

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

22 (14) ~~(17)~~ If the insured and the insurer have agreed on  
23 the demolition costs or the debris removal costs as part of the  
24 final settlement of the real property insured claim, the insurer  
25 shall withhold 1 of the following sums, whichever sum is the  
26 largest, and shall pay that sum in accordance with this section:

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

2 (b) ~~Fifteen~~ TWENTY-FIVE percent of the actual cash value  
3 of the insured real property at the time of loss SO LONG AS THIS  
4 AMOUNT FOR RESIDENTIAL PROPERTY DOES NOT EXCEED \$6,000.00  
5 ADJUSTED ANNUALLY BEGINNING JUNE 1, 1999 IN ACCORDANCE WITH THE  
6 CONSUMER PRICE INDEX.

7 (c) ~~Fifteen~~ TWENTY-FIVE percent of the final settlement of  
8 the insured real property claim SO LONG AS THIS AMOUNT FOR RESI-  
9 DENTIAL PROPERTY DOES NOT EXCEED \$6,000.00 ADJUSTED ANNUALLY  
10 BEGINNING JUNE 1, 1999 IN ACCORDANCE WITH THE CONSUMER PRICE  
11 INDEX.

12 (15) THIS SECTION APPLIES ONLY TO FINAL SETTLEMENTS THAT  
13 EXCEED 49% OF THE INSURANCE ON THE INSURED REAL PROPERTY.

14 (16) IF AN INSURER WITHHOLDS PAYMENT UNDER A POLICY IN GOOD  
15 FAITH BECAUSE OF SUSPECTED ARSON, FRAUD, OR OTHER QUESTION CON-  
16 CERNING COVERAGE, THIS SECTION DOES NOT APPLY UNTIL THE ISSUE OR  
17 QUESTION IS RESOLVED AND FINAL SETTLEMENT IS MADE.

18 (17) ~~(18)~~ As used in this section: ~~—, "final"~~

19 (A) "CONSUMER PRICE INDEX" MEANS THAT TERM AS DEFINED IN  
20 SECTION 2080.

21 (B) "FINAL settlement" means a determination of the amount  
22 due and owing to the insured ~~—~~ for a loss to insured real  
23 property, BUT DOES NOT INCLUDE CONTENTS DAMAGE, LOSSES TO PER-  
24 SONAL PROPERTY, OR ADDITIONAL COVERAGE NOT CONTAINED IN THE  
25 BUILDING COVERAGE PORTION OF THE FIRE INSURANCE POLICY, WHICH  
26 DETERMINATION IS MADE by any of the following means:

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1 (i) ~~(a)~~ Acceptance of a proof of loss by the insurer.

2 (ii) ~~(b)~~ Execution of a release by the insured.

3 (iii) ~~(c)~~ Acceptance of an arbitration award by both the  
4 insured and the insurer.

5 (iv) ~~(d)~~ Judgment of a court of competent jurisdiction.

6 (C) "HOME INSURANCE" MEANS THAT TERM AS DEFINED IN SECTION  
7 2103.

8 (D) "RESIDENTIAL PROPERTY" MEANS PROPERTY ON WHICH HOME  
9 INSURANCE CAN BE ISSUED.

10 Enacting section 1. This amendatory act takes effect  
11 January 1, 1999 and applies to any loss that occurs on and after  
12 January 1, 1999. Losses that occur before January 1, 1999 are  
13 governed by section 2845 of the insurance code of 1956, 1956 PA  
14 218, MCL 500.2845, as in effect before the amendments to that  
15 section were made by this amendatory act.