

# HOUSE BILL No. 4836

June 12, 2003, Introduced by Reps. Cheeks, Accavitti, Tobocman, McConico, Clack, Stallworth, Minore, Vagnozzi, Zelenko, Reeves, Plakas, Condino and Hardman and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 2106, 2107, 2109, 2110, and 2114 (MCL  
500.2106, 500.2107, 500.2109, 500.2110, and 500.2114) and by  
adding sections 2103a, 2107a, and 2109a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2103a. As used in this chapter, "total return rating"  
2 means the consideration of total revenue and available assets of  
3 the insurer, including, but not limited to, investment income,  
4 capital and surplus, underwriting and operating profits, premium  
5 revenue, and all other reserves.

6       Sec. 2106. Except as specifically provided in this chapter,  
7 the provisions of chapter 24 and chapter 26 ~~shall~~ do not apply  
8 to automobile insurance and home insurance. An insurer may use  
9 rates for ~~automobile insurance or~~ home insurance as soon as

1 those rates are filed. **An insurer shall not use rates for**  
 2 **automobile insurance until those rates have been approved by the**  
 3 **commissioner.** To the extent that other provisions of this ~~code~~  
 4 **act** are inconsistent with the provisions of this chapter, this  
 5 chapter ~~shall govern~~ **governs** with respect to automobile  
 6 insurance and home insurance.

7 Sec. 2107. (1) On or before September 1, 1980, each insurer  
 8 subject to this chapter shall make filings in accordance with  
 9 this chapter for ~~automobile insurance,~~ home insurance ~~, or~~  
 10 ~~both,~~ to be effective not later than January 1, 1981 ~~nor or~~  
 11 earlier than November 1, 1980.

12 (2) With regard to a filing submitted under subsection (1),  
 13 the commissioner shall conduct a review of the filing on an  
 14 informal basis, and a dispute with regard to that filing shall  
 15 not be considered a contested case under ~~Act No. 306 of the~~  
 16 ~~Public Acts of 1969, as amended~~ **the administrative procedures**  
 17 **act of 1969, 1969 PA 306, MCL 24.201 to 24.328.** A filing not  
 18 disapproved within 60 days after its submission shall be  
 19 considered approved.

20 (3) A filing approved or considered approved under  
 21 subsection (2) ~~shall be~~ **is** exempt from any further proceedings  
 22 whatsoever under this chapter until July 1, 1981.

23 (4) If a filing is disapproved under subsection (2), the  
 24 insurer, within 30 days of the order of disapproval, shall make a  
 25 revised filing with the commissioner. The revised filing shall  
 26 take effect on January 1, 1981 and ~~shall be~~ **is** subject to  
 27 review under this chapter on or after January 1, 1981 in the same

1 manner as subsequent filings made under this chapter.

2       Sec. 2107a. (1) By not later than 1 year after the  
3 effective date of this section and annually thereafter, each  
4 insurer subject to this chapter shall file base rates for  
5 automobile insurance and shall make filings that conform to this  
6 act as amended by the amendatory act that added this section.

7       (2) The commissioner shall review a filing submitted under  
8 subsection (1) and shall approve or disapprove the filing within  
9 60 days after its submission.

10       (3) A filing approved under subsection (2) shall not be  
11 revised for 12 months after the effective date of the filing  
12 unless the revision meets either of the following:

13       (a) Lowers the price of the coverage.

14       (b) Is in response to a ruling or decision by the  
15 commissioner, the court, or a hearing officer.

16       (4) A rule change or other change filed with the commissioner  
17 that results in a change in the cost of coverage is considered a  
18 revision in a rate filing under this section.

19       (5) If a filing is disapproved under subsection (2), the  
20 insurer, within 30 days of the order of disapproval, shall make a  
21 revised filing with the commissioner. The revised filing is  
22 subject to review under this chapter in the same manner as an  
23 original filing made under this chapter.

24       Sec. 2109. (1) All rates for ~~automobile insurance and~~  
25 home insurance shall be made in accordance with the following  
26 provisions:

27       (a) Rates shall not be excessive, inadequate, or unfairly

1 discriminatory. A rate shall not be held to be excessive unless  
2 the rate is unreasonably high for the insurance coverage provided  
3 and a reasonable degree of competition does not exist for the  
4 insurance to which the rate is applicable.

5 (b) A rate shall not be held to be inadequate unless the rate  
6 is unreasonably low for the insurance coverage provided and the  
7 continued use of the rate endangers the solvency of the insurer;  
8 or unless the rate is unreasonably low for the insurance provided  
9 and the use of the rate has or will have the effect of destroying  
10 competition among insurers, creating a monopoly, or causing a  
11 kind of insurance to be unavailable to a significant number of  
12 applicants who are in good faith entitled to procure that  
13 insurance through ordinary methods.

14 (c) A rate for a coverage is unfairly discriminatory in  
15 relation to another rate for the same coverage if the  
16 differential between the rates is not reasonably justified by  
17 differences in losses, expenses, or both, or by differences in  
18 the uncertainty of loss, for the individuals or risks to which  
19 the rates apply. A reasonable justification shall be supported  
20 by a reasonable classification system; by sound actuarial  
21 principles when applicable; and by actual and credible loss and  
22 expense statistics or, in the case of new coverages and  
23 classifications, by reasonably anticipated loss and expense  
24 experience. A rate is not unfairly discriminatory because it  
25 reflects differences in expenses for individuals or risks with  
26 similar anticipated losses, or because it reflects differences in  
27 losses for individuals or risks with similar expenses.

1       (2) A determination concerning the existence of a reasonable  
2 degree of competition with respect to subsection (1)(a) shall  
3 take into account a reasonable spectrum of relevant economic  
4 tests, including the number of insurers actively engaged in  
5 writing the insurance in question, the present availability of  
6 such insurance compared to its availability in comparable past  
7 periods, the underwriting return of that insurance over a period  
8 of time sufficient to assure reliability in relation to the risk  
9 associated with that insurance, and the difficulty encountered by  
10 new insurers in entering the market in order to compete for the  
11 writing of that insurance.

12       **Sec. 2109a. (1) All rates for automobile insurance shall be**  
13 **reviewed by the commissioner by examining the insurer's report**  
14 **prepared pursuant to section 2128 and shall be made in accordance**  
15 **with total return rating and the following provisions:**

16       **(a) Rates shall not be excessive, inadequate, or unfairly**  
17 **discriminatory. A rate shall not be approved by the commissioner**  
18 **unless it is actuarially justified based upon the information**  
19 **received pursuant to section 2128.**

20       **(b) A rate shall not be held to be inadequate unless the**  
21 **rate, after consideration of investment income and surplus, is**  
22 **unreasonably low for the insurance coverage provided and is**  
23 **insufficient to sustain projected losses and expenses; or unless**  
24 **the rate is unreasonably low for the insurance provided and the**  
25 **use of the rate has or will have the effect of destroying**  
26 **competition among insurers, creating a monopoly, or causing a**  
27 **kind of insurance to be unavailable to a significant number of**

1 applicants who are in good faith entitled to procure that  
2 insurance through ordinary methods.

3 (c) A rate for a coverage is unfairly discriminatory in  
4 relation to another rate for the same coverage if the  
5 differential between the rates is not reasonably justified by  
6 differences in losses, expenses, or both, or by differences in  
7 the uncertainty of loss, for the individuals or risks to which  
8 the rates apply. A reasonable justification shall be supported  
9 by a reasonable classification system; by sound actuarial  
10 principles when applicable; and by actual and credible loss and  
11 expense statistics or, in the case of new coverages and  
12 classifications, by reasonably anticipated loss and expense  
13 experience. A rate is not unfairly discriminatory because it  
14 reflects differences in expenses for individuals or risks with  
15 similar anticipated losses, or because it reflects differences in  
16 losses for individuals or risks with similar expenses.

17 (2) The commissioner shall not approve a rate increase for  
18 automobile insurance unless the commissioner determines that the  
19 data received from the report prepared pursuant to section 2128  
20 justifies a rate increase. The commissioner shall not approve a  
21 rate increase by examining actuarial data from a line other than  
22 the insurer's automobile insurance line or if the insurer fails  
23 to file the data required by section 2128. The commissioner  
24 shall not approve a rate increase if the commissioner finds the  
25 insurer's administrative expenses to be excessive.

26 (3) Each insurer shall submit annually to the commissioner a  
27 complete breakdown of litigation costs associated with first and

1 third party automobile insurance claims that have been received  
2 or are in the process of being litigated and of amounts reserved  
3 to be used for those expenses. The commissioner shall not  
4 approve a rate if the administrative costs associated with the  
5 litigation of first party claims exceed 1% of the administrative  
6 costs associated with the litigation of third party claims. Each  
7 automobile insurance insurer's total administrative expenses  
8 shall be allocated to each territory according to the insurer's  
9 proportionate share of premium written in each territory. Each  
10 premium charged within each territory shall contain an equal  
11 share of the administrative expense for the territory. Rates  
12 shall be filed and charged under this section so that each  
13 automobile insurance premium includes an equal share of each  
14 insurer's overall administrative expense.

15       Sec. 2110. (1) In developing and evaluating rates pursuant  
16 to the standards prescribed in ~~section~~ **sections 2109 and 2109a**,  
17 due consideration shall be given to past and prospective loss  
18 experience within and outside this state, to catastrophe hazards,  
19 if any; to a reasonable margin for underwriting profit and  
20 contingencies; to dividends, savings, or unabsorbed premium  
21 deposits allowed or returned by insurers to their policyholders,  
22 members, or subscribers; to past and prospective expenses, both  
23 countrywide and those specially applicable to this state  
24 exclusive of assessments under this ~~code~~ **act**; to assessments  
25 under this ~~code~~ **act**; to underwriting practice and judgment; and  
26 to all other relevant factors within and outside this state.

27       (2) The systems of expense provisions included in the rates

1 for use by any insurer or group of insurers may differ from those  
2 of other insurers or groups of insurers to reflect the  
3 requirements of the operating methods of the insurer or group  
4 with respect to any kind of insurance, or with respect to any  
5 subdivision or combination thereof for which subdivision or  
6 combination separate expense provisions are applicable.

7 (3) Risks may be grouped by classifications for the  
8 establishment of rates and minimum premiums. The classifications  
9 may measure differences in losses, expenses, or both.

10 Sec. 2114. (1) A person or organization aggrieved with  
11 respect to any filing ~~which~~ **that** is in effect and ~~which~~ **that**  
12 affects the person or organization may make written application  
13 to the commissioner for a hearing on the filing. However, the  
14 insurer or rating organization ~~which~~ **that** made the filing shall  
15 not be authorized to proceed under this subsection. The  
16 application shall specify the grounds to be relied upon by the  
17 applicant. If the commissioner finds that the application is  
18 made in good faith, that the applicant would be so aggrieved if  
19 the grounds specified are established, or that the grounds  
20 specified otherwise justify holding a hearing, the commissioner,  
21 not more than 30 days after receipt of the application, shall  
22 hold a hearing in accordance with ~~Act No. 306 of the Public Acts~~  
23 ~~of 1969, as amended~~ **the administrative procedures act of 1969,**  
24 **1969 PA 306, MCL 24.201 to 24.328,** upon not less than 10 days'  
25 written notice to the applicant, the insurer, and the rating  
26 organization which made the filing.

27 (2) If after hearing initiated under subsection (1) or upon



1 the commissioner's own motion pursuant to ~~Act No. 306 of the~~  
2 ~~Public Acts of 1969, as amended~~ **the administrative procedures**  
3 **act of 1969, 1969 PA 306, MCL 24.201 to 24.328**, the commissioner  
4 finds that a filing does not meet the requirements of sections  
5 2109, **2109a**, and 2111, the commissioner shall issue an order  
6 stating the specific reasons for that finding. The order shall  
7 state when, within a reasonable time after issuance of the order,  
8 the filing shall be considered no longer effective. A copy of  
9 the order shall be sent to the applicant, if any, and to each  
10 insurer and rating organization subject to the order. The order  
11 shall not affect a contract or policy made or issued before the  
12 date the filing becomes ineffective, as indicated in the  
13 commissioner's order.

14 Enacting section 1. This amendatory act does not take  
15 effect unless Senate Bill No. \_\_\_\_ or House Bill No. 4839  
16 (request no. 03473'03) of the 92nd Legislature is enacted into  
17 law.