

# HOUSE BILL No. 5543

February 17, 2004, Introduced by Rep. Julian and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending section 2236 (MCL 500.2236), as amended by 2002 PA  
664.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2236. (1) A basic insurance policy form or annuity  
2 contract form shall not be issued or delivered to any person in  
3 this state, and an insurance or annuity application form if a  
4 written application is required and is to be made a part of the  
5 policy or contract, a printed rider or indorsement form or form  
6 of renewal certificate, and a group certificate in connection  
7 with the policy or contract, shall not be issued or delivered to  
8 a person in this state, until a copy of the form is filed with  
9 the insurance bureau and approved by the commissioner as  
10 conforming with the requirements of this act and not inconsistent

1 with the law. Failure of the commissioner to act within 30 days  
2 after submittal constitutes approval. All such forms, except  
3 policies of disability insurance as defined in section 3400,  
4 shall be plainly printed with type size not less than 8-point  
5 unless the commissioner determines that portions of such a form  
6 printed with type less than 8-point is not deceptive or  
7 misleading.

8       (2) An insurer may satisfy its obligations to make form  
9 filings by becoming a member of, or a subscriber to, a rating  
10 organization, licensed under section 2436 or 2630, which makes  
11 such filings and by filing with the commissioner a copy of its  
12 authorization of the rating organization to make the filings on  
13 its behalf. Every member of or subscriber to a rating  
14 organization shall adhere to the form filings made on its behalf  
15 by the organization except that an insurer may file with the  
16 commissioner a substitute form, and thereafter if a subsequent  
17 form filing by the rating organization affects the use of the  
18 substitute form, the insurer shall review its use and notify the  
19 commissioner whether to withdraw its substitute form.

20       (3) Beginning January 1, 1992, the commissioner shall not  
21 approve a form filed pursuant to this section providing for or  
22 relating to an insurance policy or an annuity contract for  
23 personal, family, or household purposes if the form fails to  
24 obtain the readability score or meet the other requirements of  
25 this subsection, as applicable:

26       (a) The readability score for a form for which approval is  
27 required by this section shall not be less than 45, as determined

1 by the method provided in subdivisions (b) and (c).

2 (b) The readability score for a form shall be determined as  
3 follows:

4 (i) For a form containing not more than 10,000 words, the  
5 entire form shall be analyzed. For a form containing more than  
6 10,000 words, not less than two 200-word samples per page shall  
7 be analyzed instead of the entire form. The samples shall be  
8 separated by at least 20 printed lines.

9 (ii) Count the number of words and sentences in the form or  
10 samples and divide the total number of words by the total number  
11 of sentences. Multiply this quotient by a factor of 1.015.

12 (iii) Count the total number of syllables in the form or  
13 samples and divide the total number of syllables by the total  
14 number of words. Multiply this quotient by a factor of 84.6. As  
15 used in this subparagraph, "syllable" means a unit of spoken  
16 language consisting of 1 or more letters of a word as indicated  
17 by an accepted dictionary. If the dictionary shows 2 or more  
18 equally acceptable pronunciations of a word, the pronunciation  
19 containing fewer syllables may be used.

20 (iv) Add the figures obtained in subparagraphs (ii) and (iii)  
21 and subtract this sum from 206.835. The figure obtained equals  
22 the readability score for the form.

23 (c) For the purposes of subdivision (b)(ii) and (iii), the  
24 following procedures shall be used:

25 (i) A contraction, hyphenated word, or numbers and letters  
26 when separated by spaces shall be counted as 1 word.

27 (ii) A unit of words ending with a period, semicolon, or

1 colon, but excluding headings and captions, shall be counted as 1  
2 sentence.

3 (d) In determining the readability score, the method provided  
4 in subdivisions (b) and (c):

5 (i) Shall be applied to an insurance policy form or an  
6 annuity contract, together with a rider or indorsement form  
7 usually associated with such an insurance policy form or annuity  
8 contract.

9 (ii) Shall not be applied to words or phrases that are  
10 defined in an insurance policy form, an annuity contract, or  
11 riders, indorsements, or group certificates pursuant to an  
12 insurance policy form or annuity contract.

13 (iii) Shall not be applied to language specifically agreed  
14 upon through collective bargaining or required by a collective  
15 bargaining agreement.

16 (iv) Shall not be applied to language that is prescribed by  
17 state or federal statute or by rules or regulations promulgated  
18 pursuant to a state or federal statute.

19 (e) Each form for which approval is required by this section  
20 shall contain both of the following:

21 (i) Topical captions.

22 (ii) An identification of exclusions.

23 (f) Each insurance policy and annuity contract that has more  
24 than 3,000 words printed on not more than 3 pages of text or that  
25 has more than 3 pages of text regardless of the number of words  
26 shall contain a table of contents. This subdivision does not  
27 apply to indorsements.

1 (g) Each rider or indorsement form that changes coverage  
2 shall do all of the following:

3 (i) Contain a properly descriptive title.

4 (ii) Reproduce either the entire paragraph or the provision  
5 as changed.

6 (iii) Be accompanied by an explanation of the change.

7 (h) If a computer system approved by the commissioner  
8 calculates the readability score of a form as being in compliance  
9 with this subsection, the form is considered in compliance with  
10 the readability score requirements of this subsection.

11 (4) After January 1, 1992, any change or addition to a policy  
12 or annuity contract form for personal, family, or household  
13 purposes, whether by indorsement, rider, or otherwise, or a  
14 change or addition to a rider or indorsement form to such policy  
15 or annuity contract form, which policy or annuity contract form  
16 has not been previously approved under subsection (3), shall be  
17 submitted for approval pursuant to subsection (3).

18 (5) Upon written notice to the insurer, the commissioner may  
19 disapprove, withdraw approval, or prohibit the issuance,  
20 advertising, or delivery of any form to any person in this state  
21 if it violates any provisions of this act, or contains  
22 inconsistent, ambiguous, or misleading clauses, or contains  
23 exceptions and conditions that unreasonably or deceptively affect  
24 the risk purported to be assumed in the general coverage of the  
25 policy. The notice shall specify the objectionable provisions or  
26 conditions and state the reasons for the commissioner's  
27 decision. If the form is legally in use by the insurer in this

1 state, the notice shall give the effective date of the  
2 commissioner's disapproval, which shall not be less than 30 days  
3 subsequent to the mailing or delivery of the notice to the  
4 insurer. If the form is not legally in use, then disapproval  
5 shall be effective immediately.

6 (6) If a form is disapproved or approval is withdrawn under  
7 the provisions of this act, the insurer is entitled upon demand  
8 to a hearing before the commissioner or a deputy commissioner  
9 within 30 days after the notice of disapproval or of withdrawal  
10 of approval. After the hearing, the commissioner shall make  
11 findings of fact and law, and either affirm, modify, or withdraw  
12 his or her original order or decision.

13 (7) Any issuance, use, or delivery by an insurer of any form  
14 without the prior approval of the commissioner as required by  
15 subsection (1) or after withdrawal of approval as provided by  
16 subsection (5) constitutes a separate violation for which the  
17 commissioner may order the imposition of a civil penalty of  
18 \$25.00 for each offense, but not to exceed the maximum penalty of  
19 \$500.00 for any 1 series of offenses relating to any 1 basic  
20 policy form, which penalty may be recovered by the attorney  
21 general as provided in section 230.

22 (8) The filing requirements of this section do not apply to  
23 any of the following:

24 (a) Insurance against loss of or damage to:

25 (i) Imports, exports, or domestic shipments.

26 (ii) Bridges, tunnels, or other instrumentalities of  
27 transportation and communication.

(iii) Aircraft and attached equipment.

(iv) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(b) Insurance against loss resulting from liability, other than worker's compensation or employers' liability arising out of the ownership, maintenance, or use of:

(i) Imports, exports, or domestic shipments.

(ii) Aircraft and attached equipment.

(iii) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(c) Surety bonds other than fidelity bonds.

(d) Policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Beginning September 1, 1968, the commissioner by order may exempt from the filing requirements of this section and sections 2242, 3606, and 4430 for so long as he or she considers proper any insurance document or form, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section ~~3109a~~ 3107, as specified in the order to which this section practicably

1 may not be applied, or the filing and approval of which are  
2 considered unnecessary for the protection of the public.  
3 Insurance documents or forms providing medical payments or income  
4 replacement benefits, except that portion of the document or form  
5 that establishes a relationship between group disability  
6 insurance and personal protection insurance benefits subject to  
7 exclusions or deductibles pursuant to section ~~3109a~~ 3107,  
8 exempt by order of the commissioner from the filing requirements  
9 of this section and sections 2242 and 3606 are considered  
10 approved by the commissioner for purposes of section 3430.

11 (e) Insurance that meets both of the following:

12 (i) Is sold to an exempt commercial policyholder.

13 (ii) Contains a prominent disclaimer that states "This policy  
14 is exempt from the filing requirements of section 2236 of the  
15 insurance code of 1956, 1956 PA 218, MCL 500.2236." or words  
16 that are substantially similar.

17 (9) As used in this section and sections 2401 and 2601,  
18 "exempt commercial policyholder" means an insured that purchases  
19 the insurance for other than personal, family, or household  
20 purposes.

21 (10) Every order made by the commissioner under the  
22 provisions of this section is subject to court review as provided  
23 in section 244.

24 Enacting section 1. This amendatory act does not take  
25 effect unless House Bill No. 5314 of the 92nd Legislature is  
26 enacted into law.