

# SENATE BILL No. 116

January 29, 2003, Introduced by Senators Van WOERKOM, JOHNSON, PATTERSON, GILBERT, TOY, GOSCHKA and JACOBS and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending section 602 (MCL 500.602), as amended by 1989 PA 35,  
and by adding section 603.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 602. (1) "Life" insurance is insurance upon the lives  
2 and health of persons and every insurance pertaining thereto, and  
3 to grant, purchase, or dispose of annuities. Notwithstanding any  
4 Other provision of law, life insurance includes insurance upon  
5 the lives of persons which insurance prepays ~~in a lump sum not~~  
6 ~~more than 25% of~~ the death benefit. ~~based on 1 or more of the~~  
7 ~~following medical conditions if considered to be life threatening~~  
8 ~~or of a catastrophic nature:~~  
9       ~~(a) Malignant tumors.~~  
10       ~~(b) Conditions requiring organ transplantation.~~

1       ~~(c) Coronary artery disease resulting in acute infarction or~~  
2 ~~requiring surgery.~~

3       ~~(d) Permanent neurological deficit resulting from cerebral~~  
4 ~~vaseular accident.~~

5       ~~(e) Endstage renal failure.~~

6       ~~(f) Other medical conditions which the commissioner finds,~~  
7 ~~after an opportunity for a hearing pursuant to the administrative~~  
8 ~~procedures act of 1969, Act No. 306 of the Public Acts of 1969,~~  
9 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws, to~~  
10 ~~be either life threatening or of a catastrophic nature.~~

11       (2) Transaction of life insurance includes the issuance of  
12 policies of life and endowment insurance and contracts for the  
13 payment of annuities and pure endowments, and contracts  
14 supplemental ~~thereto which~~ **to those that** contain only those  
15 provisions relating to accident and sickness insurance as provide  
16 additional benefits ~~in case of~~ **for** death or dismemberment or  
17 loss of sight by accident or as operate to safeguard those  
18 policies or contracts against lapse or to give a special  
19 surrender value or special benefit or an annuity if the insured  
20 or annuitant shall become totally and permanently disabled, as  
21 defined by the contract or supplemental contract.

22       (3) All corporations, associations, partnerships, or  
23 individuals, doing business in this state under any charter,  
24 compact, agreement, or statute of this or any other state,  
25 involving an insurance, guaranty, contract, or pledge, for the  
26 payment of annuities or endowments, or for the payment of money  
27 to families, or representatives of policy or certificate holders

1 or members, ~~shall be~~ **are** considered ~~and deemed to be~~ life  
2 insurance companies within the meaning of the laws relating to  
3 life insurance within this state.

4       **Sec. 603. (1) As used in this section:**

5       (a) "Accelerated benefits" means benefits payable under a  
6 life insurance contract to a policyowner or certificateholder,  
7 during the lifetime of the insured, in anticipation of death or  
8 upon the occurrence of specified life-threatening or catastrophic  
9 conditions as defined by the policy or rider that reduce the  
10 death benefit otherwise payable under the life insurance contract  
11 and that are payable upon the occurrence of a single qualifying  
12 event that results in the payment of a benefit amount fixed at  
13 the time of acceleration.

14       (b) "Qualifying event" means 1 or more of the following:

15       (i) A medical condition that would result in a drastically  
16 limited life span as specified in the contract.

17       (ii) A medical condition that has required or requires  
18 extraordinary medical intervention including, but not limited to,  
19 major organ transplant or continuous artificial life support,  
20 without which the insured would die.

21       (iii) A condition that usually requires continuous  
22 confinement in an eligible institution as defined in the contract  
23 if the insured is expected to remain there for the rest of his or  
24 her life.

25       (iv) A medical condition that would, in the absence of  
26 extensive or extraordinary medical treatment, result in a  
27 drastically limited life span, including, but not limited to,

1 coronary artery disease resulting in an acute infarction or  
2 requiring surgery, permanent neurological deficit resulting from  
3 cerebral vascular accident, end stage renal failure, acquired  
4 immune deficiency syndrome, or other medical conditions that the  
5 commissioner has approved for any particular filing.

6 (v) Other qualifying events that the commissioner approves  
7 for a particular filing.

8 (2) An accelerated benefit rider and a life insurance policy  
9 with accelerated benefit provisions are primarily mortality risks  
10 rather than morbidity risks and are life insurance benefits  
11 subject to all of the following:

12 (a) Chapters 40 and 44.

13 (b) Shall provide the option to take the benefit as a lump  
14 sum and not as an annuity contingent upon the life of the  
15 insured.

16 (c) Shall have no restrictions on the use of the proceeds.

17 (d) If any death benefit remains after payment of an  
18 accelerated benefit, shall not affect the accidental death  
19 benefit provision, if any, by the payment of the accelerated  
20 benefit.

21 (e) Shall include the terminology "accelerated benefit" in  
22 the descriptive title and not be described or marketed as  
23 long-term care insurance or as providing long-term care  
24 benefits.

25 (3) Except as otherwise provided, the insurer of an  
26 accelerated benefit rider or life insurance policy with  
27 accelerated benefit provisions is required to obtain from an

1 assignee or irrevocable beneficiary a signed acknowledgment of  
2 concurrence for payout prior to the payment of the accelerated  
3 benefit. If the insurer making the accelerated benefit is itself  
4 the assignee under the policy, an acknowledgment is not  
5 required.

6 (4) An insurer of an accelerated benefit rider or life  
7 insurance policy with accelerated benefit provisions shall  
8 provide a disclosure statement at the time of application and at  
9 the time the accelerated benefit payment request is submitted  
10 that receipt of these accelerated benefits may be taxable and  
11 that assistance should be sought from a personal tax advisor.  
12 The disclosure statement shall be prominently displayed on the  
13 first page of the policy or rider and any other related  
14 documents. If a policyowner or certificateholder of an  
15 accelerated benefit rider or life insurance policy with  
16 accelerated benefit provisions requests an acceleration, the  
17 insurer shall send a statement to the policyowner or  
18 certificateholder and irrevocable beneficiary showing any effect  
19 that the payment of the accelerated benefit will have on the  
20 policy's cash value, accumulation account, death benefit,  
21 premium, policy loans, and policy liens. The statement shall  
22 disclose that receipt of accelerated benefit payments may  
23 adversely affect the recipient's eligibility for medicaid or  
24 other government benefits or entitlements, may be taxable, and  
25 that assistance should be sought from a personal tax advisor. If  
26 a previous disclosure statement becomes invalid as a result of an  
27 acceleration of the death benefit, the insurer shall send a

1 revised disclosure statement to the policyowner or  
2 certificateholder and irrevocable beneficiary. If the insurer  
3 agrees to accelerate death benefits, the insurer shall issue an  
4 amended schedule page to the policyholder to reflect, or shall  
5 notify the certificateholder under a group policy of, any new,  
6 reduced in-force face amount of the contract.

7 (5) A written disclosure, including, but not necessarily  
8 limited to, a brief description of the accelerated benefit and  
9 definitions of the conditions or occurrences triggering payment  
10 of the benefits shall be given to the applicant for an  
11 accelerated benefit rider or life insurance policy with  
12 accelerated benefit provisions. The description shall include an  
13 explanation of any effect of the payment of a benefit on the  
14 policy's cash value, accumulation account, death benefit,  
15 premium, policy loans, and policy liens. For agent solicited  
16 insurance, the agent shall provide the disclosure form to the  
17 applicant prior to or concurrently with the application.  
18 Acknowledgment of the disclosure shall be signed by the applicant  
19 and writing agent. For a solicitation by direct response  
20 methods, the insurer shall provide the disclosure form to the  
21 applicant at the time the policy is delivered, with a notice that  
22 a full premium refund shall be received if the policy is returned  
23 to the company within the free look period. For group insurance  
24 policies, the disclosure form shall be contained as part of the  
25 certificate of coverage or any related document furnished by the  
26 insurer for the certificateholder.

27 (6) If there is a premium or cost of insurance charge, the

1 insurer shall give the applicant for an accelerated benefit rider  
2 or life insurance policy with accelerated benefit provisions a  
3 generic illustration numerically demonstrating any effect of the  
4 payment of a benefit on the policy's cash value, accumulation  
5 account, death benefit, premium, policy loans, and policy liens.  
6 For agent solicited insurance, the agent shall provide the  
7 illustration to the applicant prior to or concurrently with the  
8 application. For a solicitation by direct response methods, the  
9 insurer shall provide the illustration to the applicant at the  
10 time the policy is delivered. For group insurance policies, the  
11 disclosure form shall be contained as part of the certificate of  
12 coverage or any related document furnished by the insurer for the  
13 certificateholder.

14 (7) An insurer of an accelerated benefit rider or life  
15 insurance policy with accelerated benefit provisions with  
16 financing options other than as described in subsection (12)(b)  
17 shall disclose to the policyowner any premium or cost of  
18 insurance charge for the accelerated benefit. The insurer shall  
19 make a reasonable effort to assure that the certificateholder is  
20 aware of any additional premium or cost of insurance charge if  
21 the certificateholder is required to pay a charge. Upon request  
22 of the commissioner, an insurer shall furnish an actuarial  
23 demonstration disclosing the method of arriving at its cost for  
24 the accelerated benefit.

25 (8) The insurer of an accelerated benefit rider or life  
26 insurance policy with accelerated benefit provisions shall  
27 disclose to the policyowner any administrative expense charge.

1 The insurer shall make a reasonable effort to assure that the  
2 certificateholder is aware of any administrative expense charge  
3 if the certificateholder is required to pay the charge.

4 (9) An accelerated benefit provision shall be effective as  
5 follows:

6 (a) On the effective date of the policy or rider for  
7 accidents.

8 (b) No more than 30 days after the effective date of the  
9 policy or rider for illness.

10 (10) The insurer of an accelerated benefit rider or life  
11 insurance policy with accelerated benefit provisions may offer a  
12 waiver of premium for the accelerated benefit provision in the  
13 absence of a regular waiver of premium provision being in  
14 effect. At the time the benefit is claimed, the insurer shall  
15 explain any continuing premium requirement to keep the policy in  
16 force.

17 (11) An insurer of an accelerated benefit rider or life  
18 insurance policy with accelerated benefit provisions shall not  
19 unfairly discriminate among insureds with differing qualifying  
20 events covered under the policy or among insureds with similar  
21 qualifying events covered under the policy. An insurer shall not  
22 apply further conditions on the payment of the accelerated  
23 benefits other than those conditions specified in the policy or  
24 rider.

25 (12) The insurer of an accelerated benefit rider or life  
26 insurance policy with accelerated benefit provisions may do any  
27 of the following:



1       (a) Require a premium charge or cost of insurance charge for  
2 the accelerated benefit if based on sound actuarial principles.  
3 For group insurance, the additional cost may also be reflected in  
4 the experience rating.

5       (b) Pay a present value of the face amount. The calculation  
6 shall be based on any applicable actuarial discount appropriate  
7 to the policy design. The interest rate or interest rate  
8 methodology used in the calculation shall be based on sound  
9 actuarial principles and disclosed in the contract or actuarial  
10 memorandum. The maximum interest rate used shall be no greater  
11 than the greater of the current yield on 90-day treasury bills or  
12 the current maximum statutory adjustable policy loan interest  
13 rate.

14       (c) Accrue an interest charge on the amount of the  
15 accelerated benefits. The interest rate or interest rate  
16 methodology used in the calculation shall be based on sound  
17 actuarial principles and disclosed in the contract or actuarial  
18 memorandum. The maximum interest rate used shall be no greater  
19 than the greater of the current yield on 90-day treasury bills or  
20 the current maximum statutory adjustable policy loan interest  
21 rate. The interest rate accrued on the portion of the lien that  
22 is equal in amount to the cash value of the contract at the time  
23 of the benefit acceleration shall be no more than the policy loan  
24 interest rate stated in the contract.

25       (13) Except as otherwise provided in this subsection, if an  
26 accelerated benefit on an accelerated benefit rider or life  
27 insurance policy with accelerated benefit provisions is payable,

1 there shall be no more than a pro rata reduction in the cash  
2 value based on the percentage of death benefits accelerated to  
3 produce the accelerated benefit payment. Alternatively, the  
4 payment of accelerated benefits, any administrative expense  
5 charges, any future premiums, and any accrued interest may be  
6 considered a lien against the death benefit of the policy or  
7 rider and the access to the cash value may be restricted to any  
8 excess of the cash value over the sum of any other outstanding  
9 loans and the lien. Future access to additional policy loans may  
10 be limited to any excess of the cash value over the sum of the  
11 lien and any other outstanding policy loans.

12 (14) If payment of an accelerated benefit on an accelerated  
13 benefit rider or life insurance policy with accelerated benefit  
14 provisions results in a pro rata reduction in the cash value, the  
15 payment may not be applied toward repaying an amount greater than  
16 a pro rata portion of any outstanding policy loans.

17 (15) For an accelerated benefit rider or life insurance  
18 policy with accelerated benefit provisions, a qualified actuary  
19 shall describe the accelerated benefits, the risks, the expected  
20 costs, and the calculation of statutory reserves in an actuarial  
21 memorandum. The insurer shall maintain in its files descriptions  
22 of the bases and procedures used to calculate benefits payable.  
23 These descriptions and the actuarial memorandum shall be made  
24 available for examination by the commissioner upon request.

25 (16) If benefits are provided through the acceleration of  
26 benefits under group or individual life policies or riders to an  
27 accelerated benefit rider or life insurance policy with

1 accelerated benefit provisions, policy reserves shall be  
2 determined in accordance with section 834. All valuation  
3 assumptions used in constructing the reserves shall be determined  
4 as appropriate for statutory valuation purposes by a member in  
5 good standing of the American academy of actuaries. The actuary  
6 shall follow both actuarial standards and certification for good  
7 and sufficient reserves. Reserves in the aggregate should be  
8 sufficient to cover policies upon which no claim has yet arisen  
9 and policies upon which an accelerated claim has arisen. For  
10 policies and certificates that provide actuarially equivalent  
11 benefits, additional reserves do not need to be established.  
12 Policy liens and policy loans, including accrued interest,  
13 represent assets of the insurer for statutory reporting  
14 purposes. For a policy on which the policy lien exceeds the  
15 policy's statutory reserve liability, the excess shall be held as  
16 a nonadmitted asset.