

# HOUSE BILL No. 5159

September 13, 2005, Introduced by Reps. Condino, Bieda, Lipsey, Tobocman, Clemente, Alma Smith, Dillon, Polidori, Wojno, Zelenko, Accavitti, Gillard, Ball, Kolb, Donigan, Vagnozzi, Plakas, Kathleen Law and Leland and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 2236, 2401, and 2601 (MCL 500.2236, 500.2401, and 500.2601), 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 of  
6 renewal certificate, and a group certificate in connection with the  
7 policy or contract, shall not be issued or delivered to a person in  
8 this state, until a copy of the form is filed with the insurance

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

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

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

27 (a) The readability score for a form for which approval is

1 required by this section shall not be less than 45, as determined  
2 by the method provided in subdivisions (b) and (c).

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

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

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

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

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

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

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

1           (ii) A unit of words ending with a period, semicolon, or colon,  
2 but excluding headings and captions, shall be counted as 1  
3 sentence.

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

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

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

13           (iii) Shall not be applied to language specifically agreed upon  
14 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 apply  
27 to indorsements.

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

3 (i) Contain a properly descriptive title.

4 (ii) Reproduce either the entire paragraph or the provision as  
5 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 the  
10 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 change  
14 or addition to a rider or indorsement form to such policy or  
15 annuity contract form, which policy or annuity contract form has  
16 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 if  
21 it violates any provisions of this act, or contains inconsistent,  
22 ambiguous, or misleading clauses, or contains exceptions and  
23 conditions that unreasonably or deceptively affect the risk  
24 purported to be assumed in the general coverage of the policy. The  
25 notice shall specify the objectionable provisions or conditions and  
26 state the reasons for the commissioner's decision. If the form is  
27 legally in use by the insurer in this state, the notice shall give

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

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

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

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

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

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

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

27 (iii) Aircraft and attached equipment.

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

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

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

8           (ii) Aircraft and attached equipment.

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

12          (c) Surety bonds other than fidelity bonds.

13          (d) Policies, riders, indorsements, or forms of unique  
14 character designed for and used with relation to insurance upon a  
15 particular subject, or that relate to the manner of distribution of  
16 benefits or to the reservation of rights and benefits under life or  
17 disability insurance policies and are used at the request of the  
18 individual policyholder, contract holder, or certificate holder.  
19 Beginning September 1, 1968, the commissioner by order may exempt  
20 from the filing requirements of this section and sections 2242,  
21 3606, and 4430 for so long as he or she considers proper any  
22 insurance document or form, except that portion of the document or  
23 form that establishes a relationship between group disability  
24 insurance and personal protection insurance benefits subject to  
25 exclusions or deductibles pursuant to section 3109a, as specified  
26 in the order to which this section practicably may not be applied,  
27 or the filing and approval of which are considered unnecessary for

the protection of the public. Insurance documents or forms providing medical payments or income replacement benefits, 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, exempt by order of the commissioner from the filing requirements of this section and sections 2242 and 3606 are considered approved by the commissioner for purposes of section 3430.

~~———— (c) Insurance that meets both of the following:~~

~~———— (i) Is sold to an exempt commercial policyholder.~~

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

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

**(9)** ~~—(10)—~~ Every order made by the commissioner under the provisions of this section is subject to court review as provided in section 244.

Sec. 2401. (1) Except as provided in subsection (2), this chapter applies to the following kinds of insurance or coverages on risks or operations in this state:

(a) Casualty insurance, as defined in section 624, except as to livestock insurance.



1 (b) Surety and fidelity.

2 (c) Automobile insurance, as defined or included under the  
3 following sections:

4 (i) 624 (general definition of casualty insurance).

5 (ii) 7202 (insuring powers of reciprocal insurers).

6 (iii) 620 (automobile insurance (limited) defined).

7 (iv) 614 (marine insurance defined).

8 (d) Worker's compensation insurance, as defined or included  
9 under the following sections:

10 (i) 624 (general definition of casualty insurance).

11 (ii) 7202 (insuring powers of reciprocal insurers).

12 (e) To all insurance transacted by a reciprocal insurer  
13 pursuant to section 7202 (insuring powers of reciprocal insurers).

14 (f) Personal property floaters.

15 (g) Title insurance.

16 (2) This chapter does not apply to any of the following:

17 (a) Reinsurance, other than joint reinsurance to the extent  
18 stated in section 2464.

19 (b) Disability insurance.

20 (c) Insurance against loss of or damage to aircraft or against  
21 liability, other than worker's compensation and employers'  
22 liability, arising out of the ownership, maintenance, or use of  
23 aircraft.

24 ~~—— (d) Insurance that meets both of the following and is not~~  
25 ~~worker's compensation insurance:~~

26 ~~—— (i) Is sold to an exempt commercial policyholder.~~

27 ~~—— (ii) Contains a prominent disclaimer that states "This policy~~

~~1 is exempt from the filing requirements of section 2236 of the~~  
~~2 insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that~~  
~~3 are substantially similar.~~

(3) This chapter applies to all classes of insurers admitted to do business in this state, including stock, mutual, reciprocal, and interinsurers authorized to write any of the kinds of insurance to which this chapter applies under this act.

(4) If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory chapter of this act, an insurer to which both chapter 24 and chapter 26 are otherwise applicable shall file with the commissioner, a designation as to which rate regulatory chapter shall be applicable to the insurer with respect to such kind of insurance, subdivision, or combination thereof, or type of coverage.

(5) If, pursuant to subsection (6), the commissioner certifies the absence of a reasonable degree of competition for a specified classification, type, or kind of insurance, the commissioner may order that each insurer file for prior approval, subject to the provisions of this chapter, any changes to its manuals of classification, manuals of rules and rates, and rating plans the insurer proposes to use for that specified classification, type, or kind of insurance. The order shall state, in writing, the reasons for the commissioner's decision to order the filing. An order issued under this subsection expires 2 years after the date of issuance. If such an order is in effect, rates to which the order applies shall be filed at least 30 days before their proposed

1 effective date. Failure of the commissioner to act within 30 days  
2 after submittal constitutes approval.

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

13 Sec. 2601. (1) This chapter applies to the following kinds of  
14 insurance as written on risks located in this state by and  
15 companies, associations, or other carriers, including reciprocals:

16 (a) Property insurance, as defined in section 610.

17 (b) Marine insurance, as defined in section 614.

18 (c) Inland navigation and transportation insurance, as defined  
19 in section 616.

20 (d) Automobile insurance (limited), as defined in section 620.

21 (2) "Inland marine insurance" shall be considered to include:

22 (a) Insurance against loss of or damage to domestic shipments,  
23 bridges, tunnels, and other inland instrumentalities of  
24 transportation or communication, excluding buildings, their  
25 furniture and furnishings, fixed contents, and supplies held in  
26 storage.

27 (b) Insurance defined by ruling of the commissioner as inland

1 marine insurance.

2 (3) This chapter does not apply to any of the following:

3 (a) Reinsurance, other than joint reinsurance to the extent  
4 stated in section 2658.

5 (b) Insurance against loss of or damage to:

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

7 (ii) Bridges, tunnels, or other instrumentalities of  
8 transportation and communication.

9 (iii) Aircraft and attached equipment.

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

13 (c) Insurance against loss resulting from liability arising  
14 out of the ownership, maintenance, or use of:

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

16 (ii) Aircraft and attached equipment.

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

20 (d) Motor vehicle insurance, nor to insurance against  
21 liability arising out of the ownership, maintenance, or use of  
22 motor vehicles.

23 (e) Companies organized and doing business under chapter 68.

24 ~~— (f) Insurance that meets both of the following:~~

25 ~~— (i) Is sold to an exempt commercial policyholder.~~

26 ~~— (ii) Contains a prominent disclaimer that states "This policy~~  
27 ~~is exempt from the filing requirements of section 2236 of the~~

1 ~~insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that~~  
2 ~~are substantially similar.~~

3 (4) If any kind of insurance, subdivision, or combination  
4 thereof, or type of coverage, subject to this chapter, is also  
5 subject to regulation by another rate regulatory chapter of this  
6 act, an insurer to which both chapters are otherwise applicable  
7 shall file with the commissioner a designation as to which rate  
8 regulatory chapter shall be applicable to it with respect to such  
9 kind of insurance, subdivision, or combination thereof, or type of  
10 coverage.

11 (5) If, pursuant to subsection (6), the commissioner certifies  
12 the absence of a reasonable degree of competition for a specified  
13 classification, type, or kind of insurance, the commissioner may  
14 order that each insurer file for prior approval, subject to the  
15 provisions of this chapter, any changes to its manuals of  
16 classification, manuals of rules and rates, and rating plans the  
17 insurer proposes to use for that specified classification, type, or  
18 kind of insurance. The order shall state, in writing, the reasons  
19 for the commissioner's decision to order the filing. An order  
20 issued under this subsection expires 2 years after the date of  
21 issuance. If such an order is in effect, rates to which the order  
22 applies shall be filed at least 30 days before their proposed  
23 effective date. Failure of the commissioner to act within 30 days  
24 after submittal constitutes approval.

25 (6) A determination concerning the existence of a reasonable  
26 degree of competition shall take into account a reasonable spectrum  
27 of relevant economic tests, including the number of insurers

1 actively engaged in writing the insurance in question, the present  
2 availability of that insurance compared to the availability in  
3 comparable past periods, the underwriting return of that insurance  
4 over a reasonable period of time sufficient to assure reliability  
5 in relation to the risk associated with that insurance, and the  
6 difficulty encountered by new insurers entering the market in order  
7 to compete for the writing of that insurance.