

SENATE BILL No. 200

February 15, 2005, Introduced by Senators SCOTT, LELAND, OLSHOVE, CLARKE and BRATER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 2106, 2108, 2109, 2110, 2114, and 2127 (MCL 500.2106, 500.2108, 500.2109, 500.2110, 500.2114, and 500.2127) and by adding sections 2103a, 2107a, 2109a, and 2128; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 2103A. AS USED IN THIS CHAPTER, "TOTAL RETURN RATING" MEANS THE CONSIDERATION OF TOTAL REVENUE AND AVAILABLE ASSETS OF THE INSURER, INCLUDING, BUT NOT LIMITED TO, INVESTMENT INCOME, CAPITAL AND SURPLUS, UNDERWRITING AND OPERATING PROFITS, PREMIUM REVENUE, AND ALL OTHER RESERVES.

Sec. 2106. Except as specifically provided in this chapter,

1 the provisions of chapter 24 and chapter 26 ~~shall~~ DO not apply to
2 automobile insurance and home insurance. ~~An~~ UNTIL 1 YEAR AFTER THE
3 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 2107A, AN
4 insurer may use rates for automobile insurance or home insurance as
5 soon as those rates are filed. BEGINNING 1 YEAR AFTER THE EFFECTIVE
6 DATE OF THE AMENDATORY ACT THAT ADDED SECTION 2107A, AN INSURER
7 SHALL NOT USE RATES FOR AUTOMOBILE INSURANCE OR HOME INSURANCE
8 UNTIL THOSE RATES HAVE BEEN APPROVED BY THE COMMISSIONER. To the
9 extent that other provisions of this ~~code~~ ACT are inconsistent
10 with the provisions of this chapter, this chapter ~~shall govern~~
11 GOVERNS with respect to automobile insurance and home insurance.

12 SEC. 2107A. (1) BY NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE
13 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND ANNUALLY
14 THEREAFTER, EACH INSURER SUBJECT TO THIS CHAPTER SHALL FILE BASE
15 RATES FOR AUTOMOBILE INSURANCE AND HOME INSURANCE AND SHALL MAKE
16 FILINGS THAT CONFORM TO THIS ACT AS AMENDED BY THE AMENDATORY ACT
17 THAT ADDED THIS SECTION.

18 (2) THE COMMISSIONER SHALL REVIEW A FILING SUBMITTED UNDER
19 SUBSECTION (1) AND SHALL APPROVE OR DISAPPROVE THE FILING WITHIN 60
20 DAYS AFTER ITS SUBMISSION.

21 (3) A FILING APPROVED UNDER SUBSECTION (2) SHALL NOT BE
22 REVISED FOR 12 MONTHS AFTER THE EFFECTIVE DATE OF THE FILING UNLESS
23 THE REVISION MEETS EITHER OF THE FOLLOWING:

24 (A) LOWERS THE PRICE OF THE COVERAGE.

25 (B) IS IN RESPONSE TO A RULING OR DECISION BY THE
26 COMMISSIONER, THE COURT, OR A HEARING OFFICER.

27 (4) A RULE CHANGE OR OTHER CHANGE FILED WITH THE COMMISSIONER

1 THAT RESULTS IN A CHANGE IN THE COST OF COVERAGE IS CONSIDERED A
2 REVISION IN A RATE FILING UNDER THIS SECTION.

3 (5) IF A FILING IS DISAPPROVED UNDER SUBSECTION (2), THE
4 INSURER, WITHIN 30 DAYS OF THE ORDER OF DISAPPROVAL, SHALL MAKE A
5 REVISED FILING WITH THE COMMISSIONER. THE REVISED FILING IS SUBJECT
6 TO REVIEW UNDER THIS CHAPTER IN THE SAME MANNER AS AN ORIGINAL
7 FILING MADE UNDER THIS CHAPTER.

8 Sec. 2108. (1) ~~On the effective date thereof, each~~ EACH
9 insurer shall file with the commissioner every manual of
10 classification, every manual of rules and rates, every rating plan,
11 and every modification of a manual of classification, manual of
12 rules and rates, or a rating plan ~~which~~ THAT it proposes to use
13 for automobile insurance and home insurance. Each filing shall
14 state the character and extent of the coverage contemplated. Each
15 insurer subject to this chapter who maintains rates in any part of
16 this state shall at all times maintain rates in effect for all
17 eligible persons meeting the underwriting criteria of the insurer.

18 (2) An insurer may satisfy its obligation to make filings
19 under subsection (1) by becoming a member of, or a subscriber to, a
20 rating organization licensed under chapter 24 or chapter 26 which
21 makes those filings, and by filing with the commissioner a copy of
22 its authorization of the rating organization to make those filings
23 on its behalf. Nothing contained in this chapter shall be construed
24 as requiring any insurer to become a member of or a subscriber to
25 any rating organization. Insurers may file and use deviations from
26 filings made on their behalf, which deviations shall be subject to
27 the provisions of this chapter.

1 (3) Each filing shall be accompanied by a certification by or
 2 on behalf of the insurer that, to the best of its information and
 3 belief, the filing conforms to the requirements of this chapter.

4 (4) Each filing shall include information that supports the
 5 filing with respect to the requirements of section 2109 **OR 2109A**.
 6 The information may include 1 or more of the following:

7 (a) The experience or judgment of the insurer or rating
 8 organization making the filing.

9 (b) The interpretation of the insurer or rating organization
 10 of any statistical data it relies upon.

11 (c) The experience of other insurers or rating organizations.

12 (d) Any other relevant information.

13 (5) A filing and any accompanying information shall be open to
 14 public inspection upon filing.

15 (6) An insurer shall not make, issue, or renew a contract or
 16 policy except in accordance with filings ~~which~~ **THAT** are in effect
 17 for the insurer pursuant to this chapter.

18 Sec. 2109. (1) ~~All~~ **UNTIL 1 YEAR AFTER THE EFFECTIVE DATE OF**
 19 **THE AMENDATORY ACT THAT ADDED SECTION 2109A, ALL** rates for
 20 automobile insurance and home insurance shall be made in accordance
 21 with the following provisions:

22 (a) Rates shall not be excessive, inadequate, or unfairly
 23 discriminatory. A rate shall not be held to be excessive unless the
 24 rate is unreasonably high for the insurance coverage provided and a
 25 reasonable degree of competition does not exist for the insurance
 26 to which the rate is applicable.

27 (b) A rate shall not be held to be inadequate unless the rate

1 is unreasonably low for the insurance coverage provided and the
2 continued use of the rate endangers the solvency of the insurer; or
3 unless the rate is unreasonably low for the insurance provided and
4 the use of the rate has or will have the effect of destroying
5 competition among insurers, creating a monopoly, or causing a kind
6 of insurance to be unavailable to a significant number of
7 applicants who are in good faith entitled to procure that insurance
8 through ordinary methods.

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

23 (2) A determination concerning the existence of a reasonable
24 degree of competition with respect to subsection (1)(a) shall take
25 into account a reasonable spectrum of relevant economic tests,
26 including the number of insurers actively engaged in writing the
27 insurance in question, the present availability of such insurance

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

7 SEC. 2109A. (1) BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF
8 THE AMENDATORY ACT THAT ADDED THIS SECTION, ALL RATES FOR
9 AUTOMOBILE INSURANCE AND HOME INSURANCE SHALL BE MADE IN ACCORDANCE
10 WITH TOTAL RETURN RATING AND THE FOLLOWING PROVISIONS:

11 (A) RATES SHALL NOT BE EXCESSIVE, INADEQUATE, OR UNFAIRLY
12 DISCRIMINATORY. AN AUTOMOBILE INSURANCE RATE SHALL NOT BE APPROVED
13 BY THE COMMISSIONER UNLESS IT IS ACTUARIALLY JUSTIFIED BASED UPON
14 THE INFORMATION RECEIVED PURSUANT TO SECTION 2128.

15 (B) A RATE SHALL NOT BE HELD TO BE INADEQUATE UNLESS THE RATE,
16 AFTER CONSIDERATION OF INVESTMENT INCOME AND SURPLUS, IS
17 UNREASONABLY LOW FOR THE INSURANCE COVERAGE PROVIDED AND IS
18 INSUFFICIENT TO SUSTAIN PROJECTED LOSSES AND EXPENSES; OR UNLESS
19 THE RATE IS UNREASONABLY LOW FOR THE INSURANCE PROVIDED AND THE USE
20 OF THE RATE HAS OR WILL HAVE THE EFFECT OF DESTROYING COMPETITION
21 AMONG INSURERS, CREATING A MONOPOLY, OR CAUSING A KIND OF INSURANCE
22 TO BE UNAVAILABLE TO A SIGNIFICANT NUMBER OF APPLICANTS WHO ARE IN
23 GOOD FAITH ENTITLED TO PROCURE THAT INSURANCE THROUGH ORDINARY
24 METHODS.

25 (C) A RATE FOR COVERAGE IS UNFAIRLY DISCRIMINATORY IN RELATION
26 TO ANOTHER RATE FOR THE SAME COVERAGE IF THE DIFFERENTIAL BETWEEN
27 THE RATES IS NOT REASONABLY JUSTIFIED BY DIFFERENCES IN LOSSES,

1 EXPENSES, OR BOTH, OR BY DIFFERENCES IN THE UNCERTAINTY OF LOSS,
2 FOR THE INDIVIDUALS OR RISKS TO WHICH THE RATES APPLY. A REASONABLE
3 JUSTIFICATION SHALL BE SUPPORTED BY A REASONABLE CLASSIFICATION
4 SYSTEM; BY SOUND ACTUARIAL PRINCIPLES WHEN APPLICABLE; AND BY
5 ACTUAL AND CREDIBLE LOSS AND EXPENSE STATISTICS OR, IN THE CASE OF
6 NEW COVERAGES AND CLASSIFICATIONS, BY REASONABLY ANTICIPATED LOSS
7 AND EXPENSE EXPERIENCE. A RATE IS NOT UNFAIRLY DISCRIMINATORY
8 BECAUSE IT REFLECTS DIFFERENCES IN EXPENSES FOR INDIVIDUALS OR
9 RISKS WITH SIMILAR ANTICIPATED LOSSES, OR BECAUSE IT REFLECTS
10 DIFFERENCES IN LOSSES FOR INDIVIDUALS OR RISKS WITH SIMILAR
11 EXPENSES.

12 (D) FOR AUTOMOBILE INSURANCE, SHALL BE REVIEWED BY THE
13 COMMISSIONER BY EXAMINING THE INSURER'S REPORT PREPARED PURSUANT TO
14 SECTION 2128.

15 (2) THE COMMISSIONER SHALL NOT APPROVE A RATE INCREASE FOR
16 AUTOMOBILE INSURANCE UNLESS THE COMMISSIONER DETERMINES THAT THE
17 DATA RECEIVED FROM THE REPORT PREPARED PURSUANT TO SECTION 2128
18 JUSTIFIES A RATE INCREASE. THE COMMISSIONER SHALL NOT APPROVE A
19 RATE INCREASE FOR AUTOMOBILE INSURANCE BY EXAMINING ACTUARIAL DATA
20 FROM A LINE OTHER THAN THE INSURER'S AUTOMOBILE INSURANCE LINE OR
21 IF THE INSURER FAILS TO FILE THE DATA REQUIRED BY SECTION 2128. THE
22 COMMISSIONER SHALL NOT APPROVE A RATE INCREASE FOR HOME INSURANCE
23 BY EXAMINING ACTUARIAL DATA FROM A LINE OTHER THAN THE INSURER'S
24 HOME INSURANCE LINE. THE COMMISSIONER SHALL NOT APPROVE A RATE
25 INCREASE IF THE COMMISSIONER FINDS THE INSURER'S ADMINISTRATIVE
26 EXPENSES TO BE EXCESSIVE.

27 (3) IF THE COMMISSIONER DETERMINES THAT A RATE FOR AUTOMOBILE

1 INSURANCE OR HOME INSURANCE IS EXCESSIVE, THE COMMISSIONER MAY
2 ORDER THE INSURER TO MAKE A BASE RATE REDUCTION ADJUSTMENT.

3 (4) EACH AUTOMOBILE INSURER SHALL SUBMIT ANNUALLY TO THE
4 COMMISSIONER A COMPLETE BREAKDOWN OF LITIGATION COSTS ASSOCIATED
5 WITH FIRST AND THIRD PARTY AUTOMOBILE INSURANCE CLAIMS THAT HAVE
6 BEEN RECEIVED OR ARE IN THE PROCESS OF BEING LITIGATED AND OF
7 AMOUNTS RESERVED TO BE USED FOR THOSE EXPENSES. THE COMMISSIONER
8 SHALL NOT APPROVE A RATE FOR AUTOMOBILE INSURANCE IF THE
9 ADMINISTRATIVE COSTS ASSOCIATED WITH THE LITIGATION OF FIRST PARTY
10 CLAIMS EXCEED 1% OF THE ADMINISTRATIVE COSTS ASSOCIATED WITH THE
11 LITIGATION OF THIRD PARTY CLAIMS. EACH AUTOMOBILE INSURANCE
12 INSURER'S TOTAL ADMINISTRATIVE EXPENSES SHALL BE ALLOCATED TO EACH
13 TERRITORY ACCORDING TO THE INSURER'S PROPORTIONATE SHARE OF PREMIUM
14 WRITTEN IN EACH TERRITORY. EACH PREMIUM CHARGED WITHIN EACH
15 TERRITORY SHALL CONTAIN AN EQUAL SHARE OF THE ADMINISTRATIVE
16 EXPENSE FOR THE TERRITORY. RATES SHALL BE FILED AND CHARGED UNDER
17 THIS SECTION SO THAT EACH AUTOMOBILE INSURANCE PREMIUM INCLUDES AN
18 EQUAL SHARE OF EACH INSURER'S OVERALL ADMINISTRATIVE EXPENSE.

19 Sec. 2110. (1) In developing and evaluating rates pursuant to
20 the standards prescribed in ~~section~~ SECTIONS 2109 AND 2109A, due
21 consideration shall be given to past and prospective loss
22 experience within and outside this state, to catastrophe hazards,
23 if any; to a reasonable margin for underwriting profit and
24 contingencies; to dividends, savings, or unabsorbed premium
25 deposits allowed or returned by insurers to their policyholders,
26 members, or subscribers; to past and prospective expenses, both
27 countrywide and those specially applicable to this state exclusive

1 of assessments under this ~~code~~ **ACT**; to assessments under this
2 ~~code~~ **ACT**; to underwriting practice and judgment; and to all other
3 relevant factors within and outside this state.

4 (2) The systems of expense provisions included in the rates
5 for use by any insurer or group of insurers may differ from those
6 of other insurers or groups of insurers to reflect the requirements
7 of the operating methods of the insurer or group with respect to
8 any kind of insurance, or with respect to any subdivision or
9 combination thereof for which subdivision or combination separate
10 expense provisions are applicable.

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

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

1 24.328, upon not less than 10 days' written notice to the
2 applicant, the insurer, and the rating organization which made the
3 filing.

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

17 Sec. 2127. The commissioner may by rule prospectively require
18 insurers, rating organizations, and advisory organizations to
19 collect and report data ~~only~~ to the extent necessary to monitor
20 and evaluate the automobile and home insurance markets in this
21 state. The commissioner shall authorize the use of sampling
22 techniques in each instance where sampling is practicable and
23 consistent with the purposes for which the data, by county, are to
24 be collected and reported. **RULES PROMULGATED PURSUANT TO THIS**
25 **SECTION ARE IN ADDITION TO, AND DO NOT REPLACE, THE REPORTING**
26 **REQUIREMENTS IN SECTION 2128.**

27 **SEC. 2128. BY APRIL 1 OF EACH YEAR, EACH INSURER WHO ISSUES**

1 AUTOMOBILE INSURANCE IN THIS STATE SHALL FILE WITH THE COMMISSIONER
2 ON FORMS PRESCRIBED BY THE COMMISSIONER THE FOLLOWING AUTOMOBILE
3 INSURANCE DATA, BY TERRITORY, FOR THE PRIOR CALENDAR YEAR:

4 (A) WITH RESPECT TO PERSONAL PROTECTION INSURANCE COVERAGE:

5 (i) THE NUMBER OF CLAIMS FOR PERSONAL PROTECTION INSURANCE
6 BENEFITS FOR WHICH PAYMENT IS MADE.

7 (ii) THE NUMBER OF CLAIMS FOR PERSONAL PROTECTION INSURANCE
8 BENEFITS THAT ARE CLOSED WITHOUT PAYMENT.

9 (iii) THE NUMBER OF CLAIMS FOR PERSONAL PROTECTION INSURANCE
10 BENEFITS THAT INVOLVE SOME FORM OF LITIGATION AND ARE CLOSED
11 WITHOUT PAYMENT.

12 (iv) THE NUMBER OF CLAIMS FOR PERSONAL PROTECTION INSURANCE
13 BENEFITS THAT INVOLVE LITIGATION AND FOR WHICH PAYMENT IS MADE
14 AFTER LITIGATION COMMENCES, INCLUDING THE LENGTH OF TIME BETWEEN
15 THE FILING OF THE CLAIM AND THE FIRST PAYMENT.

16 (v) THE AMOUNT OF INTEREST CHARGES PAID ON CLAIMS FOR PERSONAL
17 PROTECTION INSURANCE BENEFITS AND THE NUMBER OF CASES FOR WHICH
18 INTEREST CHARGES HAVE BEEN PAID.

19 (vi) THE LITIGATION COSTS FOR CLAIMS FOR PERSONAL PROTECTION
20 INSURANCE BENEFITS.

21 (vii) THE NUMBER OF CASES GOING TO VERDICT AND THE AMOUNT OF
22 THE VERDICT IN THOSE CASES WHERE AN AWARD IS MADE.

23 (viii) THE NUMBER OF VERDICTS OF NO CAUSE OF ACTION.

24 (ix) THE NUMBER OF CASES WHERE ATTORNEY FEES ARE PAID, THE
25 TOTAL AMOUNT OF ATTORNEY FEES PAID, AND THE AMOUNT OF ATTORNEY FEES
26 PAID FOR EACH CASE WHERE FEES WERE PAID.

27 (B) WITH RESPECT TO PROPERTY PROTECTION INSURANCE COVERAGE:

1 (i) THE NUMBER OF THIRD PARTY AUTOMOBILE BODILY INJURY TORT
2 CLAIMS CLOSED BY PAYMENT TO THE CLAIMANT BEFORE THE COMMENCEMENT OF
3 LITIGATION AND A BREAKDOWN OF HOW MANY OF THESE CLAIMS WERE DEATH
4 THRESHOLD CLAIMS, SERIOUS IMPAIRMENT OF BODY FUNCTION THRESHOLD
5 CLAIMS, AND PERMANENT SERIOUS DISFIGUREMENT THRESHOLD CLAIMS.

6 (ii) THE NUMBER OF THIRD PARTY AUTOMOBILE BODILY INJURY TORT
7 CLAIM LAWSUITS FILED, AND A BREAKDOWN OF HOW MANY WERE FILED FOR
8 DEATH THRESHOLD CLAIMS, SERIOUS IMPAIRMENT OF BODY FUNCTION
9 THRESHOLD CLAIMS, AND PERMANENT SERIOUS DISFIGUREMENT THRESHOLD
10 CLAIMS.

11 (iii) THE NUMBER OF THIRD PARTY AUTOMOBILE BODILY INJURY TORT
12 CLAIMS CLOSED BY PAYMENT TO THE CLAIMANT AFTER THE COMMENCEMENT OF
13 LITIGATION AND A BREAKDOWN OF HOW MANY OF THESE CLAIMS WERE DEATH
14 THRESHOLD CLAIMS, SERIOUS IMPAIRMENT OF BODY FUNCTION THRESHOLD
15 CLAIMS, AND PERMANENT SERIOUS DISFIGUREMENT THRESHOLD CLAIMS.

16 (iv) THE DOLLAR AMOUNT PAID TO CLAIMANTS TO SETTLE THIRD PARTY
17 AUTOMOBILE BODILY INJURY TORT CLAIMS BEFORE AND AFTER LITIGATION
18 HAD BEEN COMMENCED AND A BREAKDOWN OF THE DOLLAR AMOUNTS PAID FOR
19 DEATH THRESHOLD CLAIMS, SERIOUS IMPAIRMENT OF BODY FUNCTION
20 THRESHOLD CLAIMS, AND PERMANENT SERIOUS DISFIGUREMENT THRESHOLD
21 CLAIMS.

22 (v) THE NUMBER AND DOLLAR AMOUNT PAID OR RESERVED FOR ALL
23 BODILY INJURY CLAIMS SET UP OR OPENED, INDICATING THE NUMBER AND
24 DOLLAR AMOUNT OF RESERVES FOR CLAIMS REMAINING OPEN AT THE END OF
25 THE REPORTING PERIOD.

26 Enacting section 1. Sections 2107 and 2109 of the insurance
27 code of 1956, 1956 PA 218, MCL 500.2107 and 500.2109, are repealed

1 1 year after the date this amendatory act takes effect.