

# HOUSE BILL No. 4972

May 19, 2009, Introduced by Reps. Lipton, Constan, Liss, Young, Kennedy and Barnett and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 2109, 2115, 2403, and 2603 (MCL 500.2109, 500.2115, 500.2403, and 500.2603), section 2115 as amended by 1980 PA 461 and section 2403 as amended by 1993 PA 200.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

4           (a) Rates shall not be excessive, inadequate, or unfairly  
5 discriminatory. A rate shall not be held to be excessive unless the  
6 rate is unreasonably high for the insurance coverage provided. ~~and~~  
7 ~~a reasonable degree of competition does not exist for the insurance~~  
8 ~~to which the rate is applicable.~~

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

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

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

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

8       Sec. 2115. (1) ~~If as~~ **AS** part of a decision in a proceeding  
9 under section 2114, or in a separate proceeding on the  
10 commissioner's own motion, held pursuant to ~~Act No. 306 of the~~  
11 ~~Public Acts of 1969, as amended, the commissioner finds that a~~  
12 ~~reasonable degree of competition does not exist on a statewide~~  
13 ~~basis with respect to automobile insurance or home insurance,~~ **THE**  
14 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**  
15 **24.328,** the commissioner shall ~~by~~ **MAY** order ~~require each~~ **AN**  
16 **AUTOMOBILE OR HOME** insurer which transacts that type of insurance  
17 ~~in this state to comply with the provisions of chapter 24 or 26, as~~  
18 ~~the case may be. , with respect to that insurance which was the~~  
19 ~~subject of the commissioner's finding.~~ The order shall take effect  
20 not less than 90 nor more than 150 days after the order is issued.  
21 On or after the effective date of an order issued under this  
22 subsection, none of the provisions of this chapter shall ~~be~~ **IS**  
23 applicable to the insurance ~~which~~ **THAT** was the subject of the  
24 order.

25       (2) After an order issued pursuant to subsection (1) has been  
26 in effect for 1 year, ~~if the commissioner has reason to believe~~  
27 ~~that there would be a reasonable degree of price competition for~~

1 ~~the type of insurance affected by the order, THE COMMISSIONER, ON~~  
 2 ~~HIS OR HER OWN MOTION, or if,~~ upon the petition of an insurer or a  
 3 resident of this state, ~~there is a showing that there is reason to~~  
 4 ~~believe that there would be a reasonable degree of price~~  
 5 ~~competition for that type of insurance, the commissioner shall MAY~~  
 6 hold a hearing pursuant to Act No. 306 of the Public Acts of 1969,  
 7 ~~as amended, THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,~~  
 8 **MCL 24.201 TO 24.328**, to determine ~~if a reasonable degree of price~~  
 9 ~~competition would exist if WHETHER~~ the order were no longer ~~ISSUED~~  
 10 **UNDER SUBSECTION (1) SHOULD REMAIN** in effect. The hearing shall be  
 11 held upon not less than 20 days' written notice to each insurer  
 12 subject to the order **UNDER SUBSECTION (1)** and upon not less than 20  
 13 days' notice in not less than 3 newspapers of general circulation  
 14 within this state.

15 (3) If the commissioner finds after the hearing that a  
 16 ~~reasonable degree of price competition would exist, AN ORDER ISSUED~~  
 17 **UNDER SUBSECTION (1) SHOULD NOT REMAIN IN EFFECT**, the commissioner  
 18 shall by order state when, not less than 90 nor more than 150 days  
 19 after issuance of a new order, the ~~preceding order~~ **UNDER SUBSECTION**  
 20 **(1)** will no longer be effective. On and after the effective date of  
 21 an order issued under this subsection, the provisions of this  
 22 chapter shall be applicable to the type of insurance ~~which THAT~~ was  
 23 the subject of the order **UNDER SUBSECTION (1)**.

24 Sec. 2403. (1) All rates shall be made in accordance with this  
 25 section and all of the following:

26 (a) Due consideration shall be given to past and prospective  
 27 loss experience within and outside this state; to catastrophe

1 hazards; to a reasonable margin for underwriting profit and  
2 contingencies; to dividends, savings, or unabsorbed premium  
3 deposits allowed or returned by insurers to their policyholders,  
4 members, or subscribers; to past and prospective expenses, both  
5 countrywide and those specially applicable to this state; to  
6 underwriting practice, judgment, and to all other relevant factors  
7 within and outside this state. For worker's compensation insurance,  
8 in determining the reasonableness of the margin for underwriting  
9 profit and contingencies, consideration shall be given to all  
10 after-tax investment profit or loss from unearned premium and loss  
11 reserves attributable to worker's compensation insurance, as well  
12 as the factors used to determine the amount of reserves. For all  
13 other kinds of insurance to which this chapter applies, all factors  
14 to which due consideration is given under this subdivision shall be  
15 treated in a manner consistent with the laws of this state that  
16 existed on December 28, 1981.

17 (b) The systems of expense provisions included in the rates  
18 for use by any insurer or group of insurers may differ from those  
19 of other insurers or groups of insurers to reflect the requirements  
20 of the operating methods of the insurer or group with respect to  
21 any kind of insurance, or with respect to any subdivision or  
22 combination thereof for which subdivision or combination separate  
23 expense provisions are applicable.

24 (c) Risks may be grouped by classifications for the  
25 establishment of rates and minimum premiums. Classification rates  
26 may be modified to produce rates for individual risks in accordance  
27 with rating plans that measure variations in hazards, expense

1 provisions, or both. The rating plans may measure any differences  
2 among risks that may have a probable effect upon losses or expenses  
3 as provided for in subdivision (a).

4 (d) Rates shall not be excessive, inadequate, or unfairly  
5 discriminatory. A rate shall not be held to be excessive unless the  
6 rate is unreasonably high for the insurance coverage provided. ~~and~~  
7 ~~a reasonable degree of competition does not exist with respect to~~  
8 ~~the classification, kind, or type of risks to which the rate is~~  
9 ~~applicable.~~ Except as otherwise provided in this subdivision, a  
10 rate shall not be held to be inadequate unless the rate is  
11 unreasonably low for the insurance coverage provided and the  
12 continued use of the rate endangers the solvency of the insurer; or  
13 unless the rate is unreasonably low for the insurance coverage  
14 provided and the use of the rate has or will have the effect of  
15 destroying competition among insurers, creating a monopoly, or  
16 causing a kind of insurance to be unavailable to a significant  
17 number of applicants who are in good faith entitled to procure the  
18 insurance through ordinary methods. For commercial liability  
19 insurance a rate shall not be held to be inadequate unless the  
20 rate, after consideration of investment income and marketing  
21 programs and underwriting programs, is unreasonably low for the  
22 insurance coverage provided and is insufficient to sustain  
23 projected losses and expenses; or unless the rate is unreasonably  
24 low for the insurance coverage provided and the use of the rate has  
25 or will have the effect of destroying competition among insurers,  
26 creating a monopoly, or causing a kind of insurance to be  
27 unavailable to a significant number of applicants who are in good

1 faith entitled to procure the insurance through ordinary methods.  
2 As used in this subdivision, "commercial liability insurance" means  
3 insurance that provides indemnification for commercial, industrial,  
4 professional, or business liabilities. For worker's compensation  
5 insurance provided by an insurer that is controlled by a nonprofit  
6 health care corporation formed pursuant to the nonprofit health  
7 care corporation reform act, ~~Act No. 350 of the Public Acts of~~  
8 ~~1980, being sections 550.1101 to 550.1704 of the Michigan Compiled~~  
9 ~~Laws 1980 PA 350, MCL 550.1101 TO 550.1704~~, a rate shall not be  
10 held to be inadequate unless the rate is unreasonably low for the  
11 insurance coverage provided. A rate for a coverage is unfairly  
12 discriminatory in relation to another rate for the same coverage,  
13 if the differential between the rates is not reasonably justified  
14 by differences in losses, expenses, or both, or by differences in  
15 the uncertainty of loss for the individuals or risks to which the  
16 rates apply. A reasonable justification shall be supported by a  
17 reasonable classification system; by sound actuarial principles  
18 when applicable; and by actual and credible loss and expense  
19 statistics or, in the case of new coverages and classifications, by  
20 reasonably anticipated loss and expense experience. A rate is not  
21 unfairly discriminatory because the rate reflects differences in  
22 expenses for individuals or risks with similar anticipated losses,  
23 or because the rate reflects differences in losses for individuals  
24 or risks with similar expenses. Rates are not unfairly  
25 discriminatory if they are averaged broadly among persons insured  
26 on a group, franchise, blanket policy, or similar basis.

27 (2) Except to the extent necessary to meet the provisions of

1 subsection (1)(d), uniformity among insurers in any matters within  
2 the scope of this section is neither required nor prohibited.

3 Sec. 2603. (1) All rates shall be made in accordance with the  
4 following provisions:

5 (a) Due consideration shall be given to past and prospective  
6 loss experience within and outside this state; to catastrophe  
7 hazards; to a reasonable margin for underwriting profit and  
8 contingencies; to dividends, savings, or unabsorbed premium  
9 deposits allowed or returned by insurers to their policyholders,  
10 members, or subscribers; to past and prospective expenses, both  
11 countrywide and those specially applicable to this state; and to  
12 all other relevant factors within and outside this state. In the  
13 case of fire insurance rates, consideration also shall be given to  
14 the experience of the fire insurance business during a period of  
15 not less than the most recent 5-year period for which that  
16 experience is available.

17 (b) The systems of expense provisions included in the rates  
18 for use by any insurer or group of insurers may differ from those  
19 of other insurers or groups of insurers to reflect the requirements  
20 of the operating methods of the insurer or group with respect to  
21 any kind of insurance or with respect to any subdivision or  
22 combination thereof for which subdivision or combination separate  
23 expense provisions are applicable.

24 (c) Risks may be grouped by classifications for the  
25 establishment of rates and minimum premiums. Classification rates  
26 may be modified to produce rates for individual risks in accordance  
27 with rating plans ~~which~~ **THAT** measure variations in hazards, expense

1 provisions, or both. The rating plans may measure any differences  
2 among risks that may have a probable effect upon losses or expenses  
3 as provided for in subdivision (a).

4 (d) Rates shall not be excessive, inadequate, or unfairly  
5 discriminatory. A rate shall not be held to be excessive unless the  
6 rate is unreasonably high for the insurance coverage provided. ~~and~~  
7 ~~a reasonable degree of competition does not exist with respect to~~  
8 ~~the classification, kind, or type of risks to which the rate is~~  
9 ~~applicable.~~ A rate shall not be held to be inadequate unless the  
10 rate is unreasonably low for the insurance coverage provided and  
11 the continued use of the rate endangers the solvency of the  
12 insurer; or unless the rate is unreasonably low for the insurance  
13 provided and the use of the rate has or will have the effect of  
14 destroying competition among insurers, creating a monopoly, or  
15 causing a kind of insurance to be unavailable to a significant  
16 number of applicants who are in good faith entitled to procure the  
17 insurance through ordinary methods. A rate for a coverage is  
18 unfairly discriminatory in relation to another rate for the same  
19 coverage, if the differential between the rates is not reasonably  
20 justified by differences in losses, expenses, or both, or by  
21 differences in the uncertainty of loss for the individuals or risks  
22 to which the rates apply. A reasonable justification shall be  
23 supported by a reasonable classification system; by sound actuarial  
24 principles when applicable; and by actual and credible loss and  
25 expense statistics or, in the case of new coverages and  
26 classifications, by reasonably anticipated loss and expense  
27 experience. A rate is not unfairly discriminatory because the rate

1 reflects differences in expenses for individuals or risks with  
2 similar anticipated losses, or because the rate reflects  
3 differences in losses for individuals or risks with similar  
4 expenses. Rates are not unfairly discriminatory if they are  
5 averaged broadly among persons insured on a group, franchise,  
6 blanket policy, or similar basis.

7 (2) Except to the extent necessary to meet the provisions of  
8 subsection (1)(d), uniformity among insurers in any matters within  
9 the scope of this section is neither required nor prohibited.