

HOUSE BILL No. 5147

November 13, 2013, Introduced by Reps. Goike, Leonard, Glardon, Hovey-Wright, Segal and Cochran 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;
and to repeal acts and parts of acts.

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~~**DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** and approved
 2 by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT OF INSURANCE AND**
 3 **FINANCIAL SERVICES** as conforming with the requirements of this act
 4 and not inconsistent with the law. Failure of the ~~commissioner~~
 5 **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** to
 6 act within 30 days after submittal constitutes approval. ~~All such~~
 7 ~~forms,~~**A FORM DESCRIBED IN THIS SECTION,** except ~~policies~~**A POLICY**
 8 of disability insurance as defined in section 3400, ~~shall~~**MUST** be
 9 plainly printed with type size not less than 8-point unless the
 10 ~~commissioner~~**DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL**
 11 **SERVICES** determines that portions of ~~such a~~**THE** form printed with
 12 type less than 8-point is not deceptive or misleading.

13 (2) An insurer may satisfy its obligations to make form
 14 filings by becoming a member of, or a subscriber to, a rating
 15 organization ~~licensed under section 2436 or 2630, which~~**THAT**
 16 makes ~~such~~**THOSE** filings and by filing with the ~~commissioner~~
 17 **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** a
 18 copy of its authorization of the rating organization to make the
 19 filings on its behalf. Every member of or subscriber to a rating
 20 organization shall adhere to the form filings made on its behalf by
 21 the organization except that an insurer may file with the
 22 ~~commissioner~~**DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL**
 23 **SERVICES** a substitute form, and thereafter if a subsequent form
 24 filing by the rating organization affects the use of the substitute
 25 form, the insurer shall review its use and notify the ~~commissioner~~
 26 **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**
 27 whether to withdraw its substitute form.

1 (3) Beginning January 1, 1992, the ~~commissioner~~**DIRECTOR OF**
2 **THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** shall not
3 approve a form filed ~~pursuant to~~**UNDER** this section providing for
4 or relating to an insurance policy or an annuity contract for
5 personal, family, or household purposes if the form fails to obtain
6 the **FOLLOWING** readability score or meet the other requirements of
7 this subsection, as applicable:

8 (a) The readability score ~~for a form for which approval is~~
9 ~~required by this section shall~~**MUST** not be less than 45, as
10 determined by the method provided in subdivisions (b) and (c).

11 (b) The readability score ~~for a form~~ shall be determined as
12 follows:

13 (i) For a form containing not more than 10,000 words, the
14 entire form shall be analyzed. For a form containing more than
15 10,000 words, not less than two 200-word samples per page shall be
16 analyzed instead of the entire form. The samples ~~shall~~**MUST** be
17 separated by at least 20 printed lines.

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

21 (iii) Count the total number of syllables in the form or samples
22 and divide the total number of syllables by the total number of
23 words. Multiply this quotient by a factor of 84.6. As used in this
24 subparagraph, "syllable" means a unit of spoken language consisting
25 of 1 or more letters of a word as indicated by an accepted
26 dictionary. If the dictionary shows 2 or more equally acceptable
27 pronunciations of a word, the pronunciation containing fewer

1 syllables may be used.

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

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

7 (i) A contraction, hyphenated word, or numbers and letters when
8 separated by spaces ~~shall be~~ **IS** counted as 1 word.

9 (ii) A unit of words ending with a period, semicolon, or colon,
10 but excluding headings and captions, ~~shall be~~ **IS** counted as 1
11 sentence.

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

14 (i) Shall be applied to an insurance policy form or an annuity
15 contract, together with a rider or indorsement form usually
16 associated with ~~such an~~ **THE** insurance policy form or annuity
17 contract.

18 (ii) Shall not be applied to words or phrases that are defined
19 in an insurance policy form, an annuity contract, or riders,
20 indorsements, or group certificates ~~pursuant to~~ **UNDER** an insurance
21 policy form or annuity contract.

22 (iii) Shall not be applied to language specifically agreed upon
23 through collective bargaining or required by a collective
24 bargaining agreement.

25 (iv) Shall not be applied to language that is prescribed by
26 state or federal statute or by rules or regulations promulgated
27 ~~pursuant to~~ **UNDER** a state or federal statute.

1 (e) ~~Each~~ **THE** form ~~for which approval is required by this~~
 2 ~~section shall~~ **MUST** contain both of the following:

3 (i) Topical captions.

4 (ii) An identification of exclusions.

5 (f) Each insurance policy and annuity contract that has more
 6 than 3,000 words printed on not more than 3 pages of text or that
 7 has more than 3 pages of text regardless of the number of words
 8 ~~shall~~ **MUST** contain a table of contents. This subdivision does not
 9 apply to indorsements.

10 (g) Each rider or indorsement form that changes coverage ~~shall~~
 11 **MUST** do all of the following:

12 (i) Contain a properly descriptive title.

13 (ii) Reproduce either the entire paragraph or the provision as
 14 changed.

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

16 (h) If a computer system approved by the ~~commissioner~~ **DIRECTOR**
 17 **OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** calculates
 18 the readability score of a form as being in compliance with this
 19 subsection, the form is considered in compliance with the
 20 readability score requirements of this subsection.

21 **(I) A VARIABLE LIFE PRODUCT OR VARIABLE ANNUITY PRODUCT**
 22 **APPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION**
 23 **FOR SALE IN THIS STATE IS COMPLIANT WITH THIS SECTION.**

24 (4) After January 1, 1992, any change or addition to a policy
 25 or annuity contract form for personal, family, or household
 26 purposes, whether by indorsement, rider, or otherwise, or a change
 27 or addition to a rider or indorsement form to ~~such~~ **THE** policy or

1 annuity contract form, which policy or annuity contract form has
2 not been previously approved under subsection (3), shall be
3 submitted for approval ~~pursuant to~~ **UNDER** subsection (3).

4 (5) Upon written notice to the insurer, the ~~commissioner~~
5 **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** may
6 disapprove, withdraw approval or prohibit the issuance,
7 advertising, or delivery of any form to any person in this state if
8 ~~it~~ **THE FORM** violates ~~any provisions of~~ this act, ~~or~~ contains
9 inconsistent, ambiguous, or misleading clauses, or contains
10 exceptions and conditions that unreasonably or deceptively affect
11 the risk purported to be assumed in the general coverage of the
12 policy. The notice ~~shall~~ **MUST** specify the objectionable provisions
13 or conditions and state the reasons for the ~~commissioner's~~ **DIRECTOR**
14 **OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES'** decision. If
15 the form is legally in use by the insurer in this state, the notice
16 ~~shall~~ **MUST** give the effective date of the ~~commissioner's~~ **DIRECTOR**
17 **OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES'** disapproval,
18 which shall not be less than 30 days ~~subsequent to~~ **AFTER** the
19 mailing or delivery of the notice to the insurer. If the form is
20 not legally in use, ~~then~~ ~~disapproval shall be~~ **IS** effective
21 immediately.

22 (6) If a form is disapproved or approval is withdrawn under
23 ~~the provisions of~~ this act, the insurer is entitled upon demand to
24 a hearing before the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT OF**
25 **INSURANCE AND FINANCIAL SERVICES** or a deputy ~~commissioner~~ **DIRECTOR**
26 **OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** within 30
27 days after the notice of disapproval or of withdrawal of approval.

1 After the hearing, the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT OF**
2 **INSURANCE AND FINANCIAL SERVICES** shall make findings of fact and
3 law, and either affirm, modify, or withdraw his or her original
4 order or decision.

5 (7) Any issuance, use, or delivery by an insurer of any form
6 without the prior approval of the ~~commissioner~~**DIRECTOR OF THE**
7 **DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** as required by
8 subsection (1) or after withdrawal of approval as provided by
9 subsection (5) ~~constitutes~~**IS** a separate violation for which the
10 ~~commissioner~~**DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL**
11 **SERVICES** may order the imposition of a civil penalty of \$25.00 for
12 each offense, but not to exceed the maximum penalty of \$500.00 for
13 any 1 series of offenses relating to any 1 basic policy form, which
14 penalty may be recovered by the attorney general as provided in
15 section 230.

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

18 (a) Insurance against loss of or damage to **ANY OF THE**
19 **FOLLOWING:**

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

21 (ii) Bridges, tunnels, or other instrumentalities of
22 transportation and communication.

23 (iii) Aircraft and attached equipment.

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

27 (b) Insurance against loss resulting from liability, other

1 than worker's compensation or employers' liability arising out of
 2 the ownership, maintenance, or use of **ANY OF THE FOLLOWING:**

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

4 (ii) Aircraft and attached equipment.

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

8 (c) Surety bonds other than fidelity bonds.

9 (d) Policies, riders, indorsements, or forms of unique
 10 character designed for and used with relation to insurance upon a
 11 particular subject, or that relate to the manner of distribution of
 12 benefits or to the reservation of rights and benefits under life or
 13 disability insurance policies and are used at the request of the
 14 individual policyholder, contract holder, or certificate holder.

15 Beginning September 1, 1968, the ~~commissioner~~**DIRECTOR OF THE**
 16 **DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** by order may exempt
 17 from the filing requirements of this section and sections 2242,
 18 3606, and 4430 for so long as he or she considers proper any
 19 insurance document or form, except that portion of the document or
 20 form that establishes a relationship between group disability
 21 insurance and personal protection insurance benefits subject to
 22 exclusions or deductibles ~~pursuant to~~**UNDER** section 3109a, as
 23 specified in the order to which this section **IS NOT** practicably ~~may~~
 24 ~~not be~~ applied, or the filing and approval of which are considered
 25 unnecessary for the protection of the public. Insurance documents
 26 or forms providing medical payments or income replacement benefits,
 27 except that portion of the document or form that establishes a

1 relationship between group disability insurance and personal
2 protection insurance benefits subject to exclusions or deductibles
3 pursuant to ~~UNDER~~ section 3109a, exempt by order of the
4 ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL**
5 **SERVICES** from the filing requirements of this section and sections
6 2242 and 3606 are considered approved by the ~~commissioner~~ **DIRECTOR**
7 **OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** for purposes
8 of section 3430.

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

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

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

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

19 (10) Every order made by the ~~commissioner~~ **DIRECTOR OF THE**
20 **DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** under the provisions
21 of this section is subject to court review as provided in section
22 244.

23 Enacting section 1. Section 2206 of the insurance code of
24 1956, 1956 PA 218, MCL 500.2206, is repealed.