

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5862

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 102, 2227, and 2845 (MCL 500.102, 500.2227,
and 500.2845), section 102 as amended by 2000 PA 252, section 2227
as added by 1998 PA 217, and section 2845 as amended by 1998 PA
216.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. **AS USED IN THIS ACT:**

2 **(A)** ~~(1)~~-"Commissioner" as used in this act means the
3 ~~commissioner of the office of financial and insurance~~
4 ~~services.~~**DIRECTOR.**

5 **(B)** ~~(2)~~-"Department" as used in this act means the office of
6 ~~financial and insurance services.~~**DEPARTMENT OF INSURANCE AND**

1 FINANCIAL SERVICES.

2 (C) "DIRECTOR" MEANS, UNLESS THE CONTEXT CLEARLY IMPLIES A
3 DIFFERENT MEANING, THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND
4 FINANCIAL SERVICES.

5 Sec. 2227. (1) If a claim is filed for a loss to insured real
6 property due to fire, explosion, vandalism, malicious mischief,
7 wind, hail, riot, or civil commotion and a final settlement is
8 reached on the loss to the insured real property, an insurer shall
9 withhold from payment 25% of the actual cash value of the insured
10 real property at the time of the loss or 25% of the final
11 settlement, whichever is less. ~~For~~ UNTIL DECEMBER 31, 2014, FOR
12 residential property, the 25% settlement or judgment withheld shall
13 not exceed \$6,000.00 adjusted annually beginning June 1, 1999 in
14 accordance with the consumer price index. BEGINNING JANUARY 1,
15 2015, FOR RESIDENTIAL PROPERTY, THE 25% SETTLEMENT OR JUDGMENT
16 WITHHELD SHALL NOT EXCEED \$12,000.00 ADJUSTED JANUARY 1 OF EACH
17 YEAR IN ACCORDANCE WITH THE CONSUMER PRICE INDEX. The ~~commissioner~~
18 DIRECTOR shall notify annually all insurance companies transacting
19 property insurance in this state as to the new adjusted amount. At
20 the time that 25% of the settlement or judgment is withheld, the
21 insurer shall give notice of the withholding to the treasurer of
22 the city, village, or township in which the insured real property
23 is located, to the insured, and to any mortgagee having an existing
24 lien or liens against the insured real property, if the mortgagee
25 is named on the policy. ~~In the case of~~ FOR a judgment, notice shall
26 also be provided to the court in which judgment was entered. The
27 notice ~~shall~~ MUST include all of the following:

1 (a) The identity and address of the insurer.

2 (b) The name and address or forwarding address of each
3 policyholder, including any mortgagee.

4 (c) ~~Location~~ **THE LOCATION** of the insured real property.

5 (d) The date of loss, policy number, and claim number.

6 (e) The amount of money withheld.

7 (f) A statement that the city, village, or township may have
8 the withheld amount paid into a trust or escrow account established
9 for the purposes of this section if within 15 days after the
10 mailing of the notice the city, village, or township states that
11 the money should be withheld to protect the public health and
12 safety; otherwise, the withheld amount shall be paid to the insured
13 15 days after the mailing of the notice.

14 (g) An explanation of the provisions of this section.

15 (2) ~~In order for~~ **FOR** a city, village, or township to escrow
16 the amount withheld by the insurer, and to retain that amount, the
17 following procedure shall be used:

18 (a) An authorized representative of the city, village, or
19 township shall request the insurer to pay the withheld amount into
20 an escrow account maintained by the treasurer of the city, village,
21 or township. A final settlement that exceeds 49% of the insurance
22 on the insured real property is prima facie evidence that the
23 damaged insured structure violates existing health and safety
24 standards of the city, village, or township and constitutes cause
25 for the escrowing of the withheld amount as surety for the repair,
26 replacement, or removal of the damaged structure.

27 (b) ~~In the case of~~ **FOR** a settlement, the request under

1 subdivision (a) shall be sent to the insurer with a copy to the
2 insured and any mortgagees. The copy to the insured ~~shall~~**MUST**
3 contain the notice required under subdivision (d). ~~Upon~~**ON** receipt
4 of the request, the insurer shall forward the withheld amount to
5 the treasurer of the city, village, or township, and shall provide
6 notice of the forwarding to the insured and any mortgagees.

7 (c) ~~In the case of~~**FOR** a judgment, the request under
8 subdivision (a) shall be sent to the insurer with a copy to the
9 insured, any mortgagees, and the court in which judgment was
10 entered. The copy to the insured ~~shall~~**MUST** contain the notice
11 required under subdivision (d). ~~Upon the~~**ON** motion of the city,
12 village, or township, the court shall order the withheld amount
13 transmitted to the treasurer of the city, village, or township.

14 (d) The city, village, or township shall notify the insured
15 that the insured has 10 days from the date of the mailing of the
16 notice to object to the city's, village's, or township's retention
17 of the withheld amount. The notice ~~shall~~**MUST** identify the
18 authorized representative of the city, village, or township ~~that~~**TO**
19 **WHOM** the insured should address his or her objections ~~to~~ and ~~shall~~
20 **MUST** state that the insured may do either of the following:

21 (i) Seek resolution with the representative of the city,
22 village, or township designated to receive and resolve objections
23 under this section. The city, village, or township shall make a
24 final determination and shall notify the insured of that
25 determination not later than 30 days after receipt of notice that
26 the insured wishes to seek resolution under this subparagraph. This
27 final determination shall include notice to the insured that if the

1 insured is still dissatisfied with the city's, village's, or
2 township's determination, the insured may seek relief in circuit
3 court.

4 (ii) Seek relief in the circuit court.

5 (3) Upon receipt of money and information from an insurer as
6 prescribed in subsections (1) and (2), the local treasurer shall
7 record the information and the date of receipt of the money and
8 shall immediately deposit the money in a trust or escrow account
9 established for the purposes of this section. The account may be
10 interest-bearing. If ~~the~~**A** mortgage on the insured property is in
11 default, the treasurer of the city, village, or township, upon
12 written request from ~~a~~**THE** first mortgagee of **THE** property, ~~with~~
13 ~~respect to which policy proceeds were withheld and placed into a~~
14 ~~trust or escrow account under subsections (1) and (2) and this~~
15 ~~subsection,~~ shall release to the mortgagee all or any part of the
16 policy proceeds received by the city, village, or township ~~with~~
17 ~~respect to that property,~~ not later than 10 days after receipt of
18 the written request by the mortgagee, to the extent necessary to
19 satisfy any outstanding lien of the mortgagee.

20 (4) Except as provided in subsection (7), money deposited in
21 an account ~~pursuant to~~**UNDER** subsection (3) shall not be commingled
22 with city, village, or township funds. Any interest earned on money
23 placed in a trust or escrow account ~~shall~~**MAY** be retained by the
24 city, village, or township to defray ~~expenses~~**ADMINISTRATIVE COSTS**
25 incurred under this section.

26 (5) Except as provided in subdivision (c), the policy proceeds
27 deposited under subsection (3) shall immediately be forwarded to

1 the insured when the authorized representative of the city,
2 village, or township designated by the governing body of the city,
3 village, or township receives or is shown reasonable proof of any
4 of the following:

5 (a) That the damaged or destroyed portions of the insured
6 structure have been repaired or replaced, except to the extent that
7 the amount withheld under this ~~subsection~~**SECTION** is needed to
8 complete repair or replacement.

9 (b) That the damaged or destroyed structure and all remnants
10 of the structure have been removed from the land on which the
11 structure or the remnants of the structure were situated, in
12 compliance with the local code requirements of the city, village,
13 or township in which the structure was located.

14 (c) That the insured has entered into a contract to perform
15 repair, replacement, or removal services for the insured real
16 property and that the insured consents to payment of ~~funds~~**MONEY**
17 directly to the licensed contractor performing the services upon
18 completion. ~~Funds~~**MONEY** released under this subdivision may be
19 forwarded only to a licensed contractor performing services on the
20 insured property.

21 (6) Reasonable proof required under subsection (5) includes
22 any of the following:

23 (a) Originals or copies of pertinent verifiable contracts,
24 invoices, receipts, and other similar papers evidencing both the
25 work performed or to be performed and the materials used or to be
26 used by all contractors performing repair, replacement, or removal
27 services ~~with respect to~~**FOR** the insured real property, other than

House Bill No. 5862 as amended December 17, 2014

1 a licensed contractor subject to subdivision (b).

2 (b) An affidavit executed by the licensed contractor that has
 3 performed the greatest amount of repair or replacement work on the
 4 structure, or that has done most of the clearing and removal work
 5 if structure repair or replacement is not to be performed. The
 6 licensed contractor shall attach to the affidavit all pertinent
 7 contracts, invoices, and receipts and shall swear that these
 8 attached papers correctly indicate the nature and extent of the
 9 work performed to date by the licensed contractor and the materials
 10 used.

11 (c) An inspection of the insured real property to verify that
 12 repair, replacement, or clearing has been completed in accordance
 13 with subsection (5).

14 (7) ~~if~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF**
 15 with respect to a loss, reasonable proof is not received by or
 16 shown to an authorized representative of the city, village, or
 17 township designated by the governing body of the city, village, or
 18 township within 120 days after the policy proceeds portion was
 19 received by the treasurer, the city, village, or township shall use
 20 the retained proceeds to secure, repair, or demolish the damaged or
 21 destroyed structure and clear the **INSURED** property ~~in question~~, so
 22 that the structure and property ~~are in compliance~~ **COMPLY** with local
 23 code requirements and applicable ordinances of the city, village,
 24 or township. ~~Any~~ **THE CITY, VILLAGE, OR TOWNSHIP SHALL RETURN TO THE**
 25 **INSURED ANY** unused portion of the retained proceeds. ~~shall be~~
 26 ~~returned to the insured.~~ The city, village, or township may extend
 27 the 120-day time period ~~listed in~~ **UNDER** this subsection. **<<A CITY,**

House Bill No. 5862 as amended December 17, 2014

1 VILLAGE, OR TOWNSHIP MAY RETAIN AND USE POLICY PROCEEDS FOR
2 DEMOLISHING ANY PROPERTY IF ON OR BEFORE THE EFFECTIVE DATE OF THE
3 AMENDATORY ACT THAT ADDED THIS SENTENCE THE AUTHORIZED REPRESENTATIVE
4 HAD NOT RECEIVED OR BEEN SHOWN REASONABLE PROOF WITHIN 1 YEAR AFTER
5 THE INSURER PROVIDED NOTICE TO THE INSURED UNDER SUBSECTION (1) AND
6 THE INSURED PROPERTY HAS BEEN DEMOLISHED.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

>> THE INSURED MAY FILE A CIVIL ACTION AGAINST
THE CITY, VILLAGE, OR TOWNSHIP FOR THE RETURN OF THE POLICY
PROCEEDS. AN ACTION FILED UNDER THIS SUBSECTION MUST BE FILED
WITHIN 3 YEARS AFTER THE INSURER PROVIDED NOTICE TO THE INSURED
UNDER SUBSECTION (1) OR 1 YEAR AFTER THE EFFECTIVE DATE OF THE
AMENDATORY ACT THAT ADDED THIS SENTENCE, WHICHEVER IS LATER.

(8) There is no liability on the part of, and a cause of
action does not arise against, an insurer or an agent or employee
of an insurer for withholding or transferring money in the course
of complying or attempting to comply with this section. If there is
a dispute with a lienholder concerning the distribution of an
amount withheld from payment under this section, the insurer may
file an action in circuit court to identify all parties that may
have a financial interest in the withheld amount and to determine

1 how the withheld amount should be distributed.

2 (9) This section applies only to property located in a city,
3 village, or township described in subsection (12) if the city,
4 village, or township ~~pursuant to~~ **UNDER** a resolution by its
5 governing body notifies the ~~commissioner~~ **DIRECTOR** in writing that
6 the city, village, or township has established a trust or escrow
7 account to be used as prescribed in this section and intends to
8 uniformly apply this section with respect to all property located
9 within the city, village, or township following written
10 notification to the ~~commissioner~~ **DIRECTOR**. The ~~commissioner~~
11 **DIRECTOR** shall prepare and distribute a list of all cities,
12 villages, and townships that have elected to apply this section to
13 all insurance companies transacting property insurance in this
14 state.

15 (10) A city, village, or township may apply to be added to the
16 list **PREPARED UNDER SUBSECTION (9)** by making a written request for
17 addition to the ~~commissioner~~ **DIRECTOR**. When a written request for
18 addition from a city, village, or township has been received by the
19 ~~commissioner~~ **DIRECTOR**, an amended list shall be prepared and
20 distributed indicating the addition. The addition ~~shall be~~ **IS**
21 effective on the date specified by the ~~commissioner~~ **DIRECTOR** in the
22 amendment. The ~~commissioner~~ **DIRECTOR** shall notify the city,
23 village, township, and insurance companies of the effective date of
24 the addition which shall be effective not less than 30 days after
25 receipt of notice by the insurance company. A city, village, or
26 township shall not apply this section to any loss that occurred
27 before the effective date of the addition.

1 (11) A city, village, or township may request to be deleted
2 from the list **PREPARED UNDER SUBSECTION (9)** or may cease to apply
3 this section for a period of not less than 6 months upon not less
4 than 30 days' written notice to the ~~commissioner~~**DIRECTOR**. After
5 receipt of a request to be deleted from the list, the ~~commissioner~~
6 **DIRECTOR** shall prepare and distribute an amendment to the list
7 indicating the deletion. The deletion ~~shall be~~**IS** effective on the
8 date specified by the ~~commissioner~~**DIRECTOR** in the amendment. The
9 ~~commissioner~~**DIRECTOR** shall notify the city, village, township, and
10 insurance companies of the effective date of the deletion which
11 shall be effective not less than 30 days after receipt of the
12 notice by the insurance company. A city, village, or township shall
13 continue to apply this section to any loss that occurred before the
14 effective date of the deletion, notwithstanding the deletion.

15 (12) This section applies only to insured real property
16 located in cities, villages, and townships that are located in
17 counties with a population of 425,000 or more and to insured real
18 property located in cities, villages, and townships that are
19 located in counties with a population of less than 425,000 if the
20 city, village, or township has a population of 50,000 or more. This
21 section applies to insured real property located in a city,
22 village, or township that has elected to apply this section as
23 provided in subsection (9) or (10) or that has been included in
24 this section as provided in subsection (13).

25 (13) Cities, villages, and townships located in counties with
26 a population of 425,000 or more and cities, villages, and townships
27 that are located in counties with a population of less than 425,000

1 if the city, village, or township has a population of 50,000 or
2 more and that are on the list prepared by the ~~commissioner~~**DIRECTOR**
3 under section 2845(9) or (10) on October 1, 1998 are automatically
4 included as participants in the procedure established in this
5 section unless the city, village, or township makes a written
6 request to be deleted ~~pursuant to~~**UNDER** subsection (11).

7 (14) The ~~commissioner~~**DIRECTOR** shall prepare and distribute to
8 all insurance companies transacting property insurance in this
9 state by November 1, 1998 new lists indicating which cities,
10 villages, and townships are subject to this section and which
11 cities, villages, and townships are subject to section 2845.

12 (15) The withholding requirements of this section do not apply
13 if all of the following occur:

14 (a) Within 15 days after agreement on a final settlement
15 between the insured and the insurer, the insured has filed with the
16 insurer evidence of a contract to repair as described in subsection
17 (6).

18 (b) The insured consents to the payment of ~~funds~~**MONEY**
19 directly to the licensed contractor performing the repair services.
20 ~~Funds~~**MONEY** released under this subdivision may be forwarded only
21 to a licensed contractor performing the repair services on the
22 insured property.

23 (c) On receipt of the contract to repair, the insurer gives
24 notice to the city, village, or township in which the property is
25 ~~situated~~**LOCATED** that there will not be a withholding under this
26 section because of the repair contract.

27 (16) If the insured and the insurer have agreed on the

1 demolition costs or the debris removal costs as part of the final
2 settlement of the real property insured claim, the insurer shall
3 withhold 1 of the following ~~sums~~, **AMOUNTS**, whichever ~~sum~~ is the
4 largest, and shall pay that ~~sum~~ **AMOUNT** in accordance with this
5 section:

6 (a) The agreed cost of demolition or debris removal.

7 (b) ~~Twenty five percent UNTIL DECEMBER 31, 2014, 25%~~ of the
8 actual cash value of the insured real property at the time of loss
9 ~~so long as~~ **IF** this amount for residential property does not exceed
10 \$6,000.00 adjusted annually beginning June 1, 1999 in accordance
11 with the consumer price index.

12 **(C) BEGINNING JANUARY 1, 2015, 25% OF THE ACTUAL CASH VALUE OF**
13 **THE INSURED REAL PROPERTY AT THE TIME OF THE LOSS IF THIS AMOUNT**
14 **FOR RESIDENTIAL PROPERTY DOES NOT EXCEED \$12,000.00 ADJUSTED**
15 **JANUARY 1 OF EACH YEAR IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.**

16 (D) ~~(c) Twenty five percent UNTIL DECEMBER 31, 2014, 25%~~ of
17 the final settlement of the insured real property claim ~~so long as~~
18 **IF** this amount for residential property does not exceed \$6,000.00
19 adjusted annually beginning June 1, 1999 in accordance with the
20 consumer price index.

21 **(E) BEGINNING JANUARY 1, 2015, 25% OF THE FINAL SETTLEMENT OF**
22 **THE INSURED REAL PROPERTY CLAIM IF THIS AMOUNT FOR RESIDENTIAL**
23 **PROPERTY DOES NOT EXCEED \$12,000.00 ADJUSTED JANUARY 1 OF EACH YEAR**
24 **IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.**

25 (17) This section applies only to final settlements that
26 exceed 49% of the insurance on the insured real property.

27 (18) If an insurer withholds payment under a policy in good

1 faith because of suspected arson, fraud, or other question
2 concerning coverage, this section does not apply until the issue or
3 question is resolved and final settlement is made.

4 (19) As used in this section:

5 (a) "Consumer price index" means that term as defined in
6 section 2080.

7 (b) "Final settlement" means a determination of the amount due
8 and owing to the insured for a loss to insured real property, but
9 does not include contents damage, losses to personal property, or
10 additional coverage not contained in the building coverage portion
11 of the fire insurance policy, which determination is made by any of
12 the following means:

13 (i) Acceptance of a proof of loss by the insurer.

14 (ii) Execution of a release by the insured.

15 (iii) Acceptance of an arbitration award by both the insured and
16 the insurer.

17 (iv) Judgment of a court of competent jurisdiction.

18 (c) "Home insurance" means that term as defined in section
19 2103.

20 (d) "Residential property" means property on which home
21 insurance can be issued.

22 Sec. 2845. (1) If a claim is filed for a loss to insured real
23 property due to fire or explosion and a final settlement is reached
24 on the loss to the insured real property, an insurer shall withhold
25 from payment 25% of the actual cash value of the insured real
26 property at the time of the loss or 25% of the final settlement,
27 whichever is less. ~~For~~ **UNTIL DECEMBER 31, 2014, FOR** residential

1 property, the 25% settlement or judgment withheld shall not exceed
2 \$6,000.00 adjusted annually beginning June 1, 1999 in accordance
3 with the consumer price index. **BEGINNING JANUARY 1, 2015, FOR**
4 **RESIDENTIAL PROPERTY, THE 25% SETTLEMENT OR JUDGMENT WITHHELD SHALL**
5 **NOT EXCEED \$12,000.00 ADJUSTED JANUARY 1 OF EACH YEAR IN ACCORDANCE**
6 **WITH THE CONSUMER PRICE INDEX.** The ~~commissioner~~**DIRECTOR** shall
7 notify annually all insurance companies transacting property
8 insurance in this state as to the new adjusted amount. At the time
9 that 25% of the settlement or judgment is withheld, the insurer
10 shall give notice of the withholding to the treasurer of the city,
11 village, or township in which the insured real property is located,
12 to the insured, and to any mortgagee having an existing lien or
13 liens against the insured real property, if the mortgagee is named
14 on the policy. ~~In the case of~~**FOR** a judgment, notice shall also be
15 provided to the court in which judgment was entered. The notice
16 ~~shall~~**MUST** include all of the following:

- 17 (a) The identity and address of the insurer.
- 18 (b) The name and address or forwarding address of each
19 policyholder, including any mortgagee.
- 20 (c) ~~Location~~**THE LOCATION** of the insured real property.
- 21 (d) The date of loss, policy number, and claim number.
- 22 (e) The amount of money withheld.
- 23 (f) A statement that the city, village, or township may have
24 the withheld amount paid into a trust or escrow account established
25 for the purposes of this section if within 15 days after the
26 mailing of the notice the city, village, or township states that
27 the money should be withheld to protect the public health and

1 safety; otherwise, the withheld amount shall be paid to the insured
2 15 days after the mailing of the notice.

3 (g) An explanation of the provisions of this section.

4 (2) ~~In order for~~ **FOR** a city, village, or township to escrow
5 the amount withheld by the insurer, and to retain that amount, the
6 following procedure shall be used:

7 (a) An authorized representative of the city, village, or
8 township shall request the insurer to pay the withheld amount into
9 an escrow account maintained by the treasurer of the city, village,
10 or township. A final settlement that exceeds 49% of the insurance
11 on the insured real property is prima facie evidence that the
12 damaged insured structure violates existing health and safety
13 standards of the city, village, or township and constitutes cause
14 for the escrowing of the withheld amount as surety for the repair,
15 replacement, or removal of the damaged structure.

16 (b) ~~In the case of~~ **FOR** a settlement, the request under
17 subdivision (a) shall be sent to the insurer with a copy to the
18 insured and any mortgagees. The copy to the insured shall ~~shall~~ **MUST**
19 contain the notice required under subdivision (d). ~~Upon~~ **ON** receipt
20 of the request, the insurer shall forward the withheld amount to
21 the treasurer of the city, village, or township, and shall provide
22 notice of the forwarding to the insured and any mortgagees.

23 (c) ~~In the case of~~ **FOR** a judgment, the request under
24 subdivision (a) shall be sent to the insurer with a copy to the
25 insured, any mortgagees, and the court in which judgment was
26 entered. The copy to the insured shall ~~shall~~ **MUST** contain the notice
27 required under subdivision (d). ~~Upon the~~ **ON** motion of the city,

1 village, or township, the court shall order the withheld amount
2 transmitted to the treasurer of the city, village, or township.

3 (d) The city, village, or township shall notify the insured
4 that the insured has 10 days from the date of the mailing of the
5 notice to object to the city's, village's, or township's retention
6 of the withheld amount. The notice ~~shall~~**MUST** identify the
7 authorized representative of the city, village, or township ~~that~~**TO**
8 **WHOM** the insured should address his or her objections ~~to~~ and ~~shall~~
9 **MUST** state that the insured may do either of the following:

10 (i) Seek resolution with the representative of the city,
11 village, or township designated to receive and resolve objections
12 under this section. The city, village, or township shall make a
13 final determination and shall notify the insured of that
14 determination not later than 30 days after receipt of notice that
15 the insured wishes to seek resolution under this subparagraph. This
16 final determination shall include notice to the insured that if the
17 insured is still dissatisfied with the city's, village's, or
18 township's determination, the insured may seek relief in circuit
19 court.

20 (ii) Seek relief in the circuit court.

21 (3) Upon receipt of money and information from an insurer as
22 prescribed in subsections (1) and (2), the local treasurer shall
23 record the information and the date of receipt of the money and
24 shall immediately deposit the money in a trust or escrow account
25 established for the purposes of this section. The account may be
26 interest-bearing. If ~~the~~**A** mortgage on the insured property is in
27 default, the treasurer of the city, village, or township, ~~upon~~**ON**

1 written request from a ~~THE~~ first mortgagee of ~~THE~~ property, with
2 ~~respect to which policy proceeds were withheld and placed into a~~
3 ~~trust or escrow account under subsections (1) and (2) and this~~
4 ~~subsection,~~ shall release to the mortgagee all or any part of the
5 policy proceeds received by the city, village, or township with
6 ~~respect to that property,~~ not later than 10 days after receipt of
7 the written request by the mortgagee, to the extent necessary to
8 satisfy any outstanding lien of the mortgagee.

9 (4) Except as provided in subsection (7), money deposited in
10 an account ~~pursuant to~~ **UNDER** subsection (3) shall not be commingled
11 with city, village, or township funds. Any interest earned on money
12 placed in a trust or escrow account ~~shall~~ **MAY** be retained by the
13 city, village, or township to defray ~~expenses~~ **ADMINISTRATIVE COSTS**
14 incurred under this section.

15 (5) Except as provided in subdivision (c), the ~~policy proceeds~~
16 **MONEY** deposited under subsection (3) shall immediately be forwarded
17 to the insured when the authorized representative of the city,
18 village, or township designated by the governing body of the city,
19 village, or township receives or is shown reasonable proof of any
20 of the following:

21 (a) That the damaged or destroyed portions of the insured
22 structure have been repaired or replaced, except to the extent that
23 the amount withheld under this ~~subsection~~ **SECTION** is needed to
24 complete repair or replacement.

25 (b) That the damaged or destroyed structure and all remnants
26 of the structure have been removed from the land on which the
27 structure or the remnants of the structure were situated, in

1 compliance with the local code requirements of the city, village,
2 or township in which the structure was located.

3 (c) That the insured has entered into a contract to perform
4 repair, replacement, or removal services for the insured real
5 property and that the insured consents to payment of ~~funds~~ **MONEY**
6 directly to the contractor performing the services upon completion.
7 ~~Funds~~ **MONEY** released under this subdivision may be forwarded only
8 to a contractor performing services on the insured property.

9 (6) Reasonable proof required under subsection (5) includes
10 any of the following:

11 (a) Originals or copies of pertinent verifiable contracts,
12 invoices, receipts, and other similar papers evidencing both the
13 work performed or to be performed and the materials used or to be
14 used by all contractors performing repair, replacement, or removal
15 services ~~with respect to~~ **FOR** the insured real property, other than
16 a contractor subject to subdivision (b).

17 (b) An affidavit executed by the contractor that has performed
18 the greatest amount of repair or replacement work on the structure,
19 or that has done most of the clearing and removal work if structure
20 repair or replacement is not to be performed. The contractor shall
21 attach to the affidavit all pertinent contracts, invoices, and
22 receipts and shall swear that these attached papers correctly
23 indicate the nature and extent of the work performed to date by the
24 contractor and the materials used.

25 (c) An inspection of the insured real property to verify that
26 repair, replacement, or clearing has been completed in accordance
27 with subsection (5).

House Bill No. 5862 as amended December 17, 2014

1 (7) ~~IF~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF**
 2 with respect to a loss, reasonable proof is not received by or
 3 shown to an authorized representative of the city, village, or
 4 township designated by the governing body of the city, village, or
 5 township within 120 days after the policy proceeds portion was
 6 received by the treasurer, the city, village, or township shall use
 7 the retained proceeds to secure, repair, or demolish the damaged or
 8 destroyed structure and clear the **INSURED** property ~~in question, so~~
 9 that the structure and property ~~are in compliance~~ **COMPLY** with local
 10 code requirements and applicable ordinances of the city, village,
 11 or township. ~~Any~~ **THE CITY, VILLAGE, OR TOWNSHIP SHALL RETURN TO THE**
 12 **INSURED ANY** unused portion of the retained proceeds. ~~shall be~~
 13 ~~returned to the insured.~~ The city, village, or township may extend
 14 the 120-day time period ~~listed in~~ **UNDER** this subsection. **<<A CITY,**
 15 **VILLAGE, OR TOWNSHIP MAY RETAIN AND USE POLICY PROCEEDS FOR**
 16 **DEMOLISHING ANY PROPERTY IF ON OR BEFORE THE EFFECTIVE DATE OF**
 17 **THE AMENDATORY ACT THAT ADDED THIS SENTENCE THE AUTHORIZED**
 18 **REPRESENTATIVE HAD NOT RECEIVED OR BEEN SHOWN REASONABLE PROOF**
 19 **WITHIN 1 YEAR AFTER THE INSURER PROVIDED NOTICE TO THE INSURED**
 20 **UNDER SUBSECTION (1) AND THE INSURED PROPERTY HAS BEEN DEMOLISHED.**

21

22

23

24

25

26

27

>> THE INSURED MAY FILE A CIVIL
ACTION AGAINST THE CITY, VILLAGE, OR TOWNSHIP FOR THE RETURN OF THE
POLICY PROCEEDS. AN ACTION FILED UNDER THIS SUBSECTION MUST BE
FILED WITHIN 3 YEARS AFTER THE INSURER PROVIDED NOTICE TO THE

1 **INSURED UNDER SUBSECTION (1) OR 1 YEAR AFTER THE EFFECTIVE DATE OF**
2 **THE AMENDATORY ACT THAT ADDED THIS SENTENCE, WHICHEVER IS LATER.**

3 (8) There is no liability on the part of, and a cause of
4 action shall not arise against, an insurer or an agent or employee
5 of an insurer for withholding or transferring money in the course
6 of complying or attempting to comply with this section. If there is
7 a dispute with a lienholder concerning the distribution of an
8 amount withheld from payment under this section, the insurer may
9 file an action in circuit court to identify all parties that may
10 have a financial interest in the withheld amount and to determine
11 how the withheld amount should be distributed.

12 (9) This section applies only to property located in a city,
13 village, or township described in subsection (12) if the city,
14 village, or township pursuant to a resolution by its governing body
15 notifies the ~~commissioner~~**DIRECTOR** in writing that the city,
16 village, or township has established a trust or escrow account to
17 be used as prescribed in this section and intends to uniformly
18 apply this section with respect to all property located within the
19 city, village, or township following written notification to the
20 ~~commissioner~~**DIRECTOR**. The ~~commissioner~~**DIRECTOR** shall prepare and
21 distribute a list of all cities, villages, and townships that have
22 elected to apply this section to all insurance companies
23 transacting property insurance in this state.

24 (10) A city, village, or township may apply to be added to the
25 list **PREPARED UNDER SUBSECTION (9)** by making a written request for
26 addition to the ~~commissioner~~**DIRECTOR**. When a written request for
27 addition from a city, village, or township has been received by the

1 ~~commissioner~~, **DIRECTOR**, an amended list shall be prepared and
2 distributed indicating the addition. The addition ~~shall be~~ **IS**
3 effective on the date specified by the ~~commissioner~~ **DIRECTOR** in the
4 amendment. The ~~commissioner~~ **DIRECTOR** shall notify the city,
5 village, township, and insurance companies of the effective date of
6 the addition which shall be effective not less than 30 days after
7 receipt of notice by the insurance company. A city, village, or
8 township shall not apply this section to any loss that occurred
9 before the effective date of the addition.

10 (11) A city, village, or township may request to be deleted
11 from the list **PREPARED UNDER SUBSECTION (9)** or may cease to apply
12 this section for a period of not less than 6 months upon not less
13 than 30 days' written notice to the ~~commissioner~~ **DIRECTOR**. After
14 receipt of a request to be deleted from the list, the ~~commissioner~~
15 **DIRECTOR** shall prepare and distribute an amendment to the list
16 indicating the deletion. The deletion ~~shall be~~ **IS** effective on the
17 date specified by the ~~commissioner~~ **DIRECTOR** in the amendment. The
18 ~~commissioner~~ **DIRECTOR** shall notify the city, village, township, and
19 insurance companies of the effective date of the deletion which
20 shall be effective not less than 30 days after receipt of the
21 notice by the insurance company. A city, village, or township shall
22 continue to apply this section to any loss that occurred before the
23 effective date of the deletion, notwithstanding the deletion.

24 (12) This section applies only to insured real property
25 located in cities, villages, and townships that are located in
26 counties with a population of less than 425,000 except that this
27 section does not apply to insured real property located in cities,

1 villages, and townships that are located in counties with a
2 population of less than 425,000 if the city, village, or township
3 has a population of 50,000 or more. This section applies to insured
4 real property located in a city, village, or township that has
5 elected to apply this section as provided in subsection (9) or
6 (10).

7 (13) The withholding requirements of this section do not apply
8 if all of the following occur:

9 (a) Within 15 days after agreement on a final settlement
10 between the insured and the insurer, the insured has filed with the
11 insurer evidence of a contract to repair as described in subsection
12 (6).

13 (b) The insured consents to the payment of ~~funds~~ **MONEY**
14 directly to the contractor performing the repair services. ~~Funds~~
15 **MONEY** released under this subdivision may be forwarded only to a
16 contractor performing the repair services on the insured property.

17 (c) On receipt of the contract to repair, the insurer gives
18 notice to the city, village, or township in which the property is
19 ~~situated~~ **LOCATED** that there will not be a withholding under this
20 section because of the repair contract.

21 (14) If the insured and the insurer have agreed on the
22 demolition costs or the debris removal costs as part of the final
23 settlement of the real property insured claim, the insurer shall
24 withhold 1 of the following ~~sums~~, **AMOUNTS**, whichever ~~sum~~ is the
25 largest, and shall pay that ~~sum~~ **AMOUNT** in accordance with this
26 section:

27 (a) The agreed cost of demolition or debris removal.

1 (b) ~~Twenty five percent~~ UNTIL DECEMBER 31, 2014, 25% of the
2 actual cash value of the insured real property at the time of loss
3 ~~so long as~~ IF this amount for residential property does not exceed
4 \$6,000.00 adjusted annually beginning June 1, 1999 in accordance
5 with the consumer price index.

6 (C) BEGINNING JANUARY 1, 2015, 25% OF THE ACTUAL CASH VALUE OF
7 THE INSURED REAL PROPERTY AT THE TIME OF THE LOSS IF THIS AMOUNT
8 FOR RESIDENTIAL PROPERTY DOES NOT EXCEED \$12,000.00 ADJUSTED
9 JANUARY 1 OF EACH YEAR IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.

10 (D) ~~(c) Twenty five percent~~ UNTIL DECEMBER 31, 2014, 25% of
11 the final settlement of the insured real property claim ~~so long as~~
12 IF this amount for residential property does not exceed \$6,000.00
13 adjusted annually beginning June 1, 1999 in accordance with the
14 consumer price index.

15 (E) BEGINNING JANUARY 1, 2015, 25% OF THE FINAL SETTLEMENT OF
16 THE INSURED REAL PROPERTY CLAIM IF THIS AMOUNT FOR RESIDENTIAL
17 PROPERTY DOES NOT EXCEED \$12,000.00 ADJUSTED JANUARY 1 OF EACH YEAR
18 IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.

19 (15) This section applies only to final settlements that
20 exceed 49% of the insurance on the insured real property.

21 (16) If an insurer withholds payment under a policy in good
22 faith because of suspected arson, fraud, or other question
23 concerning coverage, this section does not apply until the issue or
24 question is resolved and final settlement is made.

25 (17) As used in this section:

26 (a) "Consumer price index" means that term as defined in
27 section 2080.

1 (b) "Final settlement" means a determination of the amount due
2 and owing to the insured for a loss to insured real property, but
3 does not include contents damage, losses to personal property, or
4 additional coverage not contained in the building coverage portion
5 of the fire insurance policy, which determination is made by any of
6 the following means:

7 (i) Acceptance of a proof of loss by the insurer.

8 (ii) Execution of a release by the insured.

9 (iii) Acceptance of an arbitration award by both the insured and
10 the insurer.

11 (iv) Judgment of a court of competent jurisdiction.

12 (c) "Home insurance" means that term as defined in section
13 2103.

14 (d) "Residential property" means property on which home
15 insurance can be issued.