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:

Sec. 2236. (1) A basic insurance policy form or annuity contract form shall not be issued or delivered to any person in this state, and an insurance or annuity application form if a written application is required and is to be made a part of the policy or contract, a printed rider or indorsement form or form of renewal certificate, and a group certificate in connection with the policy or contract, shall not be issued or delivered to a person in this state, until a copy of the form is filed with the ~~insurance~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*i*) Topical captions.

(*ii*) An identification of exclusions.

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

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

(*i*) Contain a properly descriptive title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*iii*) Aircraft and attached equipment.

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

(b) Insurance against loss resulting from liability, other than worker's compensation or employers' liability arising out of the ownership, maintenance, or use of **ANY OF THE FOLLOWING**:

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

(*ii*) Aircraft and attached equipment.

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

(c) Surety bonds other than fidelity bonds.

(d) Policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Beginning September 1, 1968, the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** by order may exempt from the filing requirements of this section and sections 2242, 3606, and 4430 for so long as he or she considers proper any insurance document or form, 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~~ **UNDER** section 3109a, as specified in the order to which this section **IS NOT** practicably ~~may not be~~ applied, 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~~ **UNDER** section 3109a, exempt by order of the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** from the filing requirements of this section and sections 2242 and 3606 are considered approved by the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** for purposes of section 3430.

(e) 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.

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

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