

# HOUSE BILL NO. 5928

June 25, 2020, Introduced by Reps. Wittenberg, Koleszar, Greig, Cynthia Johnson, Sabo, Pohutsky, Lasinski, Brixie, Witwer, Garza, Brenda Carter, Kennedy, Gay-Dagnogo, Hope, Chirkun, Elder, Sowerby, Stone, Warren, Guerra, Yancey, Hood, Manoogian, Cynthia Neeley, Garrett, Kuppa, Clemente, Shannon, Hammoud, Hoadley, Tyrone Carter, Anthony, Jones and Coleman 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 2016 PA 276,  
and by adding section 2245.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2236. (1) Except as otherwise provided in this section,  
2       an insurer shall not deliver or issue for delivery in this state a  
3       basic insurance policy form or annuity contract form; a printed  
4       rider or indorsement form or form of renewal certificate; or a  
5       group certificate in connection with the policy or contract unless



1 a copy of the form is filed with the department and approved by the  
2 director as conforming with the requirements of this act and not  
3 inconsistent with the law. ~~A—Except as otherwise provided in~~  
4 **section 2245**, a form is considered approved if the director fails  
5 to act within 30 days after its submittal under this section.  
6 Except for disability insurance as described in section 3400, an  
7 insurer shall plainly print the form with a type size of not less  
8 than 8-point unless the director determines that portions of the  
9 form that are printed with type less than 8-point are not deceptive  
10 or misleading.

11 (2) An insurer may satisfy its obligations to make form  
12 filings by becoming a member of, or a subscriber to, a rating  
13 organization licensed under section 2436 or 2630 that makes the  
14 filings that are required under this section. An insurer described  
15 in this subsection shall file with the director a copy of its  
16 authorization of the rating organization to make the filings on its  
17 behalf. Except as otherwise provided in this subsection, an insurer  
18 that is a member of or subscriber to a rating organization shall  
19 adhere to the form filings made on its behalf by the organization.  
20 An insurer may file with the director a substitute form and if a  
21 subsequent form filing by the rating organization after the filling  
22 of a substitute form affects the use of the substitute form, the  
23 insurer shall review its use and notify the director whether to  
24 withdraw its substitute form.

25 (3) The director shall not approve a form filed under this  
26 section that provides for or relates to an insurance policy or an  
27 annuity contract for personal, family, or household purposes if the  
28 form fails to obtain the following readability score or meet the  
29 other requirements of this subsection, as applicable:



1 (a) The readability score must not be less than 45, as  
2 determined by the method provided in subdivisions (b) and (c).

3 (b) The readability score is determined as follows:

4 (i) For a form containing not more than 10,000 words, the  
5 entire form must be analyzed. For a form containing more than  
6 10,000 words, not fewer than two 200-word samples per page must be  
7 analyzed instead of the entire form. The samples must be separated  
8 by at least 20 printed lines.

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

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

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

23 (c) For the purposes of subdivision (b) (ii) and (iii), the  
24 following procedures must be used:

25 (i) A contraction, hyphenated word, or numbers and letters when  
26 separated by spaces are counted as 1 word.

27 (ii) A unit of words ending with a period, semicolon, or colon,  
28 but excluding headings and captions, is counted as 1 sentence.

29 (d) In determining the readability score, all of the following



1 apply to the method provided in subdivisions (b) and (c):

2 (i) It must be applied to an insurance policy form or an  
3 annuity contract together with a rider or indorsement form usually  
4 associated with the insurance policy form or annuity contract. It  
5 may be applied to a group of policy, contract, rider, or  
6 indorsement forms that have substantially the same language  
7 resulting in a single readability score for those forms.

8 (ii) It must not be applied to a word or phrase that is defined  
9 in an insurance policy form or an annuity contract or a rider,  
10 indorsement, or group certificate associated with the insurance  
11 policy form or annuity contract.

12 (iii) It must not be applied to language specifically agreed  
13 upon through collective bargaining or required by a collective  
14 bargaining agreement.

15 (iv) It must not be applied to language that is prescribed by  
16 or based on state or federal statute or any related rules,  
17 regulations, or orders.

18 (v) It must not be applied to medical terms that are included  
19 in the form for coverage purposes.

20 (e) The form must contain both of the following:

21 (i) Topical captions.

22 (ii) An identification of exclusions.

23 (f) Except as otherwise provided in this subdivision, an  
24 insurance policy or annuity contract that has more than 3,000 words  
25 printed on not more than 3 pages of text or that has more than 3  
26 pages of text regardless of the number of words must contain a  
27 table of contents. This subdivision does not apply to riders or  
28 indorsements.

29 (g) Each rider or indorsement form that changes coverage must

1 do all of the following:

2 (i) Contain a properly descriptive title.

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

5 (iii) At the time of filing, be accompanied by an explanation of  
6 the change.

7 (h) If a computer system approved by the director calculates  
8 the readability score of a form as being in compliance with this  
9 subsection, the form is considered in compliance with the  
10 readability score requirements of this subsection.

11 (i) A variable life product or variable annuity product  
12 approved by the United States Securities and Exchange Commission  
13 for sale in this state is considered in compliance with this  
14 section.

15 (4) An insurer shall submit for approval under subsection (3)  
16 a change or addition to a policy or annuity contract form for  
17 personal, family, or household purposes, whether by indorsement,  
18 rider, or otherwise, or a change or addition to a rider or  
19 indorsement form associated with the policy form or annuity  
20 contract form, if the form has not been previously approved under  
21 subsection (3).

22 (5) Upon written notice to the insurer, the director may, on a  
23 case-by-case review, disapprove, withdraw approval, or prohibit the  
24 issuance, advertising, or delivery of a form to any person in this  
25 state if the form violates this act, contains inconsistent,  
26 ambiguous, or misleading clauses, or contains exceptions and  
27 conditions that unreasonably or deceptively affect the risk  
28 purported to be assumed in the general coverage of the policy. The  
29 director shall specify in the notice the objectionable provisions



1 or conditions and state the reasons for the decision. If the form  
2 is legally in use by the insurer in this state, the director shall  
3 give the effective date of the disapproval in the notice, which  
4 must not be less than 30 days after the mailing or delivery of the  
5 notice to the insurer. If the form is not legally in use, the  
6 disapproval is effective immediately.

7 (6) If a form is disapproved or approval is withdrawn under  
8 this act, the insurer is entitled on demand to a hearing before the  
9 director or a deputy director within 30 days after the notice of  
10 disapproval or of withdrawal of approval. After the hearing, the  
11 director shall make findings of fact and law and affirm, modify, or  
12 withdraw his or her original order or decision. An insurer shall  
13 not issue the form after a final determination of disapproval or  
14 withdrawal of approval.

15 (7) Any issuance, use, or delivery by an insurer of a form  
16 without the prior approval of the director as required under  
17 subsection (1) or after withdrawal of approval under subsection (5)  
18 is a separate violation for which the director may order the  
19 imposition of a civil penalty of \$25.00 for each offense, not to  
20 exceed a maximum penalty of \$500.00 for any 1 series of offenses  
21 relating to any 1 basic policy form. The attorney general may act  
22 to recover the penalty under this subsection as provided in section  
23 230.

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

26 (a) Insurance against loss of or damage to any of the  
27 following:

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

29 (ii) Bridges, tunnels, or other instrumentalities of



1 transportation and communication.

2 (iii) Aircraft and attached equipment.

3 (iv) Vessels and watercraft that are under construction, are  
4 owned by or used in a business, or have a straight-line hull length  
5 of more than 24 feet.

6 (b) Insurance against loss resulting from liability, other  
7 than worker's disability compensation or employers' liability  
8 arising out of the ownership, maintenance, or use of any of the  
9 following:

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

11 (ii) Aircraft and attached equipment.

12 (iii) Vessels and watercraft that are under construction, are  
13 owned by or used in a business, or have a straight-line hull length  
14 of more than 24 feet.

15 (c) Surety bonds other than fidelity bonds.

16 (d) Policies, riders, indorsements, or forms of unique  
17 character designed for and used with relation to insurance on a  
18 particular subject, or that relate to the manner of distribution of  
19 benefits or to the reservation of rights and benefits under life or  
20 disability insurance policies and are used at the request of the  
21 individual policyholder, contract holder, or certificate holder. By  
22 order, the director may exempt from the filing requirements of this  
23 section and sections 3401a and 4430 for as long as he or she  
24 considers proper any insurance document or form, except that  
25 portion of the document or form that establishes a relationship  
26 between group disability insurance and personal protection  
27 insurance benefits subject to exclusions or deductibles under  
28 section 3109a, as specified in the order to which this section is  
29 not practicably applied, or the filing and approval of which are



1 considered unnecessary for the protection of the public. Insurance  
2 documents or forms providing medical payments or income replacement  
3 benefits, except that portion of the document or form that  
4 establishes a relationship between group disability insurance and  
5 personal protection insurance benefits subject to exclusions or  
6 deductibles under section 3109a, exempt by order of the director  
7 from the filing requirements of this section and section 3401a are  
8 considered approved by the director for purposes of section 3430.

9 (e) An insurance policy to which both of the following apply:

10 (i) The insurance is sold to an exempt commercial policyholder.

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

15 (9) Notwithstanding any provision of this act to the contrary,  
16 a health insurer may satisfy a requirement for the delivery of an  
17 insurance form or notice required by this act to a subscriber,  
18 insured, enrollee, or contract holder by doing all of the  
19 following:

20 (a) Taking appropriate and necessary measures reasonably  
21 calculated to ensure that the system for furnishing a form or  
22 notice meets all of the following requirements:

23 (i) It results in the actual receipt of a delivered form or  
24 notice.

25 (ii) It protects the confidentiality of a subscriber's,  
26 insured's, enrollee's, or contract holder's personal information.

27 (b) Ensuring that an electronically delivered form or notice  
28 is prepared and furnished in a manner consistent with the style,  
29 format, and content requirements applicable to the particular form



1 or notice.

2 (c) On request, delivering to the subscriber, insured,  
3 enrollee, or contract holder a paper version of an electronically  
4 delivered form or notice.

5 (10) Subject to the requirements of this section, an insurer  
6 may file health insurance policies, certificates, and riders  
7 quarterly. This subsection does not limit or restrict an insurer's  
8 ability to file large group health insurance policies,  
9 certificates, or riders at any time during the year.

10 (11) As used in this section and sections 2401 and 2601,  
11 "exempt commercial policyholder" means an insured that purchases  
12 the insurance for other than personal, family, or household  
13 purposes.

14 (12) As used in this section, "insurer" includes a nonprofit  
15 dental care corporation operating under 1963 PA 125, MCL 550.351 to  
16 550.373.

17 (13) An order made by the director under this section is  
18 subject to court review as provided in section 244.

19 **Sec. 2245. (1) Notwithstanding anything in this act to the**  
20 **contrary, and subject to subsection (2), each qualified insurance**  
21 **policy that is delivered, issued for delivery, or renewed in this**  
22 **state must be construed to include among the perils under the**  
23 **policy coverage for loss of use and occupancy, loss of income, or**  
24 **other business interruption losses directly or indirectly related**  
25 **to any of the following:**

26 (a) The global pandemic known as COVID-19, including any  
27 mutated form of the COVID-19 virus.

28 (b) Any executive order issued by the governor related to  
29 COVID-19.



1 (c) Any order issued by a civil authority related to COVID-19.

2 (2) Subsection (1) applies to a qualified insurance policy  
3 regardless of the terms and conditions of the qualified insurance  
4 policy.

5 (3) The coverage required under this section for a qualified  
6 insurance policy is subject to any monetary limits in the qualified  
7 insurance policy.

8 (4) An insurer that delivers, issues for delivery, or renews  
9 in this state a qualified insurance policy shall not deny a claim  
10 for either of the following reasons:

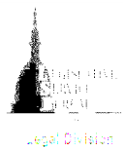
11 (a) There is no physical damage to the property of the insured  
12 for which the coverage is provided under the qualified insurance  
13 policy, or to any other property relevant to a consideration of  
14 coverage.

15 (b) The loss is a result of the COVID-19 virus regardless of  
16 whether the qualified insurance policy excludes coverage for a loss  
17 resulting from a virus.

18 (5) Subsection (1) to (4) apply to a qualified insurance  
19 policy that was in effect on January 1, 2020 or that was delivered,  
20 issued for delivery, or renewed in this state after December 31,  
21 2019.

22 (6) Each qualified insurance policy delivered, issued for  
23 delivery, or renewed in this state that expires after December 31,  
24 2019 but before 6 months after the expiration of the state of  
25 emergency declared under Executive Order No. 2020-4 or any  
26 extension of that order must be automatically renewed at the same  
27 premium charged for the coverage under the expiring qualified  
28 insurance policy.

29 (7) An insurer shall not deliver or issue for delivery in this



1 state a qualified insurance form that differs from a qualified  
2 insurance form used by the insurer before January 1, 2020 unless a  
3 copy of the form is filed with the department and expressly  
4 approved by the director as conforming with the requirements of  
5 this act and not inconsistent with the law.

6 (8) As used in this section, "qualified insurance policy"  
7 means an insurance policy that insures against loss or damage to  
8 property and includes coverage for any of the following:

- 9 (a) Loss of use and occupancy of property.  
10 (b) Loss of income.  
11 (c) Any other business interruption loss.

