

HOUSE BILL No. 4302

February 20, 2007, Introduced by Reps. Condino, Bieda and Gonzales and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 2236, 2401, and 2601 (MCL 500.2236, 500.2401,
and 500.2601), as amended by 2002 PA 664.

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
9 bureau and approved by the commissioner as conforming with the

1 requirements of this act and not inconsistent with the law. Failure
2 of the commissioner to act within 30 days after submittal
3 constitutes approval. All such forms, except policies of disability
4 insurance as defined in section 3400, shall be plainly printed with
5 type size not less than 8-point unless the commissioner determines
6 that portions of such a form printed with type less than 8-point is
7 not deceptive or misleading.

8 (2) An insurer may satisfy its obligations to make form
9 filings by becoming a member of, or a subscriber to, a rating
10 organization, licensed under section 2436 or 2630, which makes such
11 filings and by filing with the commissioner a copy of its
12 authorization of the rating organization to make the filings on its
13 behalf. Every member of or subscriber to a rating organization
14 shall adhere to the form filings made on its behalf by the
15 organization except that an insurer may file with the commissioner
16 a substitute form, and thereafter if a subsequent form filing by
17 the rating organization affects the use of the substitute form, the
18 insurer shall review its use and notify the commissioner whether to
19 withdraw its substitute form.

20 (3) Beginning January 1, 1992, the commissioner shall not
21 approve a form filed pursuant to this section providing for or
22 relating to an insurance policy or an annuity contract for
23 personal, family, or household purposes if the form fails to obtain
24 the readability score or meet the other requirements of this
25 subsection, as applicable:

26 (a) The readability score for a form for which approval is
27 required by this section shall not be less than 45, as determined

1 by the method provided in subdivisions (b) and (c).

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

4 (i) For a form containing not more than 10,000 words, the
5 entire form shall be analyzed. For a form containing more than
6 10,000 words, not less than two 200-word samples per page shall be
7 analyzed instead of the entire form. The samples shall 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 shall be used:

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

27 (ii) A unit of words ending with a period, semicolon, or colon,

1 but excluding headings and captions, shall be counted as 1
2 sentence.

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

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

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

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

15 (iv) Shall not be applied to language that is prescribed by
16 state or federal statute or by rules or regulations promulgated
17 pursuant to a state or federal statute.

18 (e) Each form for which approval is required by this section
19 shall contain both of the following:

20 (i) Topical captions.

21 (ii) An identification of exclusions.

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

27 (g) Each rider or indorsement form that changes coverage shall

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) Be accompanied by an explanation of the change.

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

10 (4) After January 1, 1992, any change or addition to a policy
11 or annuity contract form for personal, family, or household
12 purposes, whether by indorsement, rider, or otherwise, or a change
13 or addition to a rider or indorsement form to such policy or
14 annuity contract form, which policy or annuity contract form has
15 not been previously approved under subsection (3), shall be
16 submitted for approval pursuant to subsection (3).

17 (5) Upon written notice to the insurer, the commissioner may
18 disapprove, withdraw approval or prohibit the issuance,
19 advertising, or delivery of any form to any person in this state if
20 it violates any provisions of this act, or contains inconsistent,
21 ambiguous, or misleading clauses, or contains exceptions and
22 conditions that unreasonably or deceptively affect the risk
23 purported to be assumed in the general coverage of the policy. The
24 notice shall specify the objectionable provisions or conditions and
25 state the reasons for the commissioner's decision. If the form is
26 legally in use by the insurer in this state, the notice shall give
27 the effective date of the commissioner's disapproval, which shall

1 not be less than 30 days subsequent to the mailing or delivery of
2 the notice to the insurer. If the form is not legally in use, then
3 disapproval shall be effective immediately.

4 (6) If a form is disapproved or approval is withdrawn under
5 the provisions of this act, the insurer is entitled upon demand to
6 a hearing before the commissioner or a deputy commissioner within
7 30 days after the notice of disapproval or of withdrawal of
8 approval. After the hearing, the commissioner shall make findings
9 of fact and law, and either affirm, modify, or withdraw his or her
10 original order or decision.

11 (7) Any issuance, use, or delivery by an insurer of any form
12 without the prior approval of the commissioner as required by
13 subsection (1) or after withdrawal of approval as provided by
14 subsection (5) constitutes a separate violation for which the
15 commissioner may order the imposition of a civil penalty of \$25.00
16 for each offense, but not to exceed the maximum penalty of \$500.00
17 for any 1 series of offenses relating to any 1 basic policy form,
18 which penalty may be recovered by the attorney general as provided
19 in section 230.

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

22 (a) Insurance against loss of or damage to:

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

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

26 (iii) Aircraft and attached equipment.

27 (iv) Vessels and watercraft under construction or owned by or

1 used in a business or having a straight-line hull length of more
2 than 24 feet.

3 (b) Insurance against loss resulting from liability, other
4 than worker's compensation or employers' liability arising out of
5 the ownership, maintenance, or use of:

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

7 (ii) Aircraft and attached equipment.

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

11 (c) Surety bonds other than fidelity bonds.

12 (d) Policies, riders, indorsements, or forms of unique
13 character designed for and used with relation to insurance upon a
14 particular subject, or that relate to the manner of distribution of
15 benefits or to the reservation of rights and benefits under life or
16 disability insurance policies and are used at the request of the
17 individual policyholder, contract holder, or certificate holder.
18 Beginning September 1, 1968, the commissioner by order may exempt
19 from the filing requirements of this section and sections 2242,
20 3606, and 4430 for so long as he or she considers proper any
21 insurance document or form, except that portion of the document or
22 form that establishes a relationship between group disability
23 insurance and personal protection insurance benefits subject to
24 exclusions or deductibles pursuant to section 3109a, as specified
25 in the order to which this section practicably may not be applied,
26 or the filing and approval of which are considered unnecessary for
27 the protection of the public. Insurance documents or forms

1 providing medical payments or income replacement benefits, except
2 that portion of the document or form that establishes a
3 relationship between group disability insurance and personal
4 protection insurance benefits subject to exclusions or deductibles
5 pursuant to section 3109a, exempt by order of the commissioner from
6 the filing requirements of this section and sections 2242 and 3606
7 are considered approved by the commissioner for purposes of section
8 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 (9) ~~(10)~~ Every order made by the commissioner under the
20 provisions of this section is subject to court review as provided
21 in section 244.

22 Sec. 2401. (1) Except as provided in subsection (2), this
23 chapter applies to the following kinds of insurance or coverages on
24 risks or operations in this state:

25 (a) Casualty insurance, as defined in section 624, except as
26 to livestock insurance.

27 (b) Surety and fidelity.

1 (c) Automobile insurance, as defined or included under the
2 following sections:

3 (i) 624 (general definition of casualty insurance).

4 (ii) 7202 (insuring powers of reciprocal insurers).

5 (iii) 620 (automobile insurance (limited) defined).

6 (iv) 614 (marine insurance defined).

7 (d) Worker's compensation insurance, as defined or included
8 under the following sections:

9 (i) 624 (general definition of casualty insurance).

10 (ii) 7202 (insuring powers of reciprocal insurers).

11 (e) To all insurance transacted by a reciprocal insurer
12 pursuant to section 7202 (insuring powers of reciprocal insurers).

13 (f) Personal property floaters.

14 (g) Title insurance.

15 (2) This chapter does not apply to any of the following:

16 (a) Reinsurance, other than joint reinsurance to the extent
17 stated in section 2464.

18 (b) Disability insurance.

19 (c) Insurance against loss of or damage to aircraft or against
20 liability, other than worker's compensation and employers'
21 liability, arising out of the ownership, maintenance, or use of
22 aircraft.

23 ~~—— (d) Insurance that meets both of the following and is not~~
24 ~~worker's compensation insurance:~~

25 ~~—— (i) Is sold to an exempt commercial policyholder.~~

26 ~~—— (ii) Contains a prominent disclaimer that states "This policy~~
27 ~~is exempt from the filing requirements of section 2236 of the~~

1 ~~insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that~~
2 ~~are substantially similar.~~

3 (3) This chapter applies to all classes of insurers admitted
4 to do business in this state, including stock, mutual, reciprocal,
5 and interinsurers authorized to write any of the kinds of insurance
6 to which this chapter applies under this act.

7 (4) If any kind of insurance, subdivision, or combination
8 thereof, or type of coverage, subject to this chapter, is also
9 subject to regulation by another rate regulatory chapter of this
10 act, an insurer to which both chapter 24 and chapter 26 are
11 otherwise applicable shall file with the commissioner, a
12 designation as to which rate regulatory chapter shall be applicable
13 to the insurer with respect to such kind of insurance, subdivision,
14 or combination thereof, or type of coverage.

15 (5) If, pursuant to subsection (6), the commissioner certifies
16 the absence of a reasonable degree of competition for a specified
17 classification, type, or kind of insurance, the commissioner may
18 order that each insurer file for prior approval, subject to the
19 provisions of this chapter, any changes to its manuals of
20 classification, manuals of rules and rates, and rating plans the
21 insurer proposes to use for that specified classification, type, or
22 kind of insurance. The order shall state, in writing, the reasons
23 for the commissioner's decision to order the filing. An order
24 issued under this subsection expires 2 years after the date of
25 issuance. If such an order is in effect, rates to which the order
26 applies shall be filed at least 30 days before their proposed
27 effective date. Failure of the commissioner to act within 30 days

1 after submittal constitutes approval.

2 (6) A determination concerning the absence of a reasonable
3 degree of competition shall take into account a reasonable spectrum
4 of relevant economic tests, including the number of insurers
5 actively engaged in writing the insurance in question, the present
6 availability of that insurance compared to the availability in
7 comparable past periods, the underwriting return of that insurance
8 over a reasonable period of time sufficient to assure reliability
9 in relation to the risk associated with that insurance, and the
10 difficulty encountered by new insurers entering the market in order
11 to compete for the writing of that insurance.

12 Sec. 2601. (1) This chapter applies to the following kinds of
13 insurance as written on risks located in this state by and
14 companies, associations, or other carriers, including reciprocals:

15 (a) Property insurance, as defined in section 610.

16 (b) Marine insurance, as defined in section 614.

17 (c) Inland navigation and transportation insurance, as defined
18 in section 616.

19 (d) Automobile insurance (limited), as defined in section 620.

20 (2) "Inland marine insurance" shall be considered to include:

21 (a) Insurance against loss of or damage to domestic shipments,
22 bridges, tunnels, and other inland instrumentalities of
23 transportation or communication, excluding buildings, their
24 furniture and furnishings, fixed contents, and supplies held in
25 storage.

26 (b) Insurance defined by ruling of the commissioner as inland
27 marine insurance.

1 (3) This chapter does not apply to any of the following:

2 (a) Reinsurance, other than joint reinsurance to the extent
3 stated in section 2658.

4 (b) Insurance against loss of or damage to:

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

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

8 (iii) Aircraft and attached equipment.

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

12 (c) Insurance against loss resulting from liability arising
13 out of the ownership, maintenance, or use of:

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

15 (ii) Aircraft and attached equipment.

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

19 (d) Motor vehicle insurance, nor to insurance against
20 liability arising out of the ownership, maintenance, or use of
21 motor vehicles.

22 (e) Companies organized and doing business under chapter 68.

23 ~~—— (f) Insurance that meets both of the following:~~

24 ~~—— (i) Is sold to an exempt commercial policyholder.~~

25 ~~—— (ii) Contains a prominent disclaimer that states "This policy~~
26 ~~is exempt from the filing requirements of section 2236 of the~~
27 ~~insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that~~

1 ~~are substantially similar.~~

2 (4) If any kind of insurance, subdivision, or combination
3 thereof, or type of coverage, subject to this chapter, is also
4 subject to regulation by another rate regulatory chapter of this
5 act, an insurer to which both chapters are otherwise applicable
6 shall file with the commissioner a designation as to which rate
7 regulatory chapter shall be applicable to it with respect to such
8 kind of insurance, subdivision, or combination thereof, or type of
9 coverage.

10 (5) If, pursuant to subsection (6), the commissioner certifies
11 the absence of a reasonable degree of competition for a specified
12 classification, type, or kind of insurance, the commissioner may
13 order that each insurer file for prior approval, subject to the
14 provisions of this chapter, any changes to its manuals of
15 classification, manuals of rules and rates, and rating plans the
16 insurer proposes to use for that specified classification, type, or
17 kind of insurance. The order shall state, in writing, the reasons
18 for the commissioner's decision to order the filing. An order
19 issued under this subsection expires 2 years after the date of
20 issuance. If such an order is in effect, rates to which the order
21 applies shall be filed at least 30 days before their proposed
22 effective date. Failure of the commissioner to act within 30 days
23 after submittal constitutes approval.

24 (6) A determination concerning the existence of a reasonable
25 degree of competition shall take into account a reasonable spectrum
26 of relevant economic tests, including the number of insurers
27 actively engaged in writing the insurance in question, the present

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