

## 1998 PUBLIC AND LOCAL ACTS

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[No. 216]

(HB 5224)

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act," by amending section 2845 (MCL 500.2845), as amended by 1990 PA 305.

*The People of the State of Michigan enact:*

500.2845 Withholding 25% of actual cash value or final settlement where loss to insured real property due to fire or explosion; notice to treasurer, insured, and mortgagee; escrowing and retaining withheld amount; procedure; recording information and depositing money in trust or escrow account; releasing policy proceeds to mortgagee; commingling funds prohibited; retaining earned interest; forwarding policy proceeds to insured; reasonable proof; using retained proceeds to secure, repair, or demolish damaged or destroyed structure and clear property; returning unused portion of

retained proceeds; liability of insurer; applicability of section; list of cities, villages, and townships; additions and deletions; ceasing or continuing to apply section; inapplicability of withholding requirements; definitions. [M.S.A. 24.12845]

Sec. 2845. (1) If a claim is filed for a loss to insured real property due to fire or explosion and a final settlement is reached on the loss to the insured real property, an insurer shall withhold from payment 25% of the actual cash value of the insured real property at the time of the loss or 25% of the final settlement, whichever is less. For residential property, the 25% settlement or judgment withheld shall not exceed \$6,000.00 adjusted annually beginning June 1, 1999 in accordance with the consumer price index. The commissioner shall notify annually all insurance companies transacting property insurance in this state as to the new adjusted amount. At the time that 25% of the settlement or judgment is withheld, the insurer shall give notice of the withholding to the treasurer of the city, village, or township in which the insured real property is located, to the insured, and to any mortgagee having an existing lien or liens against the insured real property, if the mortgagee is named on the policy. In the case of a judgment, notice shall also be provided to the court in which judgment was entered. The notice shall include all of the following:

- (a) The identity and address of the insurer.
- (b) The name and address or forwarding address of each policyholder, including any mortgagee.
- (c) Location of the insured real property.
- (d) The date of loss, policy number, and claim number.
- (e) The amount of money withheld.
- (f) A statement that the city, village, or township may have the withheld amount paid into a trust or escrow account established for the purposes of this section if within 15 days after the mailing of the notice the city, village, or township states that the money should be withheld to protect the public health and safety; otherwise, the withheld amount shall be paid to the insured 15 days after the mailing of the notice.
- (g) An explanation of the provisions of this section.

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

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

(b) In the case of a settlement, the request under subdivision (a) shall be sent to the insurer with a copy to the insured and any mortgagees. The copy to the insured shall contain the notice required under subdivision (d). Upon receipt of the request, the insurer shall forward the withheld amount to the treasurer of the city, village, or township, and shall provide notice of the forwarding to the insured and any mortgagees.

(c) In the case of a judgment, the request under subdivision (a) shall be sent to the insurer with a copy to the insured, any mortgagees, and the court in which judgment was entered. The copy to the insured shall contain the notice required under subdivision (d). Upon the motion of the city, village, or township, the court shall order the withheld amount transmitted to the treasurer of the city, village, or township.

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(d) The city, village, or township shall notify the insured that the insured has 10 days from the date of the mailing of the notice to object to the city's, village's, or township's retention of the withheld amount. The notice shall identify the authorized representative of the city, village, or township that the insured should address his or her objections to and shall state that the insured may do either of the following:

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

(ii) Seek relief in the circuit court.

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

(4) Except as provided in subsection (7), money deposited in an account pursuant to subsection (3) shall not be commingled with city, village, or township funds. Any interest earned on money placed in a trust or escrow account shall be retained by the city, village, or township to defray expenses incurred under this section.

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

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

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

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

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

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

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

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

(7) If with respect to a loss, reasonable proof is not received by or shown to an authorized representative of the city, village, or township designated by the governing body of the city, village, or township within 120 days after the policy proceeds portion was received by the treasurer, the city, village, or township shall use the retained proceeds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable ordinances of the city, village, or township. Any unused portion of the retained proceeds shall be returned to the insured. The city, village, or township may extend the 120-day time period listed in this subsection.

(8) There is no liability on the part of, and a cause of action shall 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 how the withheld amount should be distributed.

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

(10) A city, village, or township may apply to be added to the list by making a written request for addition to the commissioner. When a written request for addition from a city, village, or township has been received by the commissioner, an amended list shall be prepared and distributed indicating the addition. The addition shall be effective on the date specified by the commissioner in the amendment. The commissioner shall notify the city, village, township, and insurance companies of the effective date of the addition which shall be effective not less than 30 days after receipt of notice by the insurance company. A city, village, or township shall not apply this section to any loss that occurred before the effective date of the addition.

(11) A city, village, or township may request to be deleted from the list or may cease to apply this section for a period of not less than 6 months upon not less than 30 days' written notice to the commissioner. After receipt of a request to be deleted from the list, the commissioner shall prepare and distribute an amendment to the list indicating the deletion. The deletion shall be effective on the date specified by the commissioner in the amendment. The commissioner shall notify the city, village, township, and insurance companies of the effective date of the deletion which shall be effective not less than 30 days after receipt of the notice by the insurance company. A city, village, or township shall continue to apply this section to any loss that occurred before the effective date of the deletion, notwithstanding the deletion.

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(12) This section applies only to insured real property located in cities, villages, and townships that are located in counties with a population of less than 425,000 except that this section does not apply to insured real property located in cities, villages, and townships that are located in counties with a population of less than 425,000 if the city, village, or township has a population of 50,000 or more. This section applies to insured real property located in a city, village, or township that has elected to apply this section as provided in subsection (9) or (10).

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

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

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

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

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

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

(b) Twenty-five percent of the actual cash value of the insured real property at the time of loss so long as this amount for residential property does not exceed \$6,000.00 adjusted annually beginning June 1, 1999 in accordance with the consumer price index.

(c) Twenty-five percent of the final settlement of the insured real property claim so long as this amount for residential property does not exceed \$6,000.00 adjusted annually beginning June 1, 1999 in accordance with the consumer price index.

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

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

(17) As used in this section:

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

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

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

(ii) Execution of a release by the insured.

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

(iv) Judgment of a court of competent jurisdiction.

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

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

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Effective date and applicability of act to losses occurring on or after January 1, 1999.

Enacting section 1. This amendatory act takes effect January 1, 1999 and applies to any loss that occurs on and after January 1, 1999. Losses that occur before January 1, 1999 are governed by section 2845 of the insurance code of 1956, 1956 PA 218, MCL 500.2845, as in effect before the amendments to that section were made by this amendatory act.

This act is ordered to take immediate effect.

Approved July 1, 1998.

Filed with Secretary of State July 1, 1998.

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