

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4331

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 2227 (MCL 500.2227), as amended by 2014 PA 509.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2227. (1) If a claim is filed for a loss to insured real
2 property due to fire, explosion, vandalism, malicious mischief,
3 wind, hail, riot, or civil commotion and a final settlement is
4 reached on the loss to the insured real property, an insurer shall
5 withhold from payment 25% of the actual cash value of the insured
6 real property at the time of the loss or 25% of the final
7 settlement, whichever is less. Until December 31, 2014, for
8 residential property, the 25% settlement or judgment withheld ~~shall~~
9 **must** not exceed \$6,000.00 adjusted annually beginning June 1, 1999

1 in accordance with the ~~consumer price index.~~ **Consumer Price Index.**
2 Beginning January 1, 2015 **and before July 1, 2024,** for residential
3 property, the 25% settlement or judgment withheld ~~shall~~**must** not
4 exceed \$12,000.00 adjusted January 1 of each year in accordance
5 with the ~~consumer price index.~~ **Consumer Price Index. Beginning July**
6 **1, 2024, for residential property, the 25% settlement or judgment**
7 **withheld must not exceed \$24,000.00 adjusted July 1 of each year in**
8 **accordance with the Consumer Price Index.** The director shall notify
9 annually all insurance companies transacting property insurance in
10 this state as to the new adjusted amount. At the time that 25% of
11 the settlement or judgment is withheld, the insurer shall give
12 notice of the withholding to the treasurer of the city, village, or
13 township in which the insured real property is located, to the
14 insured, and to any mortgagee having an existing lien or liens
15 against the insured real property, if the mortgagee is named on the
16 policy. For a judgment, **the insurer shall also provide** notice ~~shall~~
17 ~~also be provided~~ to the court in which judgment was entered. The
18 notice must include all of the following:
19 (a) The identity and address of the insurer.
20 (b) The name and address or forwarding address of each
21 policyholder, including any mortgagee.
22 (c) The location of the insured real property.
23 (d) The date of loss, policy number, and claim number.
24 (e) The amount of money withheld.
25 (f) A statement that the city, village, or township may have
26 the withheld amount paid into a trust or escrow account established
27 for the purposes of this section if within 15 days after the
28 mailing of the notice the city, village, or township states that
29 the money should be withheld to protect the public health and

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

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

4 (2) For a city, village, or township to escrow the amount
5 withheld by the insurer, and to retain that amount, the following
6 procedure ~~shall~~**must** 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) For a settlement, the request under subdivision (a) ~~shall~~
17 **must** be sent to the insurer with a copy to the insured and any
18 mortgagees. The copy to the insured must contain the notice
19 required under subdivision (d). On receipt of the request, the
20 insurer shall forward the withheld amount to the treasurer of the
21 city, village, or township, and shall provide notice of the
22 forwarding to the insured and any mortgagees.

23 (c) For a judgment, the request under subdivision (a) ~~shall~~
24 **must** be sent to the insurer with a copy to the insured, any
25 mortgagees, and the court in which judgment was entered. The copy
26 to the insured must contain the notice required under subdivision
27 (d). On motion of the city, village, or township, the court shall
28 order the withheld amount transmitted to the treasurer of the city,
29 village, or township.

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

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

18 (ii) Seek relief in the circuit court.

19 (3) ~~Upon~~**On** receipt of money and information from an insurer
20 as prescribed in subsections (1) and (2), the local treasurer shall
21 record the information and the date of receipt of the money and
22 shall immediately deposit the money in a trust or escrow account
23 established for the purposes of this section. The account may be
24 interest-bearing. If a mortgage on the insured property is in
25 default, the treasurer of the city, village, or township, ~~upon~~**on**
26 written request from the first mortgagee of the property, shall
27 release to the mortgagee all or any part of the policy proceeds
28 received by the city, village, or township not later than 10 days
29 after receipt of the written request by the mortgagee, to the

1 extent necessary to satisfy any outstanding lien of the mortgagee.

2 (4) Except as provided in subsection (7), money deposited in
3 an account under subsection (3) ~~shall~~**must** not be commingled with
4 city, village, or township funds. Any interest earned on money
5 placed in a trust or escrow account may be retained by the city,
6 village, or township to defray administrative costs incurred under
7 this section.

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

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

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

23 (c) That the insured has entered into a contract to perform
24 repair, replacement, or removal services for the insured real
25 property and that the insured consents to payment of money directly
26 to the licensed contractor performing the services ~~upon~~**on**
27 completion. Money released under this subdivision may be forwarded
28 only to a licensed contractor performing services on the insured
29 property.

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

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

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

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

21 (7) Except as otherwise provided in this subsection, if, with
22 respect to a loss, reasonable proof is not received by or shown to
23 an authorized representative of the city, village, or township
24 designated by the governing body of the city, village, or township
25 within 120 days after the policy proceeds portion was received by
26 the treasurer, the city, village, or township shall use the
27 retained proceeds to secure, repair, or demolish the damaged or
28 destroyed structure and clear the insured property so that the
29 structure and property comply with local code requirements and

1 applicable ordinances of the city, village, or township. The city,
2 village, or township shall return to the insured any unused portion
3 of the retained proceeds. The city, village, or township may extend
4 the 120-day time period under this subsection. A city, village, or
5 township may retain and use policy proceeds for **repairing or**
6 demolishing any property if on or before the effective date of the
7 amendatory act that added ~~this sentence~~ **subsection (16) (g)** the
8 authorized representative had not received or been shown reasonable
9 proof within 1 year after the insurer provided notice to the
10 insured under subsection (1). ~~and the insured property has been~~
11 ~~demolished.~~ The insured may file a civil action against the city,
12 village, or township for the return of the policy proceeds. An
13 action filed under this subsection must be filed within 3 years
14 after the insurer provided notice to the insured under subsection
15 (1) or 1 year after the effective date of the amendatory act that
16 added ~~this sentence~~, **subsection (16) (g)**, whichever is later.

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

26 (9) This section applies only to property located in a city,
27 village, or township described in subsection (12) if the city,
28 village, or township under a resolution by its governing body
29 notifies the director in writing that the city, village, or

1 township has established a trust or escrow account to be used as
2 prescribed in this section and intends to uniformly apply this
3 section with respect to all property located within the city,
4 village, or township following written notification to the
5 director. The director shall prepare and distribute a list of all
6 cities, villages, and townships that have elected to apply this
7 section to all insurance companies transacting property insurance
8 in this state.

9 (10) A city, village, or township may apply to be added to the
10 list prepared under subsection (9) by making a written request for
11 addition to the director. When a written request for addition from
12 a city, village, or township has been received by the director, an
13 amended list ~~shall~~**must** be prepared and distributed indicating the
14 addition. The addition is effective on the date specified by the
15 director in the amendment. The director shall notify the city,
16 village, **or** township, and **the** insurance companies, of the effective
17 date of the addition ~~which shall~~**that must** be effective not less
18 than 30 days after receipt of notice by the insurance company. A
19 city, village, or township shall not apply this section to any loss
20 that occurred before the effective date of the addition.

21 (11) A city, village, or township may request to be deleted
22 from the list prepared under subsection (9) or may cease to apply
23 this section for a period of not less than 6 months ~~upon~~**on** not
24 less than 30 days' written notice to the director. After receipt of
25 a request to be deleted from the list, the director shall prepare
26 and distribute an amendment to the list indicating the deletion.
27 The deletion is effective on the date specified by the director in
28 the amendment. The director shall notify the city, village, **or**
29 township, and **the** insurance companies, of the effective date of the

1 deletion ~~which shall~~ **that must** be effective not less than 30 days
2 after receipt of the notice by the insurance company. A city,
3 village, or township shall continue to apply this section to any
4 loss that occurred before the effective date of the deletion,
5 notwithstanding the deletion.

6 (12) This section applies only to insured real property
7 located in cities, villages, and townships that are located in
8 counties with a population of 425,000 or more and to insured real
9 property located in cities, villages, and townships that are
10 located in counties with a population of less than 425,000 if the
11 city, village, or township has a population of 50,000 or more. This
12 section applies to insured real property located in a city,
13 village, or township that has elected to apply this section as
14 provided in subsection (9) or (10) or that has been included in
15 this section as provided in subsection (13).

16 (13) Cities, villages, and townships located in counties with
17 a population of 425,000 or more and cities, villages, and townships
18 that are located in counties with a population of less than 425,000
19 if the city, village, or township has a population of 50,000 or
20 more and that are on the list prepared by the director under
21 section 2845(9) or (10) on October 1, 1998 are automatically
22 included as participants in the procedure established in this
23 section unless the city, village, or township makes a written
24 request to be deleted under subsection (11).

25 (14) The director shall prepare and distribute to all
26 insurance companies transacting property insurance in this state by
27 November 1, 1998 new lists indicating which cities, villages, and
28 townships are subject to this section and which cities, villages,
29 and townships are subject to section 2845.

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

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

7 (b) The insured consents to the payment of money directly to
8 the licensed contractor performing the repair services. Money
9 released under this subdivision may be forwarded only to a licensed
10 contractor performing the repair services on the insured property.

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

15 (16) If the insured and the insurer have agreed on the
16 demolition costs or the debris removal costs as part of the final
17 settlement of the real property insured claim, the insurer shall
18 withhold 1 of the following amounts, whichever is the largest, and
19 shall pay that amount in accordance with this section:

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

21 (b) Until December 31, 2014, 25% of the actual cash value of
22 the insured real property at the time of loss if this amount for
23 residential property does not exceed \$6,000.00 adjusted annually
24 beginning June 1, 1999 in accordance with the ~~consumer price~~
25 ~~index.~~ **Consumer Price Index.**

26 (c) Beginning January 1, 2015 **and before July 1, 2024**, 25% of
27 the actual cash value of the insured real property at the time of
28 the loss if this amount for residential property does not exceed
29 \$12,000.00 adjusted January 1 of each year in accordance with the

1 ~~consumer price index.~~**Consumer Price Index.**

2 (d) Beginning July 1, 2024, 25% of the actual cash value of
3 the insured real property at the time of the loss if this amount
4 for residential property does not exceed \$24,000.00 adjusted July 1
5 of each year in accordance with the Consumer Price Index.

6 (e) ~~(d)~~ Until December 31, 2014, 25% of the final settlement
7 of the insured real property claim if this amount for residential
8 property does not exceed \$6,000.00 adjusted annually beginning June
9 1, 1999 in accordance with the ~~consumer price index.~~**Consumer Price**
10 **Index.**

11 (f) ~~(e)~~ Beginning January 1, 2015 **and before January 1, 2024,**
12 25% of the final settlement of the insured real property claim if
13 this amount for residential property does not exceed \$12,000.00
14 adjusted January 1 of each year in accordance with the ~~consumer~~
15 ~~price index.~~**Consumer Price Index.**

16 (g) Beginning July 1, 2024, 25% of the final settlement of the
17 insured real property claim if this amount for residential property
18 does not exceed \$24,000.00 adjusted July 1 of each year in
19 accordance with the Consumer Price Index.

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

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

26 (19) As used in this section:

27 (a) "~~Consumer price index~~"**Price Index**" means that term as
28 defined in section 2080.

29 (b) "Final settlement" means a determination of the amount due

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

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

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

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

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

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

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