

HOUSE BILL NO. 4331

March 23, 2023, Introduced by Reps. Whitsett, McKinney, Farhat, Price, Edwards, Wilson, Tsernoglou, Brenda Carter, O'Neal, Hope, Roth, Haadsma, Filler, Aragona, Steckloff and Liberati and referred to the Committee on Insurance and Financial Services.

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

1 real property at the time of the loss or 25% of the final
2 settlement, whichever is less. Until December 31, 2014, for
3 residential property, the 25% settlement or judgment withheld ~~shall~~
4 **must** not exceed \$6,000.00 adjusted annually beginning June 1, 1999
5 in accordance with the ~~consumer price index.~~ **Consumer Price Index.**
6 Beginning January 1, 2015 **and before January 1, 2024**, for
7 residential property, the 25% settlement or judgment withheld ~~shall~~
8 **must** not exceed \$12,000.00 adjusted January 1 of each year in
9 accordance with the ~~consumer price index.~~ **Consumer Price Index.**
10 **Beginning January 1, 2024, for residential property, the 25%**
11 **settlement or judgment withheld must not exceed \$20,000.00 adjusted**
12 **January 1 of each year in accordance with the Consumer Price Index.**
13 The director shall notify annually all insurance companies
14 transacting property insurance in this state as to the new adjusted
15 amount. At the time that 25% of the settlement or judgment is
16 withheld, the insurer shall give notice of the withholding to the
17 treasurer of the city, village, or township in which the insured
18 real property is located, to the insured, and to any mortgagee
19 having an existing lien or liens against the insured real property,
20 if the mortgagee is named on the policy. For a judgment, **the**
21 **insurer shall also provide** notice ~~shall also be provided~~ to the
22 court in which judgment was entered. The notice must include all of
23 the following:
24 (a) The identity and address of the insurer.
25 (b) The name and address or forwarding address of each
26 policyholder, including any mortgagee.
27 (c) The location of the insured real property.
28 (d) The date of loss, policy number, and claim number.
29 (e) The amount of money withheld.

1 (f) A statement that the city, village, or township may have
2 the withheld amount paid into a trust or escrow account established
3 for the purposes of this section if within 15 days after the
4 mailing of the notice the city, village, or township states that
5 the money should be withheld to protect the public health and
6 safety; otherwise, the withheld amount ~~shall~~**must** be paid to the
7 insured 15 days after the mailing of the notice.

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

9 (2) For a city, village, or township to escrow the amount
10 withheld by the insurer, and to retain that amount, the following
11 procedure ~~shall~~**must** be used:

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

21 (b) For a settlement, the request under subdivision (a) ~~shall~~
22 **must** be sent to the insurer with a copy to the insured and any
23 mortgagees. The copy to the insured must contain the notice
24 required under subdivision (d). On receipt of the request, the
25 insurer shall forward the withheld amount to the treasurer of the
26 city, village, or township, and shall provide notice of the
27 forwarding to the insured and any mortgagees.

28 (c) For a judgment, the request under subdivision (a) ~~shall~~
29 **must** be sent to the insurer with a copy to the insured, any

1 mortgagees, and the court in which judgment was entered. The copy
2 to the insured must contain the notice required under subdivision
3 (d). On motion of the city, village, or township, the court shall
4 order the withheld amount transmitted to the treasurer of the city,
5 village, or township.

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

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

23 (ii) Seek relief in the circuit court.

24 (3) ~~Upon~~**On** receipt of money and information from an insurer
25 as prescribed in subsections (1) and (2), the local treasurer shall
26 record the information and the date of receipt of the money and
27 shall immediately deposit the money in a trust or escrow account
28 established for the purposes of this section. The account may be
29 interest-bearing. If a mortgage on the insured property is in

1 default, the treasurer of the city, village, or township, ~~upon~~**on**
2 written request from the first mortgagee of the property, shall
3 release to the mortgagee all or any part of the policy proceeds
4 received by the city, village, or township not later than 10 days
5 after receipt of the written request by the mortgagee, to the
6 extent necessary to satisfy any outstanding lien of the mortgagee.

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

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

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

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

28 (c) That the insured has entered into a contract to perform
29 repair, replacement, or removal services for the insured real

1 property and that the insured consents to payment of money directly
2 to the licensed contractor performing the services ~~upon~~**on**
3 completion. Money released under this subdivision may be forwarded
4 only to a licensed contractor performing services on the insured
5 property.

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

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

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

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

26 (7) Except as otherwise provided in this subsection, if, with
27 respect to a loss, reasonable proof is not received by or shown to
28 an authorized representative of the city, village, or township
29 designated by the governing body of the city, village, or township

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

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

1 how the withheld amount should be distributed.

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

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

26 (11) A city, village, or township may request to be deleted
27 from the list prepared under subsection (9) or may cease to apply
28 this section for a period of not less than 6 months ~~upon~~**on** not
29 less than 30 days' written notice to the director. After receipt of

1 a request to be deleted from the list, the director shall prepare
2 and distribute an amendment to the list indicating the deletion.
3 The deletion is effective on the date specified by the director in
4 the amendment. The director shall notify the city, village, **or**
5 township, and **the** insurance companies, of the effective date of the
6 deletion ~~which shall~~ **that must** be effective not less than 30 days
7 after receipt of the notice by the insurance company. A city,
8 village, or township shall continue to apply this section to any
9 loss that occurred before the effective date of the deletion,
10 notwithstanding the deletion.

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

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

1 (14) The director shall prepare and distribute to all
2 insurance companies transacting property insurance in this state by
3 November 1, 1998 new lists indicating which cities, villages, and
4 townships are subject to this section and which cities, villages,
5 and townships are subject to section 2845.

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

8 (a) Within 15 days after agreement on a final settlement
9 between the insured and the insurer, the insured has filed with the
10 insurer evidence of a contract to repair as described in subsection
11 (6).

12 (b) The insured consents to the payment of money directly to
13 the licensed contractor performing the repair services. Money
14 released under this subdivision may be forwarded only to a licensed
15 contractor performing the repair services on the insured property.

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

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

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

26 (b) Until December 31, 2014, 25% of the actual cash value of
27 the insured real property at the time of loss if this amount for
28 residential property does not exceed \$6,000.00 adjusted annually
29 beginning June 1, 1999 in accordance with the ~~consumer price~~

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

2 (c) Beginning January 1, 2015 **and before January 1, 2024**, 25%
3 of the actual cash value of the insured real property at the time
4 of the loss if this amount for residential property does not exceed
5 \$12,000.00 adjusted January 1 of each year in accordance with the
6 ~~consumer price index.~~**Consumer Price Index.**

7 (d) **Beginning January 1, 2024**, 25% of the actual cash value of
8 the insured real property at the time of the loss if this amount
9 for residential property does not exceed \$20,000.00 adjusted
10 **January 1 of each year in accordance with the Consumer Price Index.**

11 (e) ~~(d)~~—Until December 31, 2014, 25% of the final settlement
12 of the insured real property claim if this amount for residential
13 property does not exceed \$6,000.00 adjusted annually beginning June
14 1, 1999 in accordance with the ~~consumer price index.~~**Consumer Price**
15 **Index.**

16 (f) ~~(e)~~—Beginning January 1, 2015 **and before January 1, 2024**,
17 25% of the final settlement of the insured real property claim if
18 this amount for residential property does not exceed \$12,000.00
19 adjusted January 1 of each year in accordance with the ~~consumer~~
20 ~~price index.~~**Consumer Price Index.**

21 (g) **Beginning January 1, 2024**, 25% of the final settlement of
22 the insured real property claim if this amount for residential
23 property does not exceed \$20,000.00 adjusted January 1 of each year
24 in accordance with the Consumer Price Index.

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

27 (18) If an insurer withholds payment under a policy in good
28 faith because of suspected arson, fraud, or other question
29 concerning coverage, this section does not apply until the issue or

1 question is resolved and final settlement is made.

2 (19) As used in this section:

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

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

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

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

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

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

16 (c) "Home insurance" means that term as defined in section
17 2103.

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