

DRAFT 1

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
(MCL 500.100 to 500.8302) by adding chapter 30B.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**CHAPTER 30B**

**INSURANCE POLICYHOLDER BILL OF RIGHTS**

1  
2  
3       **Sec. 3071. This chapter applies to an insurance policy or**  
4 **contract other than a health insurance policy issued by an**  
5 **authorized or unauthorized insurer. This chapter is not exclusive,**  
6 **and other acts not specified in this chapter may also be considered**  
7 **to be a violation of this chapter. This chapter does not relieve an**



DAW

03040'23 Draft 1

1 insurer from its duties and responsibilities contained in other  
2 provisions of this act or in case law. The duties and  
3 responsibilities of an insurer under this chapter are cumulative to  
4 preexisting duties and responsibilities.

5 Sec. 3072. As used in this chapter:

6 (a) "Agent" means a person authorized to represent an insurer  
7 with respect to a claim.

8 (b) "Automobile insurance" means that term as defined in  
9 section 2102.

10 (c) "Bad-faith failure to settle" means an insurer's failure  
11 to settle a claim when, considering all of the circumstances, the  
12 insurer could and should have done so had it acted fairly and  
13 reasonably toward its insured and with due regard for the insured's  
14 interests.

15 (d) "Claimant" means a first-party claimant, a third-party  
16 claimant, or both, and includes the claimant's designated legal  
17 representative and a member of the claimant's immediate family  
18 designated by the claimant. Claimant includes an insured if the  
19 insured is making a first-party claim or otherwise asserting a  
20 right to payment under the insured's insurance policy or insurance  
21 contract.

22 (e) "First-party claimant" means a person asserting a right to  
23 payment under an insurance policy or insurance contract, or from a  
24 person that has obtained permission from a regulatory agency to be  
25 self-insured, arising out of the occurrence of a contingency of  
26 loss covered by the policy or contract.

27 (f) "Insurance policy" or "insurance contract" means a  
28 contract of insurance, indemnity, suretyship, or annuity issued or  
29 proposed or intended for issuance by a person engaged in the



1 business of insurance.

2 (g) "Investigation" means all activities of an insurer  
3 directly or indirectly related to the determination of insurance  
4 coverage and determination of liability under coverages afforded by  
5 an insurance policy or insurance contract.

6 (h) "Third-party claimant" means a person asserting a claim  
7 against a person that is insured under an insurance policy or  
8 insurance contract.

9 Sec. 3073. After a claim is made under an insurance policy  
10 issued by an authorized or unauthorized insurer, the claimant is  
11 entitled to have the claim handled in accordance with this chapter.

12 Sec. 3074. (1) An insurer shall exercise good faith and fair  
13 dealing in the investigation, adjustment, evaluation, and payment  
14 of a claim to which this chapter applies.

15 (2) An insurer shall not do any of the following:

16 (a) Delay payment of a claim, deny payment of a claim, or fail  
17 to pay a claim, unless there is a reasonable basis for and support  
18 in a provision of the policy for the action.

19 (b) Set out with specificity the factual and legal basis for  
20 the action in writing and provide the writing to the claimant not  
21 later than 7 days after the action.

22 (c) After a civil action has been filed regarding the action,  
23 change the factual or legal basis for the action.

24 (d) Abuse its relationship with an insured or use an economic  
25 advantage that puts the insurer in a position of actual or apparent  
26 authority over the insured or gives the insurer power to affect the  
27 insured's interests.

28 (3) An insurer shall give at least equal consideration to the  
29 interests of the policyholder and claimant as it does to its own



1 interests in all aspects of investigating, adjusting, evaluating,  
2 and paying a claim.

3 (4) An insurer shall establish and maintain reasonable written  
4 standards for the prompt investigation, adjustment, evaluation, and  
5 payment of claims.

6 (5) An insurer shall investigate and evaluate a claim and the  
7 materials and evidence related to the claim in an objective manner.

8 (6) An insurer shall give all reasonable benefit of the doubt  
9 to the claimant in the investigation and evaluation of a claim.

10 (7) An ambiguity in an insurance contract or policy must be  
11 construed in favor of the insured.

12 Sec. 3075. (1) An insurer shall provide to a claimant a copy  
13 of all applications for insurance, policies of insurance including  
14 all endorsements and declarations, and all underwriting files  
15 applicable to the policies of insurance on request of the claimant  
16 not later than 7 days after the date of the request.

17 (2) An insurer shall provide to a claimant a copy of all  
18 statements made by the claimant, whether written, recorded, or in  
19 electronic format, not later than 7 days after a request by the  
20 claimant.

21 (3) An insurer shall provide prompt updates on the status of a  
22 claim not later than 7 days after a request by the claimant. An  
23 insurer shall provide, without a request from the claimant, written  
24 status updates to the claimant every 30 days advising of all of the  
25 following:

26 (a) The status of the claim.

27 (b) What additional information, if any, is necessary for the  
28 insurer to make a claims decision.

29 (c) When a claims decision can reasonably be expected to be



1 made.

2 (4) An insurer shall not deny or forfeit a claim for failure  
3 to comply with a policy condition unless the insurer first provides  
4 the claimant with written notice that a policy condition has not  
5 been met and provides the claimant a reasonable period of time, not  
6 less than 30 days, to cure the defect in satisfying the condition.

7 (5) An insurer shall provide reasonable notice for any  
8 examinations under oath taken on a claim and permit attendance of  
9 the claimant's attorney at all examinations under oath.

10 (6) An insurer shall provide a claimant transcripts of all  
11 examinations under oath taken on a claim at any time during the  
12 pendency of the claim. An insurer shall not interfere with the  
13 claimant's efforts to obtain, or prohibit the claimant from  
14 obtaining, at the claimant's expense, a transcript of the testimony  
15 at the examination under oath from the court reporter or other  
16 person who recorded the testimony. An insurer shall not instruct  
17 any court reporter or other person to withhold the transcript from  
18 the claimant if the claimant pays the court reporter's fee for a  
19 copy of the transcript.

20 (7) An insurer shall provide the claimant all documentation  
21 relating to the examination of any scene, artifact, or item not  
22 later than 7 days after receiving a request for this information  
23 from the claimant, if the examination occurred without the claimant  
24 or a representative of the claimant being present at the time of  
25 the examination.

26 (8) An insurer or the insurer's agent, employee, or  
27 representative shall not make a statement to a claimant, either  
28 directly or indirectly, suggesting or implying that the claimant  
29 should, or encouraging the claimant to, not retain, or terminate a



1 contract for services with, legal counsel or other claims  
2 professionals, including, but not limited to, public adjusters.

3 (9) An insurer shall not refuse to grant a request by a  
4 claimant for an extension of time to provide information or  
5 documents or to meet policy conditions, terms, or requirements,  
6 unless the extension of time will result in actual material  
7 prejudice to the insurer.

8 (10) An insurer shall pay a claimant's additional living  
9 expenses under a fire policy and pay business interruption and  
10 extra expenses under a commercial or business policy during the  
11 investigation of a claim under the policy. If an insurer denies a  
12 claim of a policy described in this subsection, the insurer shall  
13 not terminate the payments described in this subsection before 14  
14 days after the insurer notified the claimant of the denial. If an  
15 insurance policy described in this subsection limits coverage based  
16 on the amount of time that has elapsed after the date of the loss,  
17 the time limit must be tolled until after the insurer has granted  
18 the claim for property damage and paid the actual cash value of the  
19 property damage. [Do you want the preceding sentence to also apply  
20 to coverage of "extra expenses"?]

21 (11) If an insurer issues a fire insurance that provides the  
22 replacement cost of damaged property as provided in section 2826 or  
23 2827 or for the replacement cost of personal property, the insurer  
24 shall provide the claimant a reasonable period of time after  
25 payment of the actual cash value of the property without regard to  
26 a time limit set forth in the [fire?] insurance policy for the  
27 repair and replacement of the property.

28 Sec. 3076. (1) An insurer or an adjuster, agent, or other  
29 representative of an insurer shall not misrepresent pertinent facts



1 or fail to fully disclose to a first-party claimant all pertinent  
2 benefits, coverages, coverage limits, or other provisions of an  
3 insurance policy or insurance contract under which the claim is  
4 presented, regardless of the relationship of the claimant to the  
5 policyholder.

6 (2) An insurer shall act in good faith to effectuate a prompt,  
7 fair, and equitable settlement of a claim in which liability has  
8 become reasonably clear.

9 (3) An insurer shall not deny a claim without conducting a  
10 reasonable investigation based on all available information and  
11 after conducting an objective evaluation of the available  
12 information giving the benefit of any doubts and resolving any  
13 disputes in favor of coverage.

14 (4) An insurer shall not deny a claim for failure to provide  
15 written notice of loss or proof of loss within a specified time  
16 limit unless the failure to comply with the time limit materially  
17 prejudices the insurer's rights and unless the insurer has  
18 specified ahead of time the reasonable materials that constitute  
19 proof of loss and has provided adequate time to provide proof.

20 (5) An insurer shall not request that a first-party claimant  
21 sign a release that extends beyond the subject matter that gave  
22 rise to the claim payment unless specifically negotiated by the  
23 claimant.

24 (6) An insurer shall not, in partial settlement of a loss or  
25 claim under a specific coverage, issue a check or draft that  
26 contains language that releases the insurer from its total  
27 liability, liability for additional damages, or liability under  
28 other coverages.

29 Sec. 3077. An insurer's investigation and claim files must be



Legal Division

DAW

03040'23 Draft 1

1 deemed to be prepared in the ordinary course of business and are  
2 subject to production to a claimant after a claim has been denied.  
3 The files must contain all notes and documents pertaining to the  
4 investigation, adjustment, and denial of the claim regardless of an  
5 insurer's designation of what constitutes a claim file, and in such  
6 detail that pertinent events and the dates of the events can be  
7 reconstructed.

8       Sec. 3078. (1) This section applies in an action against an  
9 insurer for bad-faith failure to settle a third-party claim,  
10 whether under statute or common law.

11       (2) In handling a claim, an insurer has a nondelegable duty to  
12 its insured and a claimant to handle the claim in good faith by  
13 complying with subsection (3).

14       (3) In addition to the standards in sections 3073 to 3077,  
15 once an insurer receives actual notice of an event or loss that  
16 could give rise to a covered liability claim, and continuing until  
17 the conclusion of the insurer's duty to defend, the insurer must do  
18 all the following:

19       (a) Assign an insurance adjuster to investigate the claim and  
20 resolve any questions concerning the existence or extent of the  
21 insured's coverage.

22       (b) Advise the insured or claimant of any additional relevant  
23 information that is necessary for the evaluation of whether to  
24 settle a claim within the applicable policy limits.

25       (c) Exercise due diligence and good faith in advising the  
26 insured of any cooperation required to settle the claim, the  
27 purpose of the required cooperation, and the consequences of  
28 refusing to cooperate, and confirming that advice in writing to the  
29 insured.





1 (d) Provide reasonable assistance to the insured or the  
2 insured's representative to comply with the insured's obligations  
3 to cooperate and to satisfy any conditions to payment of a  
4 claimant's settlement offer.

5 (e) On request, provide all communications related to a claim  
6 against the insured to the insured or the insured's representative.

7 (f) Communicate all of the following to an insured or the  
8 insured's representative:

9 (i) The identity of any other person that the insurer has  
10 reason to believe may be liable.

11 (ii) The insurer's evaluation of the claim.

12 (iii) The likelihood and possible extent of an excess judgment.

13 (iv) Steps the insured can take to avoid exposure to an excess  
14 judgment.

15 (v) Any settlement offers, and anything required of the  
16 insured to accept a settlement offer.

17 (vi) The basis for the insurer's rejection or nonacceptance of  
18 any settlement offer.

19 (g) Take all reasonable and available actions to avoid or  
20 minimize excess exposure to the insured. The insurer shall give  
21 fair consideration to any settlement offer that is not unreasonable  
22 under the facts and accept it, if possible, if a reasonably prudent  
23 person, faced with the prospect of paying the total recovery, would  
24 do so.

25 (4) A claim for bad-faith failure to settle a claim or action  
26 may be brought by the insured, a judgment creditor of the insured,  
27 or an assignee of the insured, including, but not limited to, a  
28 bankruptcy trustee, personal representative, heir, survivor,  
29 receiver, or other successor in interest including the party



1 injured by the insured. If an insurer fails to make an offer within  
2 the policy limits when liability is reasonably clear and it is  
3 reasonably clear that damages may exceed the policy limits, the  
4 insurer's liability is not limited to the policy limits.

5 Sec. 3079. (1) A person damaged by an insurer's violation of  
6 this chapter or section 2026(1) may maintain an action against the  
7 insurer and may recover all of the following damages:

8 (a) The unpaid benefits under the policy.

9 (b) Monetary loss or damage to credit reputation experienced  
10 and reasonably probable to be experienced in the future.

11 (c) Emotional distress, humiliation, and anxiety experienced  
12 and reasonably probable to be experienced in the future.

13 (d) Penalty interest of 12% per annum on all first-party  
14 claims that have not been paid within 60 days after the insurer  
15 receives proof of the amount of the claim.

16 (e) Exemplary damages.

17 (f) Punitive damages.

18 (g) A reasonable attorney fee based on whichever of the  
19 following is greater:

20 (i) The amount of time expended by the attorney at a reasonable  
21 hourly rate.

22 (ii) A contingent fee representing 33-1/3% of the amount paid  
23 or owed by the insurer.

24 (h) The legal costs incurred, including expert fees and other  
25 expenses incurred in pursuing payments owed by the insurer.

26 (2) If a person that is entitled to recover under subsection  
27 (1) (d), (g), or (h) is also entitled to recover interest, an  
28 attorney fee, or legal costs under another statutory provision,  
29 including, but not limited to, a provision of this act, because of



1 the insurer's misconduct as described in subsection (1), the  
2 insurer shall pay to the person only whichever of the interest,  
3 attorney fee, or legal costs amount is larger.



Legal Division  
DAW

Final Page

03040'23 Draft 1