

Act No. 228
Public Acts of 2001
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STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001

Introduced by Rep. Sanborn

ENROLLED HOUSE BILL No. 5313

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 regulation over worker's compensation self-insurers; 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 acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 1201, 1202, 1203, 1204, 1204c, 1205, 1206, 1209, 1214, 1224, 1234, 1242, 1243, 1244, 1905, and 3310 (MCL 500.1201, 500.1202, 500.1203, 500.1204, 500.1204c, 500.1205, 500.1206, 500.1209, 500.1214, 500.1224, 500.1234, 500.1242, 500.1243, 500.1244, 500.1905, and 500.3310), section 1201 as amended by 1980 PA 340, sections 1204 and 1214 as amended by 1986 PA 173, section 1204c as amended by 1998 PA 540, section 1206 as amended by 1992 PA 1, section 1209 as amended by 1980 PA 461, section 1224 as amended by 2000 PA 35, section 1234 as amended by 1981 PA 1, section 1243 as added by 1994 PA 409, section 1244 as amended by 1984 PA 7, section 1905 as amended by 1996 PA 548, and section 3310 as amended by 1986 PA 10, and by adding sections 1201a, 1204e, 1206a, 1206b, 1208a, 1208b, 1211, 1211a, 1211b, 1239, 1240, 1246, and 1247.

The People of the State of Michigan enact:

Sec. 1201. As used in this chapter:

(a) “Agent” except as provided in section 1243 means an insurance producer.

(b) “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(c) “Home state” means the District of Columbia or any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

(d) “Insurance” means any of the lines of authority in chapter 6.

(e) “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(f) “License” means a document issued by this state’s commissioner authorizing a person to act as an insurance producer for the qualifications specified in the document. The license itself does not create any actual, apparent, or inherent authority in the holder to represent or commit an insurer.

(g) “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(h) “Limited line credit insurance producer” means a person who sells, solicits, or negotiates 1 or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(i) “Limited lines insurance” means any of the following:

(i) Marine insurance as defined in section 614.

(ii) Credit insurance as described in section 624(1)(e).

(iii) Surety and fidelity insurance as defined in section 628.

(iv) Legal expense insurance as defined in section 618.

(v) Livestock insurance as described in section 624(1)(g).

(vi) Malpractice insurance as described in section 624(1)(h).

(vii) Plate glass insurance as described in section 624(1)(c).

(viii) Any other miscellaneous insurance described in section 624(1)(i).

(ix) Any other line of insurance that the commissioner considers necessary to recognize for the purposes of complying with section 1206a(5).

(j) “Limited lines producer” means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(k) “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(l) “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(m) “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(n) “Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

Sec. 1201a. (1) A person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that qualification in accordance with this chapter.

(2) This chapter does not apply to excess and surplus lines agents and brokers licensed under chapter 19 except as provided in sections 1204e and 1206a.

Sec. 1202. (1) This chapter shall not be construed to require an insurer to obtain an insurance producer license. As used in this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

(2) A license as an insurance producer is not required of any of the following:

(a) An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and meets 1 or more of the following:

(i) The officer's, director's, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance.

(ii) The officer's, director's, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance.

(iii) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

(b) A person who performs and receives no commission for any of the following services:

(i) Securing and furnishing information for the purpose of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance.

(ii) Securing and furnishing information for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans.

(iii) Performing administrative services related to mass marketed property and casualty insurance.

(c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts.

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance.

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media where distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

(f) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than 1 state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(g) A salaried full-time employee who counsels or advises his or her employer concerning the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

Sec. 1203. (1) A person may act as an insurance producer only for a fraternal benefit society authorized to transact insurance in this state without being licensed as an insurance producer if less than 50% of his or her time is devoted to the solicitation and procurement of insurance contracts for the society. A person who in the preceding calendar year solicits or procures life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000.00, or, in case of any other kind of insurance that the society might write, on the persons of more than 25 individuals and who has received a commission or other compensation for the sale of that insurance is conclusively presumed to be devoting 50% of his or her time to the solicitation or procurement of insurance contracts for the society. An insurance producer for a fraternal benefit society authorized to transact insurance in this state before March 1, 2002 may, upon application to the commissioner before March 1, 2003, be licensed as an insurance producer to represent that fraternal benefit society without written examination.

(2) An attorney-in-fact of a reciprocal or of an inter-insurance exchange may act as an insurance producer for the reciprocal or exchange.

Sec. 1204. (1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 1206b.

(2) Within a reasonable time after receipt of a properly completed application, the commissioner shall subject the applicant to a written examination. An applicant shall not be given an examination unless the applicant has completed a program of study registered with the commissioner pursuant to section 1204a. An applicant shall file a certificate of

completion of the registered program of study with the commissioner on a form prescribed by the commissioner indicating that the course of study was completed by the applicant not more than 6 months before the application is received by the commissioner. The commissioner may waive the applicable examination or program of study requirements of this section for a person who applies for a limited license as designated by the commissioner; for a person who has been a licensed insurance producer within the preceding 12 months; for a person who has obtained the chartered property and casualty underwriter designation, the chartered life underwriter designation, certified insurance counselor designation, accredited advisor in insurance designation, or the chartered financial consultant designation; or for a person who has an associate's, bachelor's, or master's degree with a concentration in insurance from an institution approved by the commissioner.

(3) The examination shall test the knowledge of the individual concerning the qualifications for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted as prescribed by the commissioner.

(4) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations under this section and collecting the nonrefundable fee in section 240(1)(h) or (4).

(5) Each individual applying for an examination under this section shall remit a nonrefundable fee as prescribed in section 240(1)(h) or (4).

(6) An individual who fails to appear for the examination required under this section as scheduled or fails to pass the examination shall reapply for an examination and remit all required examination fees and forms to be rescheduled for another examination.

Sec. 1204c. (1) As used in this section:

(a) "Hour" means a period of time of not less than 50 minutes.

(b) "Insurance producer" means a life-health agent or property-casualty agent.

(c) "Life-health agent" means a resident or nonresident individual insurance producer licensed for life, limited life, mortgage redemption, accident and health, or any combination thereof.

(d) "Property-casualty agent" means a resident or nonresident individual insurance producer or solicitor licensed for automobile, fire, multiple lines, any limited or minor property and casualty line, or any combination thereof.

(2) Unless the insurance producer has renewed his or her license pursuant to subsection (4), an insurance producer's hours of study accrued under this section shall be reviewed for license continuance as follows:

(a) If the insurance producer's license number ends in "1" as follows:

(i) If the insurance producer's last name starts with A to L, on January 1, 1995 and on January 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on January 1, 1996 and on January 1 every 2 years thereafter.

(b) If the insurance producer's license number ends in "2" as follows:

(i) If the insurance producer's last name starts with A to L, on February 1, 1995 and on February 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on February 1, 1996 and on February 1 every 2 years thereafter.

(c) If the insurance producer's license number ends in "3" as follows:

(i) If the insurance producer's last name starts with A to L, on March 1, 1995 and on March 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on March 1, 1996 and on March 1 every 2 years thereafter.

(d) If the insurance producer's license number ends in "4" as follows:

(i) If the insurance producer's last name starts with A to L, on June 1, 1995 and on June 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on June 1, 1996 and on June 1 every 2 years thereafter.

(e) If the insurance producer's license number ends in "5" as follows:

(i) If the insurance producer's last name starts with A to L, on July 1, 1995 and on July 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on July 1, 1996 and on July 1 every 2 years thereafter.

(f) If the insurance producer's license number ends in "6" as follows:

(i) If the insurance producer's last name starts with A to L, on August 1, 1995 and on August 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on August 1, 1996 and on August 1 every 2 years thereafter.

(g) If the insurance producer's license number ends in "7" as follows:

(i) If the insurance producer's last name starts with A to L, on September 1, 1995 and on September 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on September 1, 1996 and on September 1 every 2 years thereafter.

(h) If the insurance producer's license number ends in "8" as follows:

(i) If the insurance producer's last name starts with A to L, on October 1, 1995 and on October 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on October 1, 1996 and on October 1 every 2 years thereafter.

(i) If the insurance producer's license number ends in "9" as follows:

(i) If the insurance producer's last name starts with A to L, on November 1, 1995 and on November 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on November 1, 1996 and on November 1 every 2 years thereafter.

(j) If the insurance producer's license number ends in "0" as follows:

(i) If the insurance producer's last name starts with A to L, on December 1, 1995 and on December 1 every 2 years thereafter.

(ii) If the insurance producer's last name starts with M to Z, on December 1, 1996 and on December 1 every 2 years thereafter.

(3) If an insurance producer's hours of study would be reviewed according to the schedule under subsection (2) within 23 months after issuance of the initial license, the hours shall not be reviewed on the first scheduled date following the issuance of the initial license and shall be reviewed on the next scheduled review date following the first review date according to the schedule under subsection (2), unless the insurance producer has renewed his or her license pursuant to subsection (4).

(4) Except as provided in subsections (11) to (14), before the review date of each applicable 2-year period provided for under subsection (2) or (3), an insurance producer wishing to renew his or her license shall renew his or her license by attending or instructing not less than 30 hours of continuing education classes approved by the commissioner or 30 hours of home study if evidenced by successful completion of course work approved by the commissioner. Of the 30 hours of continuing education required, a life-health agent shall attend or instruct not less than 15 hours in a program of study approved for life-health agents and a property-casualty agent shall attend or instruct not less than 15 hours in a program of study approved for property-casualty agents.

(5) After reviewing recommendations made by the council under section 1204b, the commissioner shall approve a program of study if the commissioner determines that the program increases knowledge of insurance and related subjects as follows:

(a) For a life-health agent program of study, the program offers instruction in 1 or more of the following:

(i) The fundamental considerations and major principles of life insurance.

(ii) The fundamental considerations and major principles of health insurance.

(iii) Estate planning and taxation as related to insurance.

(iv) Industry and legal standards concerning ethics in insurance.

(v) Legal, legislative, and regulatory matters concerning insurance, the insurance code, and the insurance industry.

(vi) Principal provisions used in life insurance contracts, health insurance contracts, or annuity contracts and differences in types of coverages.

(vii) Accounting and actuarial considerations in insurance.

(viii) Principles of agency management, excluding telemarketing or other marketing instruction.

(b) For a property-casualty agent program of study, the program offers instructions in 1 or more of the following:

(i) The fundamental considerations and major principles of property insurance.

(ii) The fundamental considerations and major principles of casualty insurance.

(iii) Basic principles of risk management.

(iv) Industry and legal standards concerning ethics in insurance.

(v) Legal, legislative, and regulatory matters concerning insurance, the insurance code, and the insurance industry.

(vi) Principal provisions used in casualty insurance contracts, no-fault insurance contracts, or property insurance contracts and differences in types of coverages.

(vii) Accounting and actuarial considerations in insurance.

(viii) Principles of agency management, excluding telemarketing or other marketing instruction.

(6) A provider of a program of study for insurance producers applying for approval or reapproval from the commissioner under this section shall file, on a form provided by the commissioner, a description of the course of study including a description of the subject matter and course materials, hours of instruction, location of classroom, qualifications of instructors, and maximum student-instructor ratio and shall pay a nonrefundable \$25.00 filing fee. Any material change in a program of study shall require reapproval by the commissioner. If the information in an application for approval or reapproval is insufficient for the commissioner to determine whether the program of study meets the requirements under subsection (5), the commissioner shall give written notice to the provider, within 15 days after the provider's filing of the application for approval or reapproval, of the additional information needed by the commissioner. An application for approval or reapproval shall be considered approved unless disapproved by the commissioner within 90 days after the application for approval or reapproval is filed, or within 90 days after the receipt of additional information if the information was requested by the commissioner, whichever is later.

(7) A provider of a program of study approved by the commissioner under this section shall pay a provider authorization fee of \$500.00 for the first year the provider's program of study was approved under this section and a \$100.00 provider renewal fee for each year thereafter that the provider offers the approved program of study.

(8) A person dissatisfied with an approved program of study may petition the commissioner for a hearing on the program or the commissioner on his or her own initiative may request a hearing on a program of study. If the commissioner finds the petition to have been submitted in good faith, that the petition if true shows the program of study does not satisfy the criteria in subsection (5), or that the petition otherwise justifies holding a hearing, the commissioner shall hold a hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, within 30 days after receipt of the petition and upon not less than 10 days' written notice to the petitioner and the provider of the program of study. If the commissioner requests a hearing on a program of study on his or her own initiative, the commissioner shall hold a hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, upon not less than 10 days' written notice to the provider of the program of study.

(9) If after a hearing under subsection (8) the commissioner finds that the program of study does not satisfy the requirements under subsection (5), the commissioner shall state, in a written order mailed first-class to the petitioner and provider of the program of study, his or her findings and the date upon which the commissioner will revoke approval of the program of study which date shall be within a reasonable time of the issuance of the order.

(10) A certificate of attendance or instruction of an approved program of study or a certificate of successful completion of course work shall be filed as directed by the commissioner on a form prescribed by the commissioner and shall indicate the name and number of the course of study, the number of hours, dates of completion, and the name and number of schools attended or taught by the insurance producer or the evidence of successful completion of course work. A representative of the approved program of study shall file the form and a fee of \$1.00 per hour for course credit for each insurance producer license renewal as directed by the commissioner within 30 days after the insurance producer completes the program. A copy of the form shall also be mailed first-class to the insurance producer who attended, taught, or successfully completed the program of study. The commissioner may enter into contracts to provide for the administrative functions of this subsection.

(11) The commissioner may waive the continuing education requirements of this section for an insurance producer if the commissioner determines that enforcement of the requirements would cause a severe hardship. The commissioner shall waive the continuing education requirements of this section for an insurance producer who is licensed to write only travel or baggage insurance policies and whose employment is for a purpose other than the sale of those policies.

(12) The commissioner may enter into reciprocal continuing education agreements with insurance commissioners from other states.

(13) If an insurance producer has not met his or her continuing education requirements by the expiration date of his or her license, the insurance producer shall have a 90-day grace period in which to meet the continuing education requirements of this section. During the 90-day grace period, the insurance producer shall not solicit or sell new policies of insurance, bind coverage, or otherwise act as an insurance producer except that the insurance producer may continue to service policies previously sold and may receive commissions on policies previously sold. If the insurance producer has not met his or her continuing education requirements by the expiration of the 90-day grace period, the insurance producer's license shall be canceled. An insurance producer whose license has been canceled under this section may reapply for license to act as an insurance producer under section 1204, except that the program of study requirements under section 1204 shall not be waived.

(14) An insurance producer who has sold his or her insurance business and who has not met the continuing education requirements of this section shall not solicit or sell new policies of insurance, bind coverage, or otherwise act as an

insurance producer except that the insurance producer may continue to service policies previously sold and may receive commissions on policies previously sold as well as receive partial commissions on policies of insurance sold by a purchasing insurance producer. An insurance producer who is in the process of selling his or her insurance business and who has not met the continuing education requirements of this section shall not solicit or sell new policies of insurance, bind coverage, or otherwise act as an insurance producer except that the insurance producer may continue to service policies previously sold and may receive commissions on policies previously sold as well as receive partial commissions on policies of insurance sold by a purchasing insurance producer, for a period not to exceed 12 months after the selling insurance producer's license review date under subsection (2). An insurance producer whose license has been canceled and who wishes to resume soliciting or selling new policies of insurance, bind coverage, or otherwise act as an insurance producer and who has not met the continuing education requirements within the immediately preceding 2-year period may reapply for license to act as an insurance producer under section 1204.

Sec. 1204e. (1) The commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements under section 1206a, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(2) A nonresident insurance producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

- (a) Is at least 18 years of age.
- (b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.
- (c) As required under section 1204(2), has completed a prelicensing course of study for the qualifications for which the person has applied.
- (d) Has paid the fees applicable to the individual under section 240.
- (e) Has successfully passed the examination required for each qualification for which the person has applied.

(2) A business entity acting as an insurance producer shall obtain an insurance producer license. A business entity applying for an insurance producer license shall file with the commissioner the uniform business entity application required by the commissioner. An application for an insurance producer license under this subsection shall not be approved unless the commissioner finds all of the following:

- (a) The business entity has paid the fees under section 240(1)(d).
- (b) The business entity has designated an individual licensed producer responsible for the business entity's compliance with this state's insurance laws, rules, and regulations.
- (c) The business entity has not committed any act that is grounds for denial, suspension, or revocation under section 1239.

(3) The commissioner may require the production of any documents reasonably necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

Sec. 1206. (1) Unless denied licensure under section 1239, persons who have met the requirements of sections 1204 and 1205 shall be issued an insurance producer license. An individual insurance producer may receive a license for a qualification in 1 or more of the following lines of insurance:

- (a) Life—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
- (b) Accident and health or sickness—insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income.
- (c) Property—insurance coverage for the direct or consequential loss or damage to property of every kind.
- (d) Casualty—insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.

(e) Variable life and variable annuity products—insurance coverage provided under variable life insurance contracts and variable annuities.

(f) Personal lines—property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(g) Credit—limited line credit insurance.

(h) Any other line of insurance permitted under state laws or rules.

(2) An insurance producer license shall remain in effect unless revoked or suspended as long as education requirements for resident individual producers are met by the due date.

(3) An individual insurance producer who allows his or her license to lapse for a reason other than not meeting the requirements of section 1204c may reinstate the same license without the necessity of passing a written examination if he or she does so not later than 12 months after the date of the lapse.

(4) A license under subsection (1) shall contain the licensee's name, address, personal identification number, and the date of issuance, the qualifications, the expiration date, and any other information the commissioner considers necessary.

(5) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within 30 days of the change.

(6) The commissioner may contract with nongovernmental entities to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner considers appropriate.

Sec. 1206a. (1) Unless denied licensure under section 1239, a nonresident person shall receive a nonresident insurance producer license if he or she meets all of the following:

(a) Is currently licensed as a resident and in good standing in his or her home state.

(b) Has submitted the proper request for licensure and has paid the applicable fees required by section 240.

(c) Has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state or a completed uniform application as required by the commissioner.

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The commissioner may verify the insurance producer's licensing status through the producer database maintained by the national association of insurance commissioners or its affiliates or subsidiaries.

(3) A nonresident insurance producer who moves from 1 state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence. No fee or license application is required.

(4) Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in his or her home state shall receive a nonresident surplus lines insurance producer license pursuant to subsection (1). Except as otherwise provided in subsection (1), this section does not otherwise amend or supersede any provision of chapter 19.

(5) Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in his or her home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (1), granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited lines insurance is any authority granted by the home state that restricts the authority of the license to less than the total authority prescribed in the associated major lines under section 1206(1)(a) to (f).

Sec. 1206b. (1) An individual who applies for an insurance producer license in this state who was previously licensed for the same qualifications in another state is not required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 90 days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the national association of insurance commissioners, its affiliates, or its subsidiaries, indicate that the producer is or was licensed in good standing for the qualification requested.

(2) A person licensed as an insurance producer in another state who moves to this state shall apply within 90 days after establishing legal residence to become a resident licensee pursuant to section 1205. Prelicensing education or examination is not required of that person to obtain any qualification previously held in the prior state except where the commissioner determines otherwise by rule.

Sec. 1208a. (1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment for the qualifications held by that insurance producer within 15 days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time not to exceed 30 days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within 5 days of that determination.

(4) An insurer shall pay an appointment fee and a renewal appointment fee as provided under section 240(1)(c) for each insurance producer appointed or renewed by the insurer.

Sec. 1208b. (1) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner using a format prescribed by the commissioner of the termination within 30 days following the effective date of the termination if the reason for termination is 1 of the reasons listed in section 1239 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities listed in section 1239. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not listed in section 1239 shall notify the commissioner using a format prescribed by the commissioner of the termination within 30 days following the effective date of the termination. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(3) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (1) had the insurer then known of its existence.

(4) Not later than 15 days after making the notification required by subsection (1), (2), or (3), the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in section 1239, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier. Within 30 days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under section 1246.

(5) In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies is not subject to civil liability for making this information available, and a civil cause of action of any nature shall not arise against these entities or their respective representatives or employees, as a result of reporting or providing any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection (1) was reported to the commissioner, provided that the propriety of any termination for cause under subsection (1) is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship. In any action brought against a person that may have immunity under this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that the immunity permitted under this subsection does not apply because the person making the statement or providing the information did so with actual malice. This subsection does not abrogate or modify any existing statutory or common law privileges or immunities.

Sec. 1209. (1) If an insurance producer's authority to represent an insurer is terminated, the responsibility of an insurance producer having property rights in the renewal shall continue until the existing policies of insurance are canceled, replaced, or have expired. The insurance producer's authority during the period following notice of termination shall be governed by the written agreement between the insurance producer and the insurer. An insurer shall not cancel or refuse to renew the policy of an insured because of the termination of an insurance producer's contract. If the written agreement does not cover the insurance producer's authority during this period, the insurance producer may continue to represent the insurer in servicing existing policies, but the insurance producer shall not bind

a new risk, renew a policy, nor increase the obligation of the insurer under the policy without the approval of the insurer. This subsection does not apply to a life insurer, an insurance producer of a life insurer, an insurance producer who is an employee of an insurer, or to an insurance producer who by contractual agreement represents only 1 insurer or group of affiliated insurers, if the property rights in the renewal are owned by the insurer or group of affiliated insurers and the alteration of the insurance producer's contract does not result in the cancellation or nonrenewal of any insurance policy.

(2) As a condition of maintaining its authority to transact insurance in this state, an insurer transacting automobile insurance or home insurance in this state shall not cancel an insurance producer's contract or otherwise terminate an insurance producer's authority to represent the insurer with respect to automobile insurance or home insurance, except for 1 or more of the following reasons:

- (a) Malfeasance.
- (b) Breach of fiduciary duty or trust.
- (c) A violation of this act.
- (d) Failure to perform as provided by the contract between the parties.

(e) Submission of less than 25 applications for home insurance and automobile insurance within the immediately preceding 12-month period.

(3) Subsection (2) shall not be construed as permitting a termination of an insurance producer's authority based primarily upon any of the following:

(a) The geographic location of the insurance producer's home insurance or automobile insurance business.

(b) The actual or expected loss experience of the insurance producer's automobile or home insurance business, related in whole or in part to the geographical location of that business.

(c) The performance of the insurance producer's obligations under chapter 21.

(4) Subsection (2) and the written notice requirement under section 1208b(4) do not apply with respect to an insurance producer who is an employee of an insurer or to an insurance producer who by contractual agreement represents only 1 insurer or group of affiliated insurers, if the property rights in the renewal are owned by the insurer or group of affiliated insurers and the cancellation or termination of the insurance producer's contract does not result in the cancellation or nonrenewal of any home or automobile insurance policy.

(5) As used in this section, "automobile insurance" and "home insurance" mean those terms as defined in chapter 21.

Sec. 1211. A natural person may solicit applications for insurance and collect premiums on behalf of a licensed insurance producer resident in this state if he or she is so authorized to act by a written contract with the insurance producer, and the contract specifies the extent of his or her authority to act, he or she is licensed to act as a solicitor in accordance with this chapter, and the insurance producer has notified the commissioner of the contract.

Sec. 1211a. An insurance producer doing business under any name other than the producer's legal name shall notify the commissioner prior to using the assumed name.

Sec. 1211b. (1) The commissioner may issue a temporary insurance producer license for a period not to exceed 180 days without requiring an examination if the commissioner considers that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business.

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

(c) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America.

(d) In any other circumstance where the commissioner considers that the public interest will best be served by the issuance of this license.

(2) The commissioner may by order limit the authority of any temporary licensee if he or she considers it necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public is endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

Sec. 1214. (1) An application for a license to act as a solicitor shall be made to the commissioner and shall be accompanied by a notice of appointment from the sponsoring licensed insurance producer. The application and the notice of appointment shall be on forms prescribed by the commissioner.

(2) Within a reasonable time after receipt of a properly completed application and notice of appointment forms, the commissioner shall subject the applicant to a written examination. The examination shall be given only after the applicant has completed a program of study registered with the commissioner as provided in section 1204a. A certificate of completion of the registered program of study shall be filed with the commissioner on a form prescribed by the commissioner and shall indicate that the course of study was completed by the applicant not more than 6 months before the application is received by the commissioner. An applicant who has failed to pass the examination may take subsequent examinations as determined by rules promulgated by the commissioner. The commissioner may waive the examination or program of study requirements of this section for a person who applies for a limited lines license as designated by the commissioner or for a person who has been licensed as an insurance producer or solicitor within the preceding 12 months. The commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations that are relevant to the applicant's qualifications as a solicitor, and any other matter the commissioner considers necessary or advisable to determine compliance with this chapter, or for protection of the public. The commissioner shall make a decision on the application within 60 days after the applicant passes the examination or within 60 days after receipt of a properly completed application and notice of appointment forms.

(3) After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant meets all of the following:

(a) Is authorized by written contract to act on behalf of a licensed insurance producer.

(b) Possesses reasonable understanding of the provisions, terms, and conditions of the insurance the applicant will be licensed to solicit.

(c) Possesses reasonable understanding of the insurance laws of this state.

(d) Intends in good faith to act as a solicitor.

(e) Is honest and trustworthy.

(f) Possesses a good business reputation.

(g) Possesses good moral character to act as a solicitor.

(4) The commissioner may require an applicant or a licensed solicitor to disclose fully the identity of his or her employers, partners, and employees, may propound reasonable interrogatories, and may refuse to issue or to continue a license if the commissioner is satisfied that any employer, partner, or employee who can materially influence the applicant or the solicitor is not a fit and proper person under the standards of this chapter and that the action reasonably is necessary to protect the public.

(5) An applicant may act on behalf of the applicant's sponsoring insurance producer after receipt of a license from the commissioner.

(6) The license shall set forth the name of the solicitor and the lines of insurance permitted by the license. A person who is licensed to act as a solicitor for casualty insurance is permitted to act as a solicitor for legal expense insurance without obtaining additional authorization or licensure from the commissioner.

(7) The license shall continue in effect until suspended or revoked by the commissioner or voluntarily surrendered by the licensee. The commissioner shall demand that the licensee surrender the license when the commissioner's records indicate that the licensee is without authority from any insurance producer to act as a solicitor.

(8) The commissioner may reexamine a licensed solicitor at any time upon written notice with stated reasons.

Sec. 1224. (1) An application for a license to act as an adjuster shall be made to the commissioner on forms prescribed by the commissioner.

(2) Within a reasonable time after receipt of a properly completed application form, the commissioner may subject the applicant to a written examination, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter that the commissioner considers necessary or advisable to determine compliance with this chapter, or for the protection of the public. The commissioner may waive the examination requirements of this subsection for a person who has been licensed as an adjuster within the preceding 12 months. The commissioner shall make a decision on the application within 60 days after receipt of a properly completed application form.

(3) After examination, investigation, and interrogatories, the commissioner shall issue a license to an applicant if the commissioner determines that the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance with which the applicant will deal, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an adjuster, possesses a good business reputation, and possesses good moral character to act as an adjuster. Persons currently licensed and new licenses issued are subject to any additional

restrictions under which a resident of this state would be licensed in the jurisdiction in which the applicant resides. Any such restriction shall be imposed by the commissioner upon the date set for payment of the license fee. The commissioner shall not issue a new license or accept an annual license fee continuing a current license to either of the following:

(a) A person residing in a state that denies a comparable license to a resident of this state solely because of residency.

(b) A person who is employed either directly or indirectly by an adjuster that is a resident of a state, or by an adjuster's business that has a majority of shareholders, members, officers, directors, or owners that are residents of a state, that denies a comparable license to a resident of this state solely because of residency. An affidavit from an applicant establishing compliance with this subdivision may be relied on by the commissioner to show compliance with this subdivision.

(4) The commissioner shall not issue a license to act as an adjuster to a person who is employed by, owns stock in, is an officer or director of, or in any other manner is connected with, a fire repair contractor.

Sec. 1234. (1) An application for a license to act as an insurance counselor shall be made to the commissioner on forms prescribed by the commissioner.

(2) Within a reasonable time after receipt of a properly completed application form, the commissioner shall subject the applicant to a written examination, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter that the commissioner considers necessary or advisable to determine compliance with this chapter, or for the protection of the public. The commissioner may waive the examination requirements of this subsection for a person who has been licensed as an insurance counselor within the preceding 12 months. The commissioner shall make a decision on the application within 60 days after receipt of a properly completed application form.

(3) After examination, investigation, and interrogatories, the commissioner shall issue a license to an applicant if the commissioner determines that the applicant possesses reasonable understanding of the provisions, terms, and conditions of the insurance concerning that the applicant will counsel, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an insurance counselor, possesses a good business reputation, and possesses good moral character to act as an insurance counselor.

Sec. 1239. (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(f) Having been convicted of a felony.

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

(i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(k) Improperly using notes or any other reference material to complete an examination for an insurance license.

(l) Knowingly accepting insurance business from an individual who is not licensed.

(m) Failing to comply with an administrative or court order imposing a child support obligation.

(n) Failing to pay single business tax or comply with any administrative or court order directing payment of single business tax.

(2) Before the commissioner denies an application for a license, the commissioner shall notify in writing the applicant or licensee of the denial and of the reason for the denial. Not later than 30 days after this written denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. A hearing under this subsection shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil fine under section 1244.

(5) In addition to the penalties under this section, the commissioner may enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.

Sec. 1240. (1) An insurer or insurance producer shall not pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

(2) A person shall not accept a commission, service fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.

(4) An insurer or insurance producer may pay or assign commissions, service fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would violate section 2024.

Sec. 1242. (1) The commissioner shall refuse to grant a license to act as a solicitor, an insurance counselor, or an adjuster to an applicant who fails to meet the requirements of this chapter. Notice of the refusal shall be in writing and shall set forth the basis for the refusal. If the applicant submits a written request within 30 days after mailing of the notice of refusal, the commissioner shall promptly conduct a hearing in which the applicant shall be given an opportunity to show compliance with the requirements of this chapter.

(2) The commissioner, after notice and opportunity for a hearing, may suspend or revoke the license of a solicitor, insurance counselor, or adjuster who fails to maintain the standards required for initial licensing or who violates any provision of this act.

(3) After notice and opportunity for a hearing, the commissioner may refuse to grant or renew a license to act as a solicitor, adjuster, or insurance counselor if he or she determines by a preponderance of the evidence, that it is probable that the business or primary occupation of the applicant will give rise to coercion, indirect rebating of commissions, or other practices in the sale of insurance that are prohibited by law.

(4) Without prior hearing, the commissioner may order summary suspension of a license if he or she finds that protection of the public requires emergency action and incorporates this finding in his or her order. The suspension shall be effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later. If requested, the commissioner shall conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the summary suspension unless the person whose license is suspended requests a later date. At the hearing, the commissioner shall determine if the suspension should be continued or if the suspension should be withdrawn, and, if proper notice is given, may determine if the license should be revoked. The commissioner shall announce his or her decision within 30 days after conclusion of the hearing. The suspension shall continue until the decision is announced.

(5) The commissioner, or his or her designated deputy, may issue subpoenas to require the attendance and testimony of witnesses and the production of documents necessary to the conduct of the hearing and may designate an office of financial and insurance services employee to make service. The subpoenas issued by the commissioner, or his or her designated deputy, may be enforced upon petition to the circuit court of Ingham county to show cause why a contempt order should not be issued, as provided by law.

Sec. 1243. (1) As used in this section:

(a) "Act" means the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(b) "Affiliate" means a person that directly or indirectly or through 1 or more intermediaries, controls or is controlled by another or is under common control with another. An affiliate includes a person who for any 12-month period makes a monthly average of 10 or more referrals to lenders for the purpose of procuring a loan and the person receives consideration for making those referrals.

(c) "Agent" means an individual licensed as an insurance producer, broker, solicitor, or insurance counselor under this act.

(d) "Agency" means an insurance agency licensed under this act.

(e) "Control" means control as defined in section 115.

(f) "Insurance product" means any product or service regulated, in whole or in part, by the commissioner.

(g) "Lender" means a person or entity who directly or indirectly, in the ordinary course of business regularly makes, arranges, offers to make, or purchases and services a loan as defined by subdivision (h). A lender includes a mortgage broker. If a person purchases an interest in but does not service a loan, that person is not a lender under this section for the purposes of that loan.

(h) "Loan" means an agreement to lend money or to finance goods or services. Loan does not include any of the following:

(i) The financing of insurance premiums.

(ii) A loan from the cash value of an insurance policy.

(iii) A home improvement charge agreement or a home improvement installment contract made under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(iv) A retail installment contract of \$10,000.00 or less or a retail charge agreement made under the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873.

(i) "Loan representative" means an employee or representative of a lender that deals directly with loan applicants in accepting loan applications or approving or closing a loan.

(j) "Person" means an individual, corporation, partnership, association, or any other legal entity.

(k) "Required insurance" means any insurance product that a borrower is required to obtain as a condition of closing a loan.

(2) The commissioner shall issue an insurance agency license to an affiliate of a lender or an agent license to an individual who is an employee of the affiliate if the commissioner determines that the affiliate or employee has met the prerequisites for licensure under this act and that the affiliate and the lender will conduct the sale of insurance in compliance with this section. If a lender acquires ownership in or becomes affiliated with an agency with an existing license under this act, an application for a new license is not required. The commissioner may issue an insurance agency or agent license directly to a lender or an employee of the lender who is not an employee of an affiliated agency if the commissioner determines that the lender or employee has met the prerequisites for licensure and will conduct the sale of insurance in substantial compliance with this section.

(3) This section applies to all of the following:

(a) A lender that has been affiliated with a licensed agency or has employed a licensed agent before March 30, 1995 and that affiliation or employment continues or is renewed on and after March 30, 1995.

(b) A lender, affiliate, or employee of a lender that has been licensed as an agency or agent before March 30, 1995 and maintains that licensure on and after March 30, 1995, to the extent that the provisions of this section apply.

(c) A person affiliated with a lender that receives an agency license or an individual employed by the lender who receives an agent license.

(d) A lender that is licensed as an agency, to the extent that the provisions of this section apply.

(e) A lender that acquires ownership in an agency or otherwise becomes affiliated with a licensed insurance agency.

(f) A lender that employs a licensed insurance agent.

(4) A lender, an agency affiliated with a lender, or an agent employed by a lender may be licensed to sell any insurance product.

(5) A lender may own an insurance agency in whole or in part and shall provide notice to the commissioner and the commissioner of the financial institutions bureau of any acquisition, in whole or in part, of an insurance agency.

(6) Applications for insurance agency or agent licenses under this act shall be promptly reviewed by the commissioner. An application shall be considered approved by the commissioner if the commissioner has not denied the application for good cause within 60 days after the date the application is filed. The commissioner shall issue the insurance agency or agent license within 10 days of approval.

(7) Interrogatories propounded by the commissioner regarding the proposed business conduct between a lender and an affiliated insurance agency shall be limited to questions pertaining to compliance with this section.

(8) There is no limit on the percentage of insurance business sold to customers of a lender through an insurance agency affiliated with the lender or agent employed by the lender if sold in compliance with this act.

(9) A lender shall not do either of the following:

(a) Require a borrower to purchase any policy or contract of insurance through a particular agency or agent or with a particular insurer or fix or vary the terms or conditions of a loan as an inducement to purchase insurance. This subdivision does not prohibit a lender from requiring a borrower to purchase a required insurance policy that conforms to the requirements, if any, of the loan.

(b) Except as otherwise provided by law, require a person to purchase any insurance product from the lender or an affiliate as a condition of making a loan.

(10) The board of directors of an insurance agency affiliated with a lender shall act separately from the board of directors of the lender. A director of a lender may also serve as a director of an affiliated agency, except that a majority of directors of the affiliated agency shall not be directors of the lender. This subsection does not apply to a lender that is also the licensed agency.

(11) An officer or employee of a lender may be an officer or employee of an affiliated agency. However, except as otherwise provided by this section, for purposes of soliciting or selling insurance products, such officer or employee shall not use or disclose information that the lender may not disclose to the affiliated agency.

(12) An officer or employee of a lender shall not directly or indirectly delay or impede the completion of a loan transaction for the purpose of influencing a consumer's selection or purchase of insurance products from an agent, solicitor, agency, or insurer that is not affiliated with the lender.

(13) A loan representative may not act as an agent or solicitor for the sale or provision of required insurance related to an application, approval, commitment, or closing of a loan if the loan representative participated in the application, approval, commitment, or closing of that loan.

(14) A lender or its employees shall not knowingly initiate a discussion concerning the availability of insurance products from the lender or an affiliated agency to or with a person in response to an inquiry about credit made by the person or to a loan applicant prior to the loan applicant being notified of the disposition of a loan application. This subsection does not prohibit a lender or its employees from discussing with the person making the inquiry or loan applicant that certain required insurance must be maintained as a condition of obtaining a loan.

(15) If asked about the availability of insurance products by a person inquiring about a loan or a loan applicant, the lender may indicate that insurance products are available from the lender or an affiliated agency and may provide instruction about how to obtain further information concerning the agency or agent and available insurance products.

(16) If insurance is required as a condition of obtaining a loan, and if the required insurance is available through the lender or an affiliate of the lender, the lender shall disclose to the applicant all of the following:

(a) That the lender will not require the borrower to purchase any policy or contract of insurance through a particular agent, agency, or with a particular insurer.

(b) Except as otherwise provided by law, that the lender will not require the borrower to purchase any insurance product from the lender or an affiliate as a condition of the loan.

(c) That the purchase of any insurance product from the lender or its affiliated agency is optional and will not in any way affect current or future credit decisions.

(17) The disclosure required by subsection (16) shall be made to a loan applicant at the time the loan applicant inquires about the availability of required insurance or at such time as the lender advises the loan applicant that the required insurance is available through the lender or an affiliate of the lender, whichever is earlier. The disclosure shall be confirmed in writing, dated, and signed by the applicant no later than the closing of the loan.

(18) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

(19) The offering of a loan by a lender and the sale or provision of insurance products by the lender or an affiliated agency shall be made in different areas that are clearly and conspicuously signed and separated so as to preclude confusion on the part of customers. However, in the limited situation where physical or employee considerations prevent lending and the sale of insurance products from being conducted in different areas, the lender shall take appropriate measures to minimize customer confusion. In unique circumstances to accommodate the needs of or for the convenience of particular customers, this subsection does not prohibit on an irregular basis, taking applications for loans, extensions of loans, and the sale of insurance products at the same location.

(20) Signs and other informational material concerning the availability of insurance products from the lender or an affiliated agency shall not be displayed in an area when loan applications are being taken and when loans are being closed in that area.

(21) A lender, its employees, or its representatives may advise the general public and its customers, through mailings or otherwise, that insurance products are available from the lender or affiliated agency and may advise the general public and its customers how to obtain more information about those insurance products, so long as:

(a) The information is not provided because of a submission of any loan application until after the loan applicant has been notified of the disposition of the application, or in response to any inquiry about the availability, terms, and conditions of any loan.

(b) The timing of the communications is not based on the maturity or expiration date of a policy of required insurance or an insurance policy in the lender's possession.

(c) No information concerning customers that is prohibited for use in the solicitation or sale of insurance products under subsections (23) and (25) is used to determine which customers should receive the information.

(22) A lender may provide the names, addresses, telephone numbers, and information related to account relationships with customers to an affiliated agency or an agent employed by the lender so long as the lender does not disclose account balances or maturity dates of certificates of deposit and does not disclose account relationships to an affiliated agency or an agent employed by the lender in a manner that account balances or maturity dates of certificates of deposit may be determined by the agency or agent. This section does not prohibit disclosure of minimum required balances, terms, or conditions of an account.

(23) A lender shall not directly or indirectly provide to an affiliated agency or an agent employed by the lender the following information if obtained from an insurance policy or preauthorized payment agreement that is in the possession of the lender:

- (a) The expiration date of the insurance policy.
- (b) The name of the insurance company that issued the policy.
- (c) The amount of the premium.
- (d) Scheduled coverages and policy limits contained in the policy.
- (e) Any deductibles contained in the policy.
- (f) Any information contained on the declaration sheet of the policy.
- (g) Cash or surrender values.

(24) A lender may disclose to an affiliated agency or an agent employed by the lender information obtained from a policy of required insurance that the borrower has failed to keep in force, if the information is necessary to obtain the required insurance through the affiliated agency, employee, or elsewhere. If a customer has failed to keep required insurance in force, this section does not prohibit a lender from obtaining the required insurance in accordance with the terms of the loan or from obtaining insurance limited to repayment of the outstanding balance due in the event of loss or damage to property used as collateral on the loan.

(25) A lender shall not directly or indirectly provide to an affiliated agency or agent employed by the lender the following customer documents or information:

(a) Loan applications, except that a lender may provide to an affiliated agency or agent employed by the lender the name, address, telephone number, and account relationship concerning a loan applicant after the applicant has been notified of the disposition of the application.

- (b) Financial statements regarding assets, liabilities, net worth, income, and expenses.
- (c) Budgets or proposed budgets.
- (d) Business plans.
- (e) Contracts.
- (f) Credit reports.
- (g) Inventory records.
- (h) Collateral offered as security for loans.
- (i) Appraisals.
- (j) Personal guarantees and related information.
- (k) Insurance policy, certificate, or binder.

(26) This section does not require the lender to remove the name, address, or other information concerning the customer from the customer list if information concerning a customer of a lender is on a customer list by reason of other account relationships with the lender and the lender is otherwise authorized to disclose the list to an affiliate agency or an agent employed by the lender.

(27) This section does not prohibit a lender from providing information about the customers of the lender to an affiliated agency or an agent employed by the lender if that information is otherwise available from a public record.

(28) This section does not prohibit a lender from releasing customer information in its possession to any person if the customer authorizes the release of that information. The release shall be in writing, dated, and signed by the customer. A lender shall not knowingly ask a loan applicant to release such information prior to the applicant being notified of the disposition of the application unless the applicant has asked about the availability of insurance products as provided under subsection (15). A lender shall not require the release as a condition of applying for the loan.

(29) The use or disclosure of information allowed under this section is not a violation of the use or disclosure of information under section 2077.

(30) Except as provided in subsection (31), an insurance agency or agent shall not reward or remunerate an affiliated lender for procuring or inducing insurance product business for the agency or agent or for furnishing leads and

prospects or acting in any other manner as an agent. This subsection does not preclude an affiliated agency from compensating its employees, who may also be employees of the lender, or reimbursing its affiliated lender at fair market value for any goods, services, or facilities that the lender may provide to the agency or for expense incurred by the lender in advising its customers and the general public of the agency's services.

(31) An insurance agency may pay dividends and make other distributions of assets to the agency's shareholders, including an affiliated lender, as a return on the capital invested and risks assumed by the shareholders or in conjunction with a merger, liquidation, or other corporate transaction.

(32) This section does not prohibit a lender, or a manufacturer or an affiliate of a manufacturer acting as a lender, from soliciting or selling insurance products to a closed dealership, designated family member, new motor vehicle dealer, or proposed new motor vehicle dealer. This subsection shall not be construed to include customers of motor vehicle dealers.

(33) As used in subsection (32):

(a) "Closed dealership" means a closed dealership as defined in section 2 of 1981 PA 118, MCL 445.1562.

(b) "Designated family member" means a designated family member as defined in section 2 of 1981 PA 118, MCL 445.1562.

(c) "Manufacturer" means a manufacturer as defined in section 4 of 1981 PA 118, MCL 445.1564.

(d) "New motor vehicle dealer" means a new motor vehicle dealer as defined in section 5 of 1981 PA 118, MCL 445.1565.

(e) "Proposed new motor vehicle dealer" means a proposed new motor vehicle dealer as defined in section 5 of 1981 PA 118, MCL 445.1565.

(34) This section does not apply to insurance products offered under the credit insurance act, 1958 PA 173, MCL 550.601 to 550.624.

(35) This section does not apply to the offering of life insurance by a lender under section 4418.

(36) Notwithstanding section 4418, payment by an insurer of consideration to an agency or agent licensed under this act for an individual policy of insurance on the life of the borrower issued in connection with a loan on a dwelling or mobile home made or serviced by an affiliated lender is not considered a monetary or financial benefit to the lender as a result of the insurance.

(37) If after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner finds that a person has violated this section, the commissioner shall reduce the findings and decision to writing and serve upon the person charged with the violation a copy of the decision and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) For all violations committed in a 6-month period, the payment of a civil fine of not more than \$1,000.00 for each violation but not to exceed an aggregate civil penalty of \$30,000.00, unless the person knew or reasonably should have known the person was in violation of this section, in which case the civil fine shall not be more than \$5,000.00 for each violation and shall not exceed an aggregate civil fine of \$150,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) That restitution be made to the insured or any other person, including a customer claimant, to cover actual damages directly attributable to the acts that are found to be in violation of this section by a person that knew or reasonably should have known the acts were in violation of this section.

(c) The suspension or revocation of the person's license under this act.

(38) If a person knowingly violates a cease and desist order under this section and has been given notice and an opportunity for a hearing as provided by this section, the commissioner may order a civil fine of not more than \$25,000.00 for each violation, or a suspension or revocation of the person's license under this act, or both. However, an order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$250,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(39) The commissioner may apply to the circuit court of Ingham county for an order of the court enjoining a violation of this section.

(40) An action under this section shall not be brought more than 5 years after the occurrence of the violation that is the basis of the action.

Sec. 1244. (1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the

violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person found to be in violation of this chapter.

(d) The suspension or revocation of the person's license.

(2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the person's license, or both. An order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(4) The commissioner may apply to the circuit court of Ingham county for an order of the court enjoining a violation of this chapter.

Sec. 1246. (1) Any documents, materials, or other information in the control or possession of the office of financial and insurance services that is furnished by an insurer, an insurance producer, or an employee or representative acting on behalf of the insurer or insurance producer, or obtained by the commissioner in an investigation pursuant to this section is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the commissioner's authority is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information under subsection (1).

(3) In order to assist in the performance of the commissioner's duties under this chapter, the commissioner may do any of the following:

(a) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1), with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(c) Enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under section 1208b or this section, or as a result of sharing as authorized under subsection (3).

(5) This chapter does not prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, to a database or other clearinghouse service maintained by the national association of insurance commissioners or its affiliates or subsidiaries.

(6) An insurer, the authorized representative of the insurer, or an insurance producer that fails to report as required under section 1208b or this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined under section 1244.

Sec. 1247. (1) An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within 30 days after the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Sec. 1905. (1) A person shall not solicit insurance, bind coverage, or in any other manner act as an agent or broker in the transaction of surplus lines insurance unless licensed under this chapter and section 1206a.

(2) A person shall not offer, solicit, make a quotation on, sell, or issue a policy of insurance, binder, or any other evidence of insurance with an unauthorized insurer except in compliance with this chapter.

(3) To obtain a surplus lines license under subsection (1), a person shall do all of the following:

(a) File an application in the form and with the information as the commissioner may reasonably require to determine the ability of the applicant to satisfactorily act in accordance with this chapter.

(b) Complete an examination testing the applicant's understanding of this chapter, the surplus lines insurance business, and other chapters of this act, if required by the commissioner. The commissioner may waive the examination requirements for a person who has been licensed as a surplus lines licensee within the preceding 12 months.

(c) Comply with sections 1204 to 1206.

(d) Agree to file with the commissioner, not later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed, and the amounts returned on the insurance canceled, under the license, for the preceding 6-month period ending December 31 and June 30, respectively; and at the time of filing the statement, paying to the commissioner the 2% tax on premiums written and, instead of the costs and expenses that may be imposed by the commissioner pursuant to this chapter, a 0.5% regulatory fee on premiums written as required by section 451.

(4) A surplus lines licensee may do any or all of the following:

(a) Place insurance on risks in this state with eligible unauthorized insurers.

(b) Act in the capacity of an agent or broker, as determined by the contractual relationship with the eligible unauthorized insurer or that insurer's legal representative.

(c) Place insurance on risks in this state, with unauthorized insurers that are not eligible unauthorized insurers, in strict compliance with section 1950. If the insurance is provided through the participation of several insurers and the licensee has reason to believe that a substantial portion of the insurance would be assumed by authorized or eligible unauthorized insurers, then, with respect to the unauthorized insurers not eligible, the insured or the insured's representative shall be informed as provided in section 1950(a).

(d) Engage in any other acts expressly and implicitly authorized by this chapter and this act.

(5) Before placement of insurance with an eligible unauthorized insurer, a licensee shall inform an insured or the insured's representative that coverage is being placed with an insurer not licensed in this state and that payment of loss may not be guaranteed in the event of insolvency of the eligible unauthorized insurer.

Sec. 3310. (1) The board of governors of the facility shall consist of 11 governors. Seven of the governors shall be elected as provided in the plan of operation. Four governors shall be appointed by the commissioner, of which 2 shall represent insurance agents subject to section 1209(1) and 2 shall represent the general public. Each governor appointed by the commissioner pursuant to this subsection shall serve an annual term. The 7 elected members of the board of governors of the facility shall be elected to serve annual terms commencing within 45 days after the annual determination of participation ratios. Vacancies shall be filled as provided for in the plan of operation.

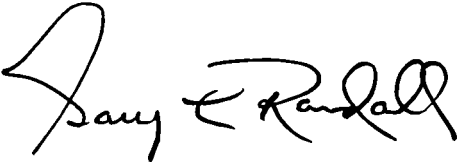
(2) The facility committee shall adopt a plan of operation by majority vote of the committee and shall submit it to the commissioner for his or her approval. If the commissioner finds that the plan meets the requirements of this chapter, he or she shall approve it. If the commissioner finds that the plan fails to meet the requirements of this chapter, he or she shall state in what respects the plan is deficient and shall afford the facility committee 10 days within which to correct the deficiency. If the commissioner and the facility committee fail to agree that the provisions of the plan so submitted meet the requirements of this chapter, either party to the controversy may submit the issue to the circuit court for Ingham county for a determination. If the commissioner fails to render a written decision on the plan of operation within 30 days after receipt of the plan, the plan shall be considered approved.

(3) Amendments to the plan of operation shall be subject to majority approval by the board of governors and ratified by majority of the membership vote. The membership vote shall be determined as defined in section 3303(e)(iii). Amendments to the plan of operation shall be subject to the approval of the commissioner, as provided in subsection (2).

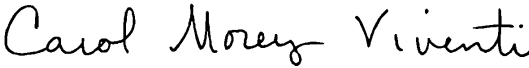
(4) Every insurer authorized to write automobile insurance in this state shall adhere to the plan of operation.

Enacting section 1. This amendatory act takes effect March 1, 2002.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.