

# HOUSE BILL No. 6444

October 4, 2018, Introduced by Rep. Wentworth and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 1201, 1207, 1208a, and 1211 (MCL 500.1201, 500.1207, 500.1208a, and 500.1211), section 1201 as amended by 2012 PA 462, section 1207 as amended by 1993 PA 200, and sections 1208a and 1211 as added by 2001 PA 228.

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

1       Sec. 1201. As used in this chapter:

2       (a) "Agent" except as provided in section 1243 means an  
3 insurance producer.

4       **(B) "AGENT OF THE INSURED" MEANS AN INSURANCE PRODUCER WHO IS**  
5 **NOT AN APPOINTED INSURANCE PRODUCER OF THE INSURER WITH WHICH THE**  
6 **INSURANCE POLICY IS PLACED. AN AGENT OF THE INSURED IS TREATED AS**  
7 **REPRESENTING THE INSURED OR THE INSURED'S BENEFICIARY AND NOT THE**

1 INSURER.

2 (C) "AGENT OF THE INSURER" MEANS AN INSURANCE PRODUCER WHO  
3 SELLS, SOLICITS, OR NEGOTIATES AN APPLICATION FOR INSURANCE AS A  
4 REPRESENTATIVE OF THE INSURER AND NOT THE INSURED OR THE INSURED'S  
5 BENEFICIARY.

6 (D) ~~(b)~~—"Business entity" means a corporation, association,  
7 partnership, limited liability company, limited liability  
8 partnership, or other legal entity.

9 (E) ~~(e)~~—"Home state", except as provided in section 1224,  
10 means the District of Columbia or any state or territory of the  
11 United States in which an insurance producer maintains his or her  
12 principal place of residence or principal place of business and is  
13 licensed to act as an insurance producer.

14 (F) ~~(d)~~—"Insurance" means any of the lines of authority in  
15 chapter 6.

16 (G) ~~(e)~~—"Insurance producer" means a person required to be  
17 licensed under the laws of this state to sell, solicit, or  
18 negotiate insurance.

19 (H) ~~(f)~~—"License" means a document issued by ~~this state's~~  
20 ~~commissioner~~ **THE DIRECTOR** authorizing a person to act as an  
21 insurance producer for the qualifications specified in the  
22 document. The license itself does not create any actual, apparent,  
23 or inherent authority in the holder to represent or commit an  
24 insurer.

25 (I) ~~(g)~~—"Limited line credit insurance" includes credit life,  
26 credit disability, credit property, credit unemployment,  
27 involuntary unemployment, mortgage life, mortgage guaranty,

1 mortgage disability, guaranteed automobile protection insurance,  
 2 and any other form of insurance offered in connection with an  
 3 extension of credit that is limited to partially or wholly  
 4 extinguishing that credit obligation that the ~~commissioner~~**DIRECTOR**  
 5 determines should be designated a form of limited line credit  
 6 insurance.

7       **(J)** ~~(h)~~—"Limited line credit insurance producer" means a  
 8 person who sells, solicits, or negotiates 1 or more forms of  
 9 limited line credit insurance coverage to individuals through a  
 10 master, corporate, group, or individual policy.

11       **(K)** ~~(i)~~—"Limited lines insurance" means any of the following:

- 12       (i) Marine insurance as defined in section 614.  
 13       (ii) Credit insurance as described in section 624(1)(e).  
 14       (iii) Surety and fidelity insurance as defined in section 628.  
 15       (iv) Legal expense insurance as defined in section 618.  
 16       (v) Livestock insurance as described in section 624(1)(g).  
 17       (vi) Malpractice insurance as described in section 624(1)(h).  
 18       (vii) Plate glass insurance as described in section 624(1)(c).  
 19       (viii) Any other miscellaneous insurance described in section  
 20 624(1)(i).

21       (ix) Any other line of insurance that the ~~commissioner~~  
 22 **DIRECTOR** considers necessary to recognize to comply with section  
 23 1206a(5).

24       **(L)** ~~(j)~~—"Limited lines producer" means a person authorized by  
 25 the ~~commissioner~~**DIRECTOR** to sell, solicit, or negotiate limited  
 26 lines insurance.

27       **(M)** ~~(k)~~—"Negotiate" means the act of conferring directly with

1 or offering advice directly to a purchaser or prospective purchaser  
2 of a particular contract of insurance concerning any of the  
3 substantive benefits, terms, or conditions of the contract,  
4 ~~provided that~~ **IF** the person engaged in that act either sells  
5 insurance or obtains insurance from insurers for purchasers.

6 **(N)** ~~(I)~~ "Sell" means to exchange a contract of insurance by  
7 any means, for money or its equivalent, on behalf of an insurance  
8 company.

9 **(O)** ~~(M)~~ "Solicit" means attempting to sell insurance or asking  
10 or urging a person to apply for a particular kind of insurance from  
11 a particular company.

12 **(P)** ~~(N)~~ "Terminate" means the cancellation of the relationship  
13 between an insurance producer and the insurer or the termination of  
14 a producer's authority to transact insurance.

15 Sec. 1207. (1) An agent ~~shall be~~ **IS** a fiduciary for all money  
16 received or held by the agent in his or her capacity as an agent.  
17 Failure by an agent in a timely manner to turn over the money ~~which~~  
18 **THAT** he or she holds in a fiduciary capacity to the persons to whom  
19 ~~they are~~ **IT IS** owed is prima facie evidence of violation of the  
20 agent's fiduciary responsibility. An agent shall not accept payment  
21 of a premium for a medicare supplemental policy or certificate in  
22 the form of a check or money order made payable to the agent  
23 instead of the insurer. ~~Upon~~ **ON** receiving payment of a premium for  
24 a medicare supplemental policy or certificate, an agent shall  
25 immediately provide a written receipt to the insured.

26 (2) An agent shall use reasonable accounting methods to record  
27 funds received in his or her fiduciary capacity including the

1 receipt and distribution of all premiums due each of his or her  
2 insurers. An agent shall record return premiums received by or  
3 credited to him or her ~~which~~**THAT** are due an insured on policies  
4 reduced or canceled or ~~which~~**THAT** are due a prospective purchaser  
5 of insurance as a result of a rejected or declined application.  
6 Records required by this section ~~shall~~**MUST** be open to examination  
7 by the ~~commissioner~~**DIRECTOR**.

8 (3) Except as provided in ~~section~~**SECTIONS 1211, 1212,** and  
9 subsection (4), an agent shall not reward or remunerate any person  
10 for procuring or inducing business in this state, furnishing leads  
11 or prospects, or acting in any other manner as an agent.

12 (4) If an agent is unable to immediately provide, through his  
13 or her insurers that are authorized to underwrite the coverage, all  
14 or a part of the coverage requested on a risk, the agent may obtain  
15 the part of the coverage refused by his or her insurers through  
16 another licensed agent or through a risk sharing plan permitted by  
17 state law. An agent who attempts to place the refused part of the  
18 coverage through another licensed agent shall advise the buyer in  
19 writing that the refused part of the coverage is not in effect  
20 until the buyer receives written evidence of insurance.

21 (5) A person ~~may~~**SHALL** not sell or attempt to sell insurance  
22 by means of intimidation or threats, whether express or implied.  
23 Except as provided in section 2077(4), a person may not induce the  
24 purchase of insurance through a particular agent or from a  
25 particular insurer by means of a promise to sell goods, ~~to~~lend  
26 money, ~~to~~**OR** provide services, or by a threat to refuse to sell  
27 goods, ~~to~~refuse ~~to~~lend money, or ~~to~~refuse ~~to~~provide services.

1 (6) After January 1, 1973, an insurer or an agent may not be a  
2 party to a contract under which the agent assumes any  
3 responsibility or obligation for payment, from his or her  
4 commission or any allocation of premium to him or her by the  
5 insurer, of any losses on insurance policies sold by the agent  
6 unless the claim adjusting is done by insurance company adjusters  
7 or licensed independent adjusters.

8 Sec. 1208a. (1) An insurance producer shall not act as ~~an~~**THE**  
9 agent of an insurer unless the insurance producer becomes an  
10 appointed agent of that insurer. An insurance producer who is not  
11 acting as an agent of ~~an~~**THE** insurer is not required to become  
12 appointed.

13 **(2) AN INSURANCE PRODUCER SHALL NOT BIND COVERAGE FOR AN**  
14 **INSURER UNLESS THE INSURANCE PRODUCER IS APPOINTED BY THE INSURER.**

15 **(3)** ~~(2)~~To appoint a producer as its agent, the appointing  
16 insurer shall file, in a format approved by the ~~commissioner,~~  
17 **DIRECTOR**, a notice of appointment for the qualifications held by  
18 that insurance producer within 15 days from the date the agency  
19 contract is executed or the first insurance application is  
20 submitted. An insurer may also elect to appoint an insurance  
21 producer to all or some insurers within the insurer's holding  
22 company system or group by the filing of a single appointment  
23 request.

24 **(4)** ~~(3)~~ ~~Upon~~**ON** receipt of the notice of appointment, the  
25 ~~commissioner~~**DIRECTOR** shall verify within a reasonable time not to  
26 exceed 30 days that the insurance producer is eligible for  
27 appointment. If the insurance producer is determined to be

1 ineligible for appointment, the ~~commissioner~~ **DIRECTOR** shall notify  
2 the insurer within 5 days of that determination.

3 **(5)** ~~(4)~~—An insurer shall pay an appointment fee and a renewal  
4 appointment fee as provided under section 240(1)(c) for each  
5 insurance producer appointed or renewed by the insurer.

6 Sec. 1211. **(1)** A natural person may solicit applications for  
7 insurance and collect premiums on behalf of a licensed insurance  
8 producer resident in this state if he or she is so authorized to  
9 act by a written contract with the insurance producer, and the  
10 contract specifies the extent of his or her authority to act, he or  
11 she is licensed to act as a solicitor in accordance with this  
12 chapter, and the insurance producer has notified the ~~commissioner~~  
13 **DIRECTOR** of the contract.

14 **(2) AN AGENT OF THE INSURED MAY OBTAIN COVERAGE FOR A CONSUMER**  
15 **THROUGH AN AGENT OF THE INSURER IF BOTH OF THE FOLLOWING APPLY:**

16 **(A) THE AGENT OF THE INSURED IS LICENSED TO ACT AS AN**  
17 **INSURANCE PRODUCER IN ACCORDANCE WITH THIS CHAPTER.**

18 **(B) THE AGENT OF THE INSURED HAS A RELATIONSHIP WITH THE AGENT**  
19 **OF THE INSURER UNDER A WRITTEN CONTRACT. THE WRITTEN CONTRACT UNDER**  
20 **THIS SUBDIVISION MUST SPECIFY THE EXTENT OF THE AGENT OF THE**  
21 **INSURED'S AUTHORITY TO ACT AND REQUIRE THE MAINTENANCE OF AN AMOUNT**  
22 **OF PROFESSIONAL LIABILITY INSURANCE, COMMONLY KNOWN AS ERRORS AND**  
23 **OMISSIONS INSURANCE.**