

Act No. 449
Public Acts of 2018
Approved by the Governor
December 20, 2018
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December 21, 2018
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STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Rep. Wentworth

ENROLLED HOUSE BILL No. 6444

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 provide for assessment fees on certain health maintenance organizations; 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 provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” 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:

Sec. 1201. As used in this chapter:

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

(b) “Agent of the insured” means an insurance producer who is not an appointed insurance producer of the insurer with which the insurance policy is placed. An agent of the insured is treated as representing the insured or the insured’s beneficiary and not the insurer.

(c) “Agent of the insurer” means an insurance producer who sells, solicits, or negotiates an application for insurance as a representative of the insurer and not the insured or the insured’s beneficiary.

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

(e) “Home state”, except as provided in section 1224, 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.

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

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

(h) “License” means a document issued by the director 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.

(i) “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 director determines should be designated a form of limited line credit insurance.

(j) “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.

(k) “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 director considers necessary to recognize to comply with section 1206a(5).

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

(m) “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, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

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

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

(p) “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. 1207. (1) An agent is a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money that he or she holds in a fiduciary capacity to the persons to whom it is owed is prima facie evidence of violation of the agent’s fiduciary responsibility. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. On receiving payment of a premium for a medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent shall record return premiums received by or credited to him or her that are due an insured on policies reduced or canceled or that are due a prospective purchaser of insurance as a result of a rejected or declined application. Records required by this section must be open to examination by the director.

(3) Except as provided in sections 1211, 1212, and subsection (4), an agent shall not reward or remunerate any person for procuring or inducing business in this state, furnishing leads or prospects, or acting in any other manner as an agent.

(4) If an agent is unable to immediately provide, through his or her insurers that are authorized to underwrite the coverage, all or a part of the coverage requested on a risk, the agent may obtain the part of the coverage refused by his or her insurers through another licensed agent or through a risk sharing plan permitted by state law. An agent who

attempts to place the refused part of the coverage through another licensed agent shall advise the buyer in writing that the refused part of the coverage is not in effect until the buyer receives written evidence of insurance.

(5) A person shall not sell or attempt to sell insurance by means of intimidation or threats, whether express or implied. Except as provided in section 2077(4), a person may not induce the purchase of insurance through a particular agent or from a particular insurer by means of a promise to sell goods, lend money, or provide services, or by a threat to refuse to sell goods, lend money, or provide services.

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

Sec. 1208a. (1) An insurance producer shall not act as the 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 the insurer is not required to become appointed.

(2) An insurance producer shall not bind coverage for an insurer unless the insurance producer is appointed by the insurer.

(3) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the director, 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.

(4) On receipt of the notice of appointment, the director 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 director shall notify the insurer within 5 days of that determination.

(5) 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. 1211. (1) 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 director of the contract.

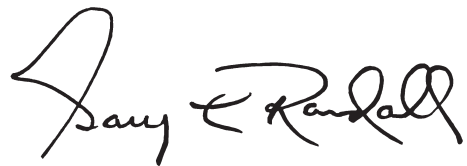
(2) An agent of the insured may obtain coverage for a consumer through an agent of the insurer if all of the following apply:

(a) The agent of the insured is licensed to act as an insurance producer in accordance with this chapter.

(b) The agent of the insured has a relationship with the agent of the insurer under a written contract. The written contract under this subdivision must specify the extent of the agent of the insured's authority to act and require the maintenance of an amount of professional liability insurance, commonly known as errors and omissions insurance.

(c) The coverage being obtained is not a health insurance policy or a health maintenance contract.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor