

HOUSE BILL No. 5973

June 25, 1992, Introduced by Reps. Keith, Gagliardi and DeMars and referred to the Committee on Corporations and Finance.

A bill to amend sections 1207, 1242, and 2077 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 1207 as amended by Act No. 170 of the Public Acts of 1990, being sections 500.1207, 500.1242, and 500.2077 of the Michigan Compiled Laws; and to add section 1204e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1207, 1242, and 2077 of Act No. 218 of
2 the Public Acts of 1956, section 1207 as amended by Act No. 170
3 of the Public Acts of 1990, being sections 500.1207, 500.1242,
4 and 500.2077 of the Michigan Compiled Laws, are amended and sec-
5 tion 1204e is added to read as follows:

6 SEC. 1204E. (1) A FINANCIAL INSTITUTION AND ITS
7 SUBSIDIARIES, OFFICERS, AND EMPLOYEES THAT MEET THE REQUIREMENTS

1 OF THIS CHAPTER SHALL BE ISSUED A LICENSE TO ACT AS AN AGENT IN
2 THIS STATE.

3 (2) AS USED IN THIS SECTION, "FINANCIAL INSTITUTION" MEANS A
4 STATE OR NATIONALLY CHARTERED BANK, A STATE OR FEDERALLY
5 CHARTERED SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT
6 UNION, INDUSTRIAL BANK, TRUST COMPANY, SAVINGS AND LOAN ASSOCIA-
7 TION, AND A LICENSEE AS DEFINED UNDER SECTION 1 OF THE REGULATORY
8 LOAN ACT OF 1963, ACT NO. 21 OF THE PUBLIC ACTS OF 1939, BEING
9 SECTION 493.1 OF THE MICHIGAN COMPILED LAWS.

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

22 (2) An agent shall use reasonable accounting methods to
23 record funds received in his or her fiduciary capacity including
24 the receipt and distribution of all premiums due each of his or
25 her insurers. An agent shall record return premiums received by
26 or credited to him or her ~~which~~ THAT are due an insured on
27 policies reduced or canceled or ~~which~~ THAT are due a

1 prospective purchaser of insurance as a result of a rejected or
2 declined application. Records required by this section shall be
3 open to examination by the commissioner.

4 (3) Except as provided in section 1212 and subsection (4),
5 an agent shall not reward or remunerate any person for procuring
6 or inducing business in this state, furnishing leads or pros-
7 pects, or acting in any other manner as an agent.

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

18 (5) A person may not sell or attempt to sell insurance by
19 means of intimidation or threats, whether express or implied.
20 Except as provided in section 2077(4) a person may not induce the
21 purchase of insurance through a particular agent or from a par-
22 ticular insurer by means of a promise to sell goods, to lend
23 money, to provide services, or by a threat to refuse to sell
24 goods, to refuse to lend money, or to refuse to provide
25 services. THIS SUBSECTION DOES NOT PROHIBIT A CREDITOR FROM
26 SELLING OPTIONAL INSURANCE TO A BORROWER.

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

8 Sec. 1242. (1) The commissioner shall refuse to grant a
9 license to act as an agent, a solicitor, an insurance counselor,
10 or an adjuster to an applicant who fails to meet the requirements
11 of this chapter. Notice of the refusal shall be in writing and
12 shall set forth the basis for the refusal. If the applicant sub-
13 mits a written request within 30 days after mailing of the notice
14 of refusal, the commissioner shall promptly conduct a hearing in
15 which the applicant shall be given an opportunity to show compli-
16 ance with the requirements of this chapter.

17 (2) The commissioner, after notice and opportunity for a
18 hearing, may suspend or revoke the license of an agent, solici-
19 tor, insurance counselor, or adjuster who fails to maintain the
20 standards required for initial licensing or who violates any pro-
21 vision of this act.

22 ~~(3) After notice and opportunity for a hearing, the commis-~~
23 ~~sioner may refuse to grant or renew a license to act as an agent,~~
24 ~~solicitor, adjuster or insurance counselor if he determines by a~~
25 ~~preponderance of the evidence, that it is probable that the busi-~~
26 ~~ness or primary occupation of the applicant will give rise to~~

~~1 coercion, indirect rebating of commissions or other practices in
2 the sale of insurance which are prohibited by law.~~

3 (3) ~~(4)~~ Without prior hearing, the commissioner may order
4 summary suspension of a license if he OR SHE finds that protec-
5 tion of the public requires emergency action and incorporates
6 this finding in his OR HER order. The suspension shall be effec-
7 tive on the date specified in the order or upon service of a cer-
8 tified copy of the order on the licensee, whichever is later. If
9 requested, the commissioner shall conduct a hearing on the sus-
10 pension within a reasonable time but not later than 20 days after
11 the effective date of the summary suspension unless the person
12 whose license is suspended requests a later date. At the hear-
13 ing, the commissioner shall determine if the suspension should be
14 continued or if the suspension should be withdrawn, and, if
15 proper notice is given, may determine if the license should be
16 revoked. The commissioner shall announce his OR HER decision
17 within 30 days after conclusion of the hearing. The suspension
18 shall continue until the decision is announced.

19 (4) ~~(5)~~ The commissioner, or his OR HER designated deputy,
20 may issue subpoenas with the approval of a circuit court judge of
21 the circuit court of Ingham county to require the attendance and
22 testimony of witnesses and the production of documents necessary
23 to the conduct of the hearing and may designate an employee of
24 the insurance bureau to make service. ~~thereof.~~ The subpoenas
25 issued by the commissioner, or his OR HER designated deputy, may
26 be enforced upon application ~~by them~~ to the circuit court of

1 Ingham county by proceedings in contempt thereof, as provided by
2 law.

3 Sec. 2077. (1) ~~No~~ A person shall NOT require, as a condi-
4 tion precedent to the lending of money or extension of credit, or
5 any renewal thereof, that the person ~~—~~ to whom ~~such~~ THE money
6 or credit is extended or whose obligation the creditor is to
7 acquire or finance, negotiate any policy or contract of insurance
8 through a particular insurance agent or with a particular
9 insurer. ~~No~~ A person engaged in the business of financing real
10 or personal property other than motor vehicles or of lending
11 money or extending credit, shall NOT directly or indirectly
12 require that the borrower pay a consideration of any kind to sub-
13 stitute the insurance policy of 1 insurer for that of another.

14 (2) If an instrument requires that a purchaser, mortgagor,
15 or borrower furnish insurance of any kind on real property being
16 conveyed or which is collateral security to a loan, the vendor,
17 mortgagee, or lender shall refrain from using or disclosing any
18 such information to his OR HER own advantage or to the detriment
19 of the purchaser, mortgagor, borrower, insurance company, or
20 agency complying with such requirement.

21 (3) This section shall not be construed as forbidding the
22 vendor or creditor from exercising a reasonable right to approve
23 or disapprove the insurance selected by the debtor for protection
24 of the property securing the credit or lien, but the vendor or
25 creditor shall not disapprove a policy ~~which~~ THAT contains cov-
26 erages in excess of the basic coverage required by the vendor or
27 creditor.

1 (4) ~~Nothing in this section shall forbid any~~ THIS SECTION
2 DOES NOT PROHIBIT AN insurer from requiring as a condition prece-
3 dent for the lending of its own funds that the debtor insure his
4 OR HER own life for a reasonable amount with ~~such~~ THE insurer.
5 THIS SECTION DOES NOT PROHIBIT A CREDITOR FROM SELLING OPTIONAL
6 INSURANCE TO A BORROWER.

7 (5) Each violation of this section ~~shall be~~ IS a misde-
8 meanor, punishable by a fine of not more than \$100.00.

9 Section 2. This amendatory act shall not take effect unless
10 all of the following bills of the 86th Legislature are enacted
11 into law:

12 (a) Senate Bill No. _____ or House Bill No. 5972 (request
13 no. 06128'92 a).

14 (b) Senate Bill No. _____ or House Bill No. 5971 (request
15 no. 06128'92 b).

16 (c) Senate Bill No. _____ or House Bill No. 5970 (request
17 no. 06128'92 c).