

Act No. 409
Public Acts of 1994
Approved by the Governor
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December 29, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Brown Schroer Freeman Ciaramitaro Anthony Rivers Fitzgerald Jamian
Martin and Varga

ENROLLED HOUSE BILL No. 5281

AN ACT to amend Act No 218 of the Public Acts of 1956 entitled as amended 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 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 certain acts and parts of acts to repeal certain acts and parts of acts on specific dates to repeal certain parts of this act on specific dates and to provide penalties for the violation of this act as amended being sections 500 100 to 500 8302 of the Michigan Compiled Laws by adding section 1243

The People of the State of Michigan enact

Section 1 Act No 218 of the Public Acts of 1956 as amended being sections 500 100 to 500 8302 of the Michigan Compiled Laws is amended by adding section 1243 to read as follows

Sec 1243 (1) As used in this section

(a) Act means the insurance code of 1956 Act No 218 of the Public Acts of 1956 being sections 500 100 to 500 8302 of the Michigan Compiled Laws

(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 such referrals

(c) Agent means an individual licensed as an agent 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 arrangements 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 Act No 332 of the Public Acts of 1965 being sections 445 1101 to 445 1431 of the Michigan Compiled Laws

(iv) A retail installment contract of \$10 000 00 or less or a retail charge agreement made under the retail installment sales act Act No 224 of the Public Acts of 1966 being sections 445 851 to 445 873 of the Michigan Compiled Laws

(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 the effective date of this section and that affiliation or employment continues or is renewed after the effective date of this section

(b) A lender affiliate or employee of a lender that has been licensed as an agency or agent before the effective date of this section and maintains that licensure after the effective date of this section 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. An application filed before November 1, 1994 shall be considered approved by the commissioner if the commissioner has not denied the application for good cause within 10 days after the effective date of this section. The commissioner shall issue the insurance agency or agent license within 10 days of approval.

(7) Interrogatories propounded by the commissioner pursuant to section 1204(3) 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 of 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 Act No 118 of the Public Acts of 1981 being section 445 1562 of the Michigan Compiled Laws

(b) Designated family member means a designated family member as defined in section 2 of Act No 118 of the Public Acts of 1981

(c) Manufacturer means a manufacturer as defined in section 4 of Act No 118 of the Public Acts of 1981 being section 445 1564 of the Michigan Compiled Laws

(d) New motor vehicle dealer means a new motor vehicle dealer as defined in section 5 of Act No 118 of the Public Acts of 1981 being section 445 1565 of the Michigan Compiled laws

(e) Proposed new motor vehicle dealer means a proposed new motor vehicle dealer as defined in section 5 of Act No 118 of the Public Acts of 1981

(34) This section does not apply to insurance products offered under the credit insurance act Act No 173 of the Public Acts of 1958 being sections 550 601 to 550 624 of the Michigan Compiled Laws

(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 Act No 306 of the Public Acts of 1969 being sections 24 201 to 24 328 of the Michigan Compiled Laws 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.

Section 2 This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) House Bill No. 4021

(b) House Bill No. 4022

(c) House Bill No. 4726

(d) House Bill No. 4727

(e) House Bill No. 4728

(f) House Bill No. 4729

Co. Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor