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## DISQUALIFICATION OF AUTOMOBILE INSURANCE AGENTS

### House Bill 4783 as introduced First Analysis (6-5-01)

**Sponsor: Rep. Alan Sanborn**  
**Committee: Insurance and Financial  
Services**

#### ***THE APPARENT PROBLEM:***

Automobile insurance is mandatory in Michigan, and the Michigan Essential Insurance Act requires auto insurers to provide insurance to customers who meet certain eligibility requirements. Persons who fail to meet these requirements—e.g., those who have poor driving records or poor payment history—may seek insurance through the Michigan Automobile Insurance Placement Facility (MAIPF). The MAIPF, or “facility,” is a joint underwriting association made up of all companies writing auto insurance in Michigan and operated on their behalf by several large companies who act as “servicing carriers.” With some exceptions, anyone whose car is registered in Michigan or who holds a valid Michigan driver’s license is considered to be a qualified applicant for insurance through the facility.

All automobile insurers in Michigan must participate in the facility, and any agent of a participating insurer must offer to place automobile insurance through the facility for any qualified applicant that requests the agent to do so. This requirement effectively entails the right of any insurance agent to submit applications for insurance through the facility. If the applicant accepts such an offer, the agent must forward the application and any required deposit premium in accordance with the rules and procedures detailed in the facility’s plan of operation.

As a joint underwriting association, the MAIPF has an indirect relation to a “producer,” i.e., an agent who places automobile insurance through the facility. Unlike an insurance company, the facility has neither the ability to select or “pre-qualify” producers nor any contractual agreement with producers whatsoever. For this reason, it is often difficult to ensure that producers comply with the facility’s rules and procedures. Violations include late applications, insufficient premium deposits, and missing proof of ownership. Each of these

violations results in costs that are ultimately passed down to all insurance purchasers in Michigan.

In 1998, the facility’s board of governors approved a program to assess applications for compliance with the facility’s plan of operation and to apply violations for major infractions. The facility lacks the authority to disqualify a producer who consistently and egregiously fails to comply with the facility’s rules and procedures. At most, the facility may ultimately refer “chronic abusers” to OFIS, which may apply a monetary penalty or may even suspend or revoke an agent’s license to sell insurance in the case of particularly egregious violations. Still, MAIPF contends and OFIS concedes that heavy workloads often prevent OFIS from redressing violations to the extent that the law permits. Although the threat of monetary penalties may suffice to ensure compliance by many agents, it is likely that other agents simply figure possible penalties into the cost of doing business. Moreover, while OFIS has the ability to disqualify an agent from placing insurance through the facility, it may only do so indirectly—by suspending or revoking the insurance agent’s license altogether. In many cases it is unclear whether infractions of the facility’s plan of operation, however egregious, justify suspension or revocation of an agent’s license to place insurance through an insurer in the voluntary market.

#### ***THE CONTENT OF THE BILL:***

House Bill 4783 would allow the facility to disqualify an agent from placing automobile insurance through the facility, if the agent persistently violated the rules and procedures detailed in the facility’s plan of operation. The facility would be required to amend its plan of operation both to establish standards for disqualifying an agent and to describe the procedures that it would have to follow throughout the

House Bill 4783 (6-5-01)

disqualification process. A detailed summary of the bill's provisions follows.

The facility would be required to notify the agent of his or her disqualification and notify the insurance commissioner of the disqualification. An agent could submit a written request for a hearing before the facility's board of governors or its designee no later than ten business days after the notice of disqualification was issued. The submission of a request would suspend the disqualification pending a ruling by the board of governors (or its designee). The hearing would have to be held no later than ten business days after the board received the request, and the board would have to issue a ruling no later than five days after the ruling. The board would also have to notify the commissioner of the Office of Financial and Insurance Services of its decision. If the ruling upheld the facility's original decision, the disqualification would take effect five calendar days after the date of the ruling.

The agent could appeal the ruling of disqualification by the facility's board of governors by filing a written appeal with the facility and the commissioner within 30 calendar days after the date of the ruling. However, the disqualification ruling would remain effective during the appeal process. The commissioner (or his or her designee) would be required to provide a hearing and could disapprove or approve of the board's ruling or it could direct the board to reconsider its ruling.

Although a disqualified agent could still place automobile insurance through an authorized insurer in the voluntary market, he or she could not:

- Solicit, negotiate, or effect automobile insurance on behalf of any participating member through the facility.
- Submit new applications to the facility.
- Service any existing facility policies except as permitted by the facility's user manual under procedures for disqualified agents.
- Be entitled to compensation for either new business applications or renewals.
- Obtain any binders or other supplies from the facility; any existing binders or supplies would have to be surrendered to the facility upon request.

The bill would require the facility to amend its plan of operation to establish standards and procedures for

disqualifying an agent, including at least all of the following:

- A list of actions or inactions that may lead to disqualification.
- Details for how the agent could petition the facility for removing the disqualification.
- The requirement that the written notification of disqualification specify the reasons for the disqualification, the procedure for appeal to the board, and the conditions and procedures for petitioning the facility for removing the disqualification.
- The requirement that the procedure by which the disqualified agent could appeal the disqualification to the board protect the interests of both the agent and the facility.
- Specifications for a notice informing the disqualified agent of how he or she could appeal the board of governors' ruling of disqualification to the commissioner.

MCL 500.3355

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

### ***ARGUMENTS:***

#### ***For:***

Insurance companies have mechanisms for handling agents who fail to follow the insurer's rules and procedures. Although insurance agents are not employees or contractors of the placement facility, they should be held accountable for failure to comply with the facility's plan of operation, especially in the case of frequent and major infractions. The proposed legislation would allow the facility to disqualify an agent from placing insurance through the facility, without directly affecting the agent's ability to place insurance through an insurer in the voluntary market. OFIS would be relieved of the costs and workload associated with handling cases that are referred to it, but it would remain an integral part of the process insofar as the facility would be required to inform the commissioner of disqualification proceedings. Moreover, a disqualified agent would be entitled to a hearing before the commissioner, if he or she wished to appeal the ruling of the facility's board of governors, thus respecting the agent's right to due process. Finally, increased compliance with the

facility's plan of operation would ultimately lead to lower premiums for purchasers of insurance who currently absorb the costs associated with non-compliance.

***POSITIONS:***

The Office of Financial and Insurance Services supports the bill. (5-31-01)

The Michigan Automobile Insurance Placement Facility supports the bill. (5-31-01)

Citizens Insurance Company of America supports the bill. (5-31-01)

State Farm Insurance Company supports the bill. (5-31-01)

Analyst: J. Caver

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.