



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1344 (as reported without amendment)  
Senate Bill 1401 (Substitute S-1 as reported)  
Sponsor: Senator Alan Sanborn  
Committee: Economic Development and Regulatory Reform

(as enrolled)  
(as enrolled)

Date Completed: 7-15-08

### **RATIONALE**

Under Chapter 12 of the Insurance Code, a person must be licensed as an insurance producer in order to sell, solicit, or negotiate insurance. In 2004, the then-Commissioner of the former Office of Financial and Insurance Services (OFIS) (now named the Office of Financial and Insurance Regulation) ruled that Sections 1205 and 1239 of the Code were not in harmony regarding the standard for granting or denying an insurance producer license. The OFIS Commissioner pointed out that Section 1205 prohibits issuing a license if the applicant committed certain acts, including a felony, while Section 1239 gives the Commissioner discretion as to whether to issue a license under those circumstances. The Commissioner ruled that the stricter standard in Section 1205 had to be applied, thereby making felons ineligible for licensure. Recently, the Commissioner of Financial and Insurance Regulation learned that the 2004 order had not been followed consistently for a period of time, and the Office is taking corrective action by initiating revocation proceedings against those who were licensed inappropriately. It has been suggested that legislation should make Sections 1205 and 1239 consistent by prohibiting the licensure of an applicant who committed any of the specified acts, which essentially would codify the OFIS Commissioner's 2004 ruling.

- **Prohibit the approval of an individual's or business's application for an insurance producer license if the person or business committed an act listed in the Code, rather than an act that is grounds for denial, suspension, or revocation of a license.**
- **Require the Commissioner of Financial and Insurance Regulation to refuse to issue an insurance producer license for certain reasons, and delete a provision under which refusing to issue a license for those reasons is an option of the Commissioner.**

The bills are described below.

#### **Senate Bill 1344**

Under Section 1205 of the Code, an application for an insurance producer license may not be approved unless the Commissioner finds that the individual or business meets certain requirements, including that the applicant has not committed any act that is a ground for denial, suspension, or revocation under Section 1239 of the Code. The bill instead would refer to any act listed in Section 1239(1).

#### **Senate Bill 1401 (S-1)**

Under Section 1239(1) of the Code, the Commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a

### **CONTENT**

**The bills would amend the Insurance Code to do both of the following:**

civil fine, or take any combination of actions for any of the following:

- Providing incorrect, misleading, incomplete, or untrue information in the application.
- Violating any insurance laws or any regulation, subpoena, or order of the Commissioner.
- Obtaining or attempting to obtain a license through misrepresentation or fraud.
- Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
- Intentionally misrepresenting the terms of an insurance contract or application.
- Having been convicted of a felony.
- Having committed any insurance unfair trade practice or fraud.
- Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.
- Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.
- Forging another's name to an application for insurance or any related document.
- Improperly using any reference material to complete an exam for an insurance license.
- Knowingly accepting insurance business from an individual who is not licensed.
- Failing to comply with a child support order.
- Failing to pay the Michigan business tax or comply with an order directing payment.

Under the bill, the Commissioner would be permitted to place on probation, suspend, or revoke a license and/or levy a civil fine, and would be required to refuse to issue a license, for any of those causes.

MCL 500.1205 (S.B. 1344)  
500.1239 (S.B. 1401)

### **BACKGROUND**

In a contested case Final Decision issued in May 2004, the OFIS Commissioner determined that under Section 1205, "[T]he Commissioner has no discretion to approve an insurer producer license where an applicant has committed any act that is a

ground for denial of a license under Section 1239" (*Edmond S. Mazur v Office of Financial and Insurance Services*; Case No. 03-384-L, Docket No. 2003-1515). The Commissioner determined that Sections 1205 and 1239 were inconsistent: "[T]he edict in Section 1205(1) allows for only one course for the Commissioner—disapproval of the application. Section 1239(1) allows the Commissioner discretion." The OFIS Commissioner concluded that the two sections "are best harmonized by...applying the mandatory licensing standards of Section 1205(1)".

In subsequent contested cases involving applicants who had committed acts listed in Section 1239(1), the Commissioner's office has upheld the findings in *Mazur* and denied licensure, or revoked licenses in cases in which they had been improperly granted.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bills would eliminate an inconsistency in provisions of the Insurance Code relating to the granting of an insurance producer license. Currently, under Section 1205, an application for a license may not be approved if the applicant has committed any act that is a ground for denial, suspension, or revocation under Section 1239. Section 1239, however, allows but does not require the Commissioner to refuse to issue an insurance producer license (or impose other sanctions) for certain causes.

By explicitly referring to an act listed in Section 1239(1) rather than an act that is grounds for sanctions under that section, Senate Bill 1344 would bolster the prohibition against issuing an insurance producer license to someone who committed any of the specified acts, including a felony. By requiring the Commissioner to refuse to issue a license for any of those acts, rather than allowing refusal, Senate Bill 1401 (S-1) would make the licensing standard consistent. Together, the bills essentially would codify the former OFIS Commissioner's ruling in *Mazur*, and ensure that convicted felons in Michigan were not entrusted with producing insurance policies.

In addition, although the other sanctions allowed under Section 1239 (probation, suspension or revocation of a license, and a civil fine) fall under the Commissioner's authority to discipline those who already are licensed, the refusal to issue a license deals with standards for licensure. By removing the discretion to deny an insurance producer's license from Section 1239(1), Senate Bill 1401 (S-1) would segregate statutory provisions dealing with licensing standards from provisions concerning licensees' standard of conduct and administrative remedies.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.