

Legislative Analysis



INSURANCE AGENT LICENSE ELIGIBILITY

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House Bill 4044 (H-2) as reported from committee

Sponsor: Rep. Michele Hoitenga

1st Committee: Insurance

2nd Committee: Ways and Means

Complete to 6-19-19

Analysis available at

<http://www.legislature.mi.gov>

(Enacted as Public Act 124 of 2019)

BRIEF SUMMARY: House Bill 4044 would amend the Insurance Code to modify a provision that currently requires automatic licensure denial for insurance producers (commonly called insurance agents) who have been convicted of a felony. The bill would require automatic denial for violent felonies or those related to financial probity, but would allow the exercise of discretion regarding licensure of applicants with other felony convictions after a 10-year “cooling off” period following the conviction. The bill would also eliminate automatic license denial for certain nonfelony actions, such as providing misinformation on the application, improperly using notes during the exam, or having an insurance license revoked or denied in another jurisdiction.

FISCAL IMPACT: House Bill 4044 would not have a significant fiscal impact on the Department of Insurance and Financial Services (DIFS) or any other unit of state or local government.

THE APPARENT PROBLEM:

Michigan law currently excludes anyone with a felony conviction from being issued a license to practice as an insurance agent, regardless of the nature of the conviction or how long ago it was. Reportedly, many license denials of this kind are made because of repeat drunk driving offenses that are automatic felonies. Some feel that this blanket prohibition is too broad and severe and that there should be more discretion during the review process to allow a license to be issued to someone who made a mistake in the past but has worked to turn his or her life around. It is felt that this could not only allow talented felons entry into the professional field, but in many cases the positive aspects of being able to embark on a professional career path could work to reduce recidivism. Legislation has been offered to amend the criteria for issuing an insurance producers’ license in light of these considerations.

THE CONTENT OF THE BILL:

Currently, section 1239 of the Insurance Code allows the director of DIFS to place on probation, suspend, or revoke an insurance producer’s license or levy a civil fine against the license holder, and requires that the director not issue a license, if the license holder or applicant has done any of a number of listed actions, including having ever been convicted of any felony.

The bill would change this provision to generally apply only if the license holder or applicant had been convicted of a felony within 10 years before the application was filed.

However, regardless of the date of conviction, the provision would continue to apply to a license holder or applicant who was convicted of a felony involving any of the following:

- Criminal sexual conduct.
- Violence or the threat of violence against an individual, including domestic violence.
- A felony of a fiduciary or financial nature, such as fraud, bribery, embezzlement, or extortion.

The bill would add language to allow the director of DIFS to place on probation, suspend, or revoke an insurance producer's license or levy a civil fine against the license holder, and allow the director to not issue a license, if the license holder or applicant had done any of a number of actions, among which is having been convicted of a felony other than the felonies described in the paragraph above.

The other actions, for which the director is currently required to not issue a license but under the bill would be allowed to issue one, consist of the following:

- Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- Improperly using notes or other reference material to complete an examination for an insurance license.
- Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.
- Violating any insurance laws or a regulation, subpoena, or order of the director of DIFS or the insurance commissioner of another state.
- Failing to comply with a child support court order or administrative order.
- Failing to pay business taxes or failing to comply with an administrative or court order directing payment of those taxes.

Subject to the above circumstances allowing the director of DIFS to not issue a license, the bill would require the director to issue a license to an applicant if, after examination, investigation, and interrogatories, the director determined that the applicant possesses good moral character to act as an insurance producer.

[Note: The bill also amends section 1205 of the Insurance Code, but none of those amendments makes a substantive change to current law.]

The bill would take effect six months after its enactment.

MCL 500.1205 and 500.1239

BACKGROUND INFORMATION:

According to committee testimony, no other state has a straight prohibition against issuing an insurance producer's license to an individual with a felony conviction. Almost all other states use the model licensing act of the National Association of Insurance Commissioners, which allows some discretion to the licensing agency. In 2018, DIFS had 34,422

applications for insurance producer's licenses, and 61 of these were denied on the basis of the applicant's felony conviction.

ARGUMENTS:

For:

Proponents of the bill argued that a felony conviction in a person's past is not necessarily an accurate or fair measure of that person's character or an indication of whether he or she will serve the public fairly, honestly, and openly as an insurance agent. In the first place, some felonies (e.g., embezzlement) are more directly related to the public trust requirements of the profession than are others (e.g., drunk driving). In the second place, the character demonstrated in turning one's life around after one or more bad decisions could be considered a clearer indicator of future direction than the record those decisions have left behind in one's past.

The bill would retain automatic denial for felony offenses involving violence or financial impropriety, but would afford discretion in other cases, after a 10-year period following the conviction. Proponents of the bill noted that the bill would not require automatic approval in such cases, but would allow a license to be issued once other factors are looked at, thus giving space to the exercise of judgment in the review process.

Against:

No arguments against the bill were presented in committee.

POSITIONS:

The Life Insurance Association of Michigan indicated support for the bill. (6-13-19)

A representative of the Department of Insurance and Financial Services testified with no position on the bill. (2-21-19; and indicated a neutral position 5-16-19)

The following entities indicated a neutral position on the bill:

- National Association of Insurance and Financial Advisors of Michigan (6-13-19)
- Michigan Association of Health Underwriters (5-16-19)
- Michigan Association of Insurance Agents (6-13-19)

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