

HOUSE BILL No. 5424

November 7, 2007, Introduced by Reps. Dean, Corriveau, Scott, Virgil Smith, Byrnes, Leland, Hood, Johnson, Melton, Constan, Young, Lemmons, Farrah, Coulouris, Alma Smith, Polidori, Vagnozzi, Tobocman and Condino and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding section 1241.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1241. (1) IF AN INSURANCE PRODUCER OR HIS OR HER
2 AFFILIATE RECEIVES ANY COMPENSATION FROM A CUSTOMER FOR THE
3 PLACEMENT OF INSURANCE OR REPRESENTS THE CUSTOMER WITH RESPECT TO
4 THAT PLACEMENT, NEITHER THAT PRODUCER NOR THE AFFILIATE SHALL
5 ACCEPT OR RECEIVE ANY COMPENSATION FROM AN INSURER OR OTHER THIRD
6 PARTY FOR THAT PLACEMENT OF INSURANCE UNLESS, PRIOR TO THE
7 CUSTOMER'S PURCHASE OF INSURANCE, THE PRODUCER DOES BOTH OF THE
8 FOLLOWING:

9 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), OBTAINS
10 THE CUSTOMER'S DOCUMENTED ACKNOWLEDGMENT THAT SUCH COMPENSATION
11 WILL BE RECEIVED BY THE PRODUCER OR AFFILIATE.

1 (B) DISCLOSES TO THE CUSTOMER THE AMOUNT OF COMPENSATION FROM
2 THE INSURER OR OTHER THIRD PARTY FOR THE PLACEMENT OF INSURANCE. IF
3 THE AMOUNT OF COMPENSATION IS NOT KNOWN AT THE TIME OF DISCLOSURE,
4 THE PRODUCER SHALL DISCLOSE TO THE CUSTOMER THE SPECIFIC METHOD FOR
5 CALCULATING THE COMPENSATION AND, IF POSSIBLE, A REASONABLE
6 ESTIMATE OF THE AMOUNT.

7 (2) SUBSECTION (1) (A) DOES NOT APPLY TO AN INSURANCE PRODUCER
8 WHO MEETS ALL OF THE FOLLOWING:

9 (A) DOES NOT RECEIVE COMPENSATION FROM THE CUSTOMER FOR THE
10 PLACEMENT OF INSURANCE.

11 (B) IN CONNECTION WITH THAT PLACEMENT OF INSURANCE, REPRESENTS
12 AN INSURER THAT HAS APPOINTED THE PRODUCER.

13 (C) DISCLOSES TO THE CUSTOMER PRIOR TO THE PURCHASE OF
14 INSURANCE THAT THE INSURANCE PRODUCER WILL RECEIVE COMPENSATION
15 FROM AN INSURER IN CONNECTION WITH THAT PLACEMENT OR THAT, IN
16 CONNECTION WITH THAT PLACEMENT OF INSURANCE, THE INSURANCE PRODUCER
17 REPRESENTS THE INSURER AND THAT THE PRODUCER MAY PROVIDE SERVICES
18 TO THE CUSTOMER FOR THE INSURER.

19 (3) THIS SECTION DOES NOT APPLY TO A REINSURANCE INTERMEDIARY
20 OR A PERSON LICENSED AS AN INSURANCE PRODUCER WHO ACTS ONLY AS AN
21 INTERMEDIARY BETWEEN AN INSURER AND THE CUSTOMER'S PRODUCER,
22 INCLUDING, BUT NOT LIMITED TO, A MANAGING GENERAL AGENT, A SALES
23 MANAGER, OR A WHOLESALE BROKER.

24 (4) AS USED IN THIS SECTION:

25 (A) "AFFILIATE" MEANS A PERSON THAT CONTROLS, IS CONTROLLED
26 BY, OR IS UNDER COMMON CONTROL WITH THE PRODUCER.

27 (B) "COMPENSATION FROM AN INSURER OR OTHER THIRD PARTY" MEANS

1 PAYMENTS, COMMISSIONS, FEES, AWARDS, OVERRIDES, BONUSES, CONTINGENT
2 COMMISSIONS, LOANS, STOCK OPTIONS, GIFTS, PRIZES, OR ANY OTHER FORM
3 OF VALUABLE CONSIDERATION, WHETHER OR NOT PAYABLE PURSUANT TO A
4 WRITTEN AGREEMENT.

5 (C) "COMPENSATION FROM THE CUSTOMER" DOES NOT INCLUDE ANY FEE
6 OR SIMILAR EXPENSE AS PROVIDED UNDER SECTION 1226 OR ANY FEE OR
7 AMOUNT COLLECTED BY OR PAID TO THE PRODUCER THAT DOES NOT EXCEED AN
8 AMOUNT ESTABLISHED BY THE COMMISSIONER.

9 (D) "CUSTOMER" MEANS THE PERSON SIGNING THE APPLICATION OR
10 SUBMISSION FOR INSURANCE OR THE INSURED'S AUTHORIZED REPRESENTATIVE
11 ACTUALLY NEGOTIATING THE PLACEMENT OF INSURANCE WITH THE PRODUCER.
12 A PERSON IS NOT A CUSTOMER UNDER THIS SECTION IF EITHER OF THE
13 FOLLOWING APPLIES:

14 (i) THE PERSON IS ONLY A PARTICIPANT OR BENEFICIARY OF AN
15 EMPLOYEE BENEFIT PLAN.

16 (ii) THE PERSON IS COVERED BY A GROUP OR BLANKET INSURANCE
17 POLICY OR GROUP ANNUITY CONTRACT SOLD, SOLICITED, OR NEGOTIATED BY
18 THE INSURANCE PRODUCER OR AFFILIATE.

19 (E) "DOCUMENTED ACKNOWLEDGMENT" MEANS THE CUSTOMER'S WRITTEN
20 CONSENT OBTAINED PRIOR TO THE CUSTOMER'S PURCHASE OF INSURANCE. FOR
21 A PURCHASE OVER THE TELEPHONE OR BY ELECTRONIC MEANS FOR WHICH
22 WRITTEN CONSENT CANNOT REASONABLY BE OBTAINED, CONSENT DOCUMENTED
23 BY THE PRODUCER SHALL BE ACCEPTABLE.

24 Enacting section 1. This amendatory act takes effect January
25 1, 2008.