

HOUSE BILL No. 4614

April 24, 2013, Introduced by Rep. Shirkey and referred to the Committee on Health Policy.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 102, 1201, 1238, and 1242 (MCL 500.102,
500.1201, 500.1238, and 500.1242), section 102 as amended by 2000
PA 252, section 1201 as amended by 2012 PA 462, section 1238 as
amended by 2012 PA 453, and section 1242 as amended by 2002 PA 32,
and by adding sections 1229, 1230, 1231, 1231a, and 1231b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. (1) "Commissioner" as used in this act means the
2 ~~commissioner of the office of financial and insurance~~
3 ~~services.~~**DIRECTOR.**

4 (2) "Department" as used in this act means the ~~office of~~
5 ~~financial and insurance services.~~**DEPARTMENT OF INSURANCE AND**
6 **FINANCIAL SERVICES.**

(3) "DIRECTOR" AS USED IN THIS ACT, UNLESS THE CONTEXT CLEARLY IMPLIES A DIFFERENT MEANING, MEANS THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.

Sec. 1201. As used in this chapter:

(A) "AFFORDABLE CARE ACT" MEANS THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148, AS AMENDED BY THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUBLIC LAW 111-152.

(B) ~~(a)~~—"Agent" except as provided in section 1243 means an insurance producer.

(C) ~~(b)~~—"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(D) "EXCHANGE" MEANS AN AMERICAN HEALTH BENEFITS EXCHANGE ESTABLISHED OR OPERATING IN THIS STATE PURSUANT TO THE AFFORDABLE CARE ACT.

(E) ~~(e)~~—"Home state", except as provided in section 1224, means the District of Columbia or any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

(F) ~~(d)~~—"Insurance" means any of the lines of authority in chapter 6.

(G) ~~(e)~~—"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(H) ~~(f)~~—"License" means a document issued by ~~this state's~~ ~~commissioner~~ **THE DIRECTOR** authorizing a person to act as an

1 insurance producer **OR NAVIGATOR** for the qualifications specified in
 2 the document. The license itself does not create any actual,
 3 apparent, or inherent authority in the holder to represent or
 4 commit an insurer.

5 (I) ~~(g)~~—"Limited line credit insurance" includes credit life,
 6 credit disability, credit property, credit unemployment,
 7 involuntary unemployment, mortgage life, mortgage guaranty,
 8 mortgage disability, guaranteed automobile protection insurance,
 9 and any other form of insurance offered in connection with an
 10 extension of credit that is limited to partially or wholly
 11 extinguishing that credit obligation that the ~~commissioner~~**DIRECTOR**
 12 determines should be designated a form of limited line credit
 13 insurance.

14 (J) ~~(h)~~—"Limited line credit insurance producer" means a
 15 person who sells, solicits, or negotiates 1 or more forms of
 16 limited line credit insurance coverage to individuals through a
 17 master, corporate, group, or individual policy.

18 (K) ~~(i)~~—"Limited lines insurance" means any of the following:
 19 (i) Marine insurance as defined in section 614.
 20 (ii) Credit insurance as described in section 624(1)(e).
 21 (iii) Surety and fidelity insurance as defined in section 628.
 22 (iv) Legal expense insurance as defined in section 618.
 23 (v) Livestock insurance as described in section 624(1)(g).
 24 (vi) Malpractice insurance as described in section 624(1)(h).
 25 (vii) Plate glass insurance as described in section 624(1)(c).
 26 (viii) Any other miscellaneous insurance described in section
 27 624(1)(i).

(ix) Any other line of insurance that the ~~commissioner~~**DIRECTOR** considers necessary to recognize to comply with section 1206a(5).

(l) ~~(j)~~—"Limited lines producer" means a person authorized by the ~~commissioner~~**DIRECTOR** to sell, solicit, or negotiate limited lines insurance.

(M) "NAVIGATOR" MEANS A PERSON REQUIRED TO BE LICENSED UNDER THE LAWS OF THIS STATE TO PERFORM ANY OF THE ACTIVITIES DESCRIBED IN 42 USC 18031(I) .

(N) ~~(k)~~—"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(O) ~~(l)~~—"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(P) ~~(m)~~—"Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(Q) ~~(n)~~—"Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

SEC. 1229. (1) AN INDIVIDUAL SHALL NOT ACT AS A NAVIGATOR OR HOLD HIMSELF OR HERSELF OUT TO THE PUBLIC AS A NAVIGATOR UNLESS HE OR SHE IS LICENSED AS A NAVIGATOR.

(2) UNLESS LICENSED AS A NAVIGATOR, AN INDIVIDUAL SHALL NOT

1 RECEIVE FUNDING FROM AN EXCHANGE.

2 (3) A NAVIGATOR MAY DO ALL OF THE FOLLOWING:

3 (A) CONDUCT PUBLIC EDUCATION ACTIVITIES TO RAISE AWARENESS OF
4 THE AVAILABILITY OF QUALIFIED HEALTH PLANS.

5 (B) DISTRIBUTE FAIR AND IMPARTIAL GENERAL INFORMATION
6 CONCERNING ENROLLMENT IN ALL QUALIFIED HEALTH PLANS OFFERED WITHIN
7 THE EXCHANGE AND THE AVAILABILITY OF THE PREMIUM TAX CREDITS UNDER
8 SECTION 36B OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 36B, AND
9 COST-SHARING REDUCTION UNDER SECTION 1402 OF THE AFFORDABLE CARE
10 ACT.

11 (C) FACILITATE ENROLLMENT IN QUALIFIED HEALTH PLANS, WITHOUT
12 SUGGESTING THAT AN INDIVIDUAL SELECT A PARTICULAR PLAN.

13 (D) PROVIDE REFERRALS TO APPROPRIATE STATE AGENCIES FOR AN
14 ENROLLEE WITH A GRIEVANCE, COMPLAINT, OR QUESTION REGARDING THE
15 ENROLLEE'S HEALTH PLAN, COVERAGE, OR A DETERMINATION UNDER SUCH
16 PLAN COVERAGE.

17 (E) PROVIDE INFORMATION IN A MANNER THAT IS CULTURALLY AND
18 LINGUISTICALLY APPROPRIATE TO THE NEEDS OF THE POPULATION SERVED BY
19 THE EXCHANGE.

20 (4) A NAVIGATOR SHALL NOT DO ANY OF THE FOLLOWING:

21 (A) SELL, SOLICIT, OR NEGOTIATE HEALTH INSURANCE.

22 (B) PROVIDE ADVICE CONCERNING THE BENEFITS, TERMS, AND
23 FEATURES OF A PARTICULAR HEALTH PLAN OR OFFER ADVICE ABOUT WHICH
24 HEALTH PLAN IS BETTER OR WORSE FOR A PARTICULAR INDIVIDUAL OR
25 ENTITY.

26 (C) RECOMMEND A PARTICULAR HEALTH PLAN OR ADVISE CONSUMERS
27 ABOUT WHICH HEALTH PLAN TO CHOOSE.

1 (D) PROVIDE ANY INFORMATION OR SERVICES RELATED TO HEALTH
2 BENEFIT PLANS OR OTHER PRODUCTS NOT OFFERED IN THE EXCHANGE.

3 (5) IF AN EXCHANGE IS ESTABLISHED OR OPERATING IN THIS STATE,
4 THE DIRECTOR SHALL DO ALL OF THE FOLLOWING:

5 (A) ESTABLISH A LICENSING AND TRAINING PROGRAM FOR A
6 PROSPECTIVE NAVIGATOR. THE LICENSING AND TRAINING PROGRAM SHALL
7 INCLUDE, BUT IS NOT LIMITED TO, TRAINING ON COMPLIANCE WITH THE
8 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC
9 LAW 104-191, OR REGULATIONS PROMULGATED UNDER THAT ACT, TRAINING ON
10 ETHICS, AND TRAINING ON PROVISIONS OF THE AFFORDABLE CARE ACT
11 RELATING TO NAVIGATORS.

12 (B) DEVELOP AN APPLICATION AND DISCLOSURE FORM BY WHICH A
13 NAVIGATOR MAY DISCLOSE ANY POTENTIAL CONFLICTS OF INTEREST, AS WELL
14 AS ANY OTHER INFORMATION REQUIRED BY THE DIRECTOR.

15 SEC. 1230. (1) AN INDIVIDUAL APPLYING FOR A NAVIGATOR LICENSE
16 SHALL FILE WITH THE DIRECTOR THE UNIFORM APPLICATION REQUIRED BY
17 THE DIRECTOR AND SHALL DECLARE UNDER PENALTY OF REFUSAL,
18 SUSPENSION, OR REVOCATION OF THE LICENSE THAT THE STATEMENTS MADE
19 IN THE APPLICATION ARE TRUE, CORRECT, AND COMPLETE TO THE BEST OF
20 THE INDIVIDUAL'S KNOWLEDGE AND BELIEF. AN APPLICATION FOR A
21 NAVIGATOR'S LICENSE SHALL NOT BE APPROVED UNLESS THE DIRECTOR FINDS
22 THAT THE INDIVIDUAL MEETS ALL OF THE FOLLOWING:

23 (A) IS AT LEAST 18 YEARS OF AGE.

24 (B) HAS NOT COMMITTED ANY ACT LISTED THAT WOULD BE A GROUND
25 FOR DENIAL, SUSPENSION, OR REVOCATION OF AN INSURANCE PRODUCER'S
26 LICENSE IN SECTION 1239(1).

27 (C) AS REQUIRED UNDER SECTION 1229, HAS COMPLETED A

1 PRELICENSING COURSE OF STUDY FOR THE QUALIFICATIONS FOR WHICH THE
2 PERSON HAS APPLIED.

3 (D) HAS PAID THE FEES REQUIRED BY THE DIRECTOR.

4 (E) HAS SUCCESSFULLY PASSED THE EXAMINATION REQUIRED FOR EACH
5 QUALIFICATION FOR WHICH THE PERSON HAS APPLIED.

6 (2) A BUSINESS ENTITY ACTING AS A NAVIGATOR SHALL OBTAIN A
7 NAVIGATOR LICENSE. A BUSINESS ENTITY APPLYING FOR A NAVIGATOR
8 LICENSE SHALL FILE WITH THE DIRECTOR THE UNIFORM BUSINESS ENTITY
9 APPLICATION REQUIRED BY THE DIRECTOR. AN APPLICATION FOR A
10 NAVIGATOR LICENSE UNDER THIS SUBSECTION SHALL NOT BE APPROVED
11 UNLESS THE DIRECTOR FINDS ALL OF THE FOLLOWING:

12 (A) THE BUSINESS ENTITY HAS PAID THE FEES REQUIRED BY THE
13 DIRECTOR.

14 (B) THE BUSINESS ENTITY HAS DESIGNATED AN INDIVIDUAL LICENSED
15 NAVIGATOR RESPONSIBLE FOR THE BUSINESS ENTITY'S COMPLIANCE WITH
16 THIS STATE'S INSURANCE LAWS, RULES, AND REGULATIONS.

17 (C) THE BUSINESS ENTITY HAS NOT COMMITTED ANY ACT LISTED IN
18 SECTION 1239(1).

19 (3) THE DIRECTOR MAY REQUIRE THE PRODUCTION OF ANY DOCUMENTS
20 REASONABLY NECESSARY TO VERIFY THE INFORMATION CONTAINED IN AN
21 APPLICATION.

22 SEC. 1231. (1) IN ADDITION TO ANY OTHER POWERS UNDER THIS ACT,
23 THE DIRECTOR MAY PLACE ON PROBATION, SUSPEND, OR REVOKE A
24 NAVIGATOR'S LICENSE OR MAY LEVY A CIVIL FINE UNDER SECTION 1244 OR
25 ANY COMBINATION OF ACTIONS, AND THE DIRECTOR SHALL REFUSE TO ISSUE
26 A NAVIGATOR LICENSE UNDER SECTION 1230, FOR ANY 1 OR MORE CAUSES
27 THAT WOULD BE A GROUND FOR REFUSAL, SUSPENSION, OR REVOCATION OF AN

1 INSURANCE PRODUCER'S LICENSE UNDER SECTION 1239. BEGINNING OCTOBER
2 1, 2013, THE DIRECTOR SHALL REVOKE A NAVIGATOR LICENSE OF ANY
3 PERSON OR REFUSE TO ISSUE A NAVIGATOR LICENSE FOR A PERSON THAT
4 RECEIVES FINANCIAL COMPENSATION, INCLUDING MONETARY AND IN-KIND
5 COMPENSATION, GIFTS, OR GRANTS FROM AN INSURER OFFERING QUALIFIED
6 HEALTH BENEFITS THROUGH AN EXCHANGE OPERATING IN THIS STATE. THE
7 DIRECTOR MAY DENY, SUSPEND, APPROVE, RENEW, OR REVOKE THE LICENSE
8 OF A NAVIGATOR IF THE DIRECTOR CONSIDERS IT NECESSARY TO PROTECT
9 INSUREDS AND THE PUBLIC.

10 (2) BEFORE THE DIRECTOR DENIES AN APPLICATION FOR A NAVIGATOR
11 LICENSE UNDER SECTION 1230, THE DIRECTOR SHALL NOTIFY IN WRITING
12 THE APPLICANT OR LICENSEE OF THE DENIAL AND OF THE REASON FOR THE
13 DENIAL. NOT LATER THAN 30 DAYS AFTER THIS WRITTEN DENIAL, THE
14 APPLICANT OR LICENSEE MAY MAKE WRITTEN DEMAND UPON THE DIRECTOR FOR
15 A HEARING BEFORE THE DIRECTOR TO DETERMINE THE REASONABLENESS OF
16 THE DIRECTOR'S ACTION. A HEARING UNDER THIS SUBSECTION SHALL BE
17 HELD PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
18 306, MCL 24.201 TO 24.328.

19 (3) THE NAVIGATOR LICENSE OF A BUSINESS ENTITY MAY BE
20 SUSPENDED, REVOKED, OR REFUSED IF THE DIRECTOR FINDS, AFTER
21 HEARING, THAT AN INDIVIDUAL NAVIGATOR'S VIOLATION WAS KNOWN OR
22 SHOULD HAVE BEEN KNOWN BY 1 OR MORE OF THE PARTNERS, OFFICERS, OR
23 MANAGERS ACTING ON BEHALF OF THE BUSINESS ENTITY AND THE VIOLATION
24 WAS NEITHER REPORTED TO THE DIRECTOR NOR CORRECTIVE ACTION TAKEN.

25 (4) THE DIRECTOR MAY EXAMINE THE BOOKS AND RECORDS OF A
26 NAVIGATOR TO DETERMINE WHETHER THE NAVIGATOR IS CONDUCTING ITS
27 BUSINESS IN ACCORDANCE WITH THIS CHAPTER. FOR THE PURPOSE OF

1 FACILITATING THE EXAMINATION, THE NAVIGATOR SHALL ALLOW THE
2 DIRECTOR FREE ACCESS, AT REASONABLE TIMES, TO ALL OF THE
3 NAVIGATOR'S BOOKS AND RECORDS RELATING TO TRANSACTIONS TO WHICH
4 THIS CHAPTER APPLIES.

5 SEC. 1231A. A BUSINESS ENTITY LICENSED AS A NAVIGATOR SHALL,
6 IN A MANNER PRESCRIBED BY THE DIRECTOR, MAKE AVAILABLE A LIST OF
7 ALL INDIVIDUAL NAVIGATORS THAT THE BUSINESS ENTITY EMPLOYS OR
8 SUPERVISES OR WITH WHICH THE BUSINESS ENTITY IS OTHERWISE
9 AFFILIATED.

10 SEC. 1231B. A BUSINESS ENTITY THAT TERMINATES THE EMPLOYMENT,
11 ENGAGEMENT, AFFILIATION, OR OTHER RELATIONSHIP WITH AN INDIVIDUAL
12 NAVIGATOR SHALL NOTIFY THE DIRECTOR USING A FORMAT PRESCRIBED BY
13 THE DIRECTOR OF THE TERMINATION WITHIN 30 DAYS FOLLOWING THE
14 EFFECTIVE DATE OF THE TERMINATION IF THE REASON FOR TERMINATION IS
15 1 OF THE REASONS LISTED IN SECTION 1239 OR THE BUSINESS ENTITY HAS
16 KNOWLEDGE THE INDIVIDUAL NAVIGATOR WAS FOUND BY A COURT OR
17 GOVERNMENT BODY TO HAVE ENGAGED IN ANY OF THE ACTIVITIES LISTED IN
18 SECTION 1239.

19 Sec. 1238. (1) When applying for a license to act as an agent,
20 solicitor, counselor, ~~ex~~-adjuster, **OR NAVIGATOR**, the applicant
21 shall report his or her mailing and electronic mail address to the
22 ~~commissioner~~-**DIRECTOR**. An agent, solicitor, counselor, ~~ex~~
23 adjuster, **OR NAVIGATOR** shall notify the ~~commissioner~~-**DIRECTOR** of
24 any change in his or her mailing or electronic mail address within
25 30 days after the change. The ~~commissioner~~-**DIRECTOR** shall maintain
26 the mailing and electronic mail address of each agent, solicitor,
27 counselor, ~~ex~~-adjuster, **OR NAVIGATOR** on file.

1 (2) A notice of hearing or service of process may be served
2 upon an agent, solicitor, counselor, ~~ex~~-adjuster, **OR NAVIGATOR** in
3 any action or proceeding for a violation of this act by mailing the
4 notice or process by first class mail to the agent's, solicitor's,
5 counselor's, ~~ex~~-adjuster's, **OR NAVIGATOR'S** mailing address reported
6 to the ~~commissioner~~-**DIRECTOR** under subsection (1).

7 Sec. 1242. (1) The ~~commissioner~~-**DIRECTOR** shall refuse to grant
8 a license to act as a solicitor, an insurance counselor, ~~ex~~-an
9 adjuster, **OR A NAVIGATOR** to an applicant who fails to meet the
10 requirements of this chapter. Notice of the refusal shall be in
11 writing and shall set forth the basis for the refusal. If the
12 applicant submits a written request within 30 days after mailing of
13 the notice of refusal, the ~~commissioner~~-**DIRECTOR** shall promptly
14 conduct a hearing in which the applicant shall be given an
15 opportunity to show compliance with the requirements of this
16 chapter.

17 (2) The ~~commissioner~~-**DIRECTOR**, after notice and opportunity
18 for a hearing, may suspend or revoke the license of a solicitor,
19 insurance counselor, ~~ex~~-adjuster, **OR NAVIGATOR** who fails to
20 maintain the standards required for initial licensing or who
21 violates any provision of this act.

22 (3) After notice and opportunity for a hearing, the
23 ~~commissioner~~-**DIRECTOR** may refuse to grant or renew a license to act
24 as a solicitor, adjuster, or insurance counselor if he or she
25 determines by a preponderance of the evidence, that it is probable
26 that the business or primary occupation of the applicant will give
27 rise to coercion, indirect rebating of commissions, or other

1 practices in the sale of insurance that are prohibited by law.

2 (4) Without prior hearing, the ~~commissioner~~**DIRECTOR** may order
3 summary suspension of a license if he or she finds that protection
4 of the public requires emergency action and incorporates this
5 finding in his or her order. The suspension shall be effective on
6 the date specified in the order or upon service of a certified copy
7 of the order on the licensee, whichever is later. If requested, the
8 ~~commissioner~~**DIRECTOR** shall conduct a hearing on the suspension
9 within a reasonable time but not later than 20 days after the
10 effective date of the summary suspension unless the person whose
11 license is suspended requests a later date. At the hearing, the
12 ~~commissioner~~**DIRECTOR** shall determine if the suspension should be
13 continued or if the suspension should be withdrawn, and, if proper
14 notice is given, may determine if the license should be revoked.
15 The ~~commissioner~~**DIRECTOR** shall announce his or her decision within
16 30 days after conclusion of the hearing. The suspension shall
17 continue until the decision is announced.

18 (5) The ~~commissioner~~**DIRECTOR**, or his or her designated
19 deputy, may issue subpoenas to require the attendance and testimony
20 of witnesses and the production of documents necessary to the
21 conduct of the hearing and may designate ~~an office of financial and~~
22 ~~insurance services~~**A DEPARTMENT** employee to make service. The
23 subpoenas issued by the ~~commissioner~~**DIRECTOR**, or his or her
24 designated deputy, may be enforced upon petition to the circuit
25 court of Ingham county to show cause why a contempt order should
26 not be issued, as provided by law.

27 Enacting section 1. (1) This amendatory act does not do any of

1 the following:

2 (a) Authorize or be construed to authorize the establishment
3 or operation of an American health benefit exchange in this state
4 pursuant to the patient protection and affordable care act, Public
5 Law 111-148, as amended by the health care and education
6 reconciliation act of 2010, Public Law 111-152.

7 (b) Authorize this state or an agency of this state to conduct
8 or oversee state-level governmental consumer assistance functions
9 for an American health benefit exchange established or operating in
10 this state pursuant to the patient protection and affordable care
11 act, Public Law 111-148, as amended by the health care and
12 education reconciliation act of 2010, Public Law 111-152.

13 (c) Convey any administrative, statutory, rule-making, or
14 other power to this state or an agency of this state to authorize,
15 establish, or operate an American health benefit exchange in this
16 state that did not exist before the effective date of this
17 amendatory act.

18 (2) It is the intent of this legislature that any consumer
19 assistance functions by or overseen by this state or an agency of
20 this state with regard to an American health benefit exchange shall
21 be conducted in a manner that utilizes and highlights Michigan-
22 based resources, including insurance producers, in order to best
23 serve the residents of this state and to ensure appropriate health
24 care decisions.

25 Enacting section 2. This amendatory act applies to policies,
26 certificates, or contracts delivered, issued for delivery, or
27 renewed in this state on and after the effective date of this

1 amendatory act.