

SENATE BILL No. 644

November 1, 2017, Introduced by Senator JONES and referred to the Committee on Insurance.

A bill to provide for and clarify the liability of and simplify claims and actions against insurance agents and agencies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "insurance agents liability act".

3 Sec. 2. As used in this act:

4 (a) "Customer" means a person that has engaged a licensee or
5 requested that the licensee place, procure, or service insurance
6 coverage on the person's behalf and includes any other person that
7 is requested to be included as or that is a named insured on the
8 coverage. Customer does not include any of the following:

9 (i) Any other person that may be included in the coverage or
10 in a policy issued as an additional insured, loss payee, mortgagee,
11 land contract holder, or lien holder.

1 (ii) Any other person that may benefit from the coverage as a
2 beneficiary or insured person.

3 (iii) Any other person that may have suffered or is alleged to
4 have suffered loss, damage, or injury that may be recoverable under
5 the coverage or a policy issued.

6 (b) "Insurance agent errors and omissions liability" means the
7 cause of action described in section 4(1).

8 (c) "Insurance counselor" means an individual who is licensed
9 as an insurance counselor under section 1234 of the insurance code
10 of 1956, 1956 PA 218, MCL 500.1234.

11 (d) "Licensee" means an insurance producer, as that term is
12 defined in section 1201 of the insurance code of 1956, 1956 PA 218,
13 MCL 500.1201, including an insurance agency, that is licensed under
14 the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.
15 Licensee includes an employee of an insurance producer. Licensee
16 does not include an insurance counselor.

17 (e) "Person" means an individual, partnership, corporation,
18 association, governmental entity, or other legal entity.

19 (f) "Special relationship" means a relationship between a
20 licensee and a customer as to which 1 or more of the following
21 occur:

22 (i) The licensee expressly undertakes additional duties or
23 obligations beyond exercising the standard of care to place,
24 attempt to place, or service the coverage requested by the customer
25 that is the specific issue in dispute. A licensee does not
26 expressly undertake an additional duty or obligation by doing
27 either of the following:

1 (A) Using a common phrase of puffery or assurance, such as
2 full coverage, good coverage, or you are covered.

3 (B) Offering options for optional or additional coverage or
4 limits.

5 (ii) The customer makes an inquiry to the licensee or asks the
6 licensee a question about the specific issue in dispute.

7 (iii) The licensee makes a representation or provides advice
8 or an explanation about the specific issue in dispute to the
9 customer. A licensee does not provide advice by offering options
10 for optional or additional coverage or limits.

11 (iv) The customer makes an ambiguous request to the licensee
12 that warrants clarification about the specific issue in dispute.

13 (g) "Special relationship" does not include a relationship
14 between a licensee and a customer that is based only on 1 or more
15 of the following:

16 (i) The length of a business or personal relationship between
17 the licensee and the customer.

18 (ii) The number or percentage of policies or coverages
19 procured or placed by the licensee for the customer.

20 (h) "Standard of care" means the minimum skill and care,
21 knowledge, and expertise possessed and exercised by licensees
22 placing or servicing the same or a comparable type and complexity
23 of coverage with the same or a comparable premium level as the
24 policy and coverage at issue or in dispute.

25 Sec. 3. (1) This act applies to a licensee with respect to
26 services, conduct, or actions performed in the licensee's capacity
27 as a licensee.

1 (2) This act does not apply to a licensee with respect to the
2 licensee's duties in the receipt or handling of money under section
3 1207 of the insurance code of 1956, 1956 PA 218, MCL 500.1207.

4 Sec. 4. (1) There is a single cause of action against a
5 licensee regarding services, conduct, or actions performed in the
6 agent's capacity as a licensee, insurance agent errors and
7 omissions liability.

8 (2) There is no cause of action against a licensee other than
9 the cause of action described in subsection (1), including, but not
10 limited to, any cause of action at common law or in equity for
11 negligence, breach of contract, misrepresentation, fraud, breach of
12 fiduciary duty, unjust enrichment, or quantum meruit, and any such
13 cause of action is abolished.

14 Sec. 5. Except as provided in section 6, if a special
15 relationship is established, a licensee's liability for insurance
16 agent errors and omissions liability is limited to breach or
17 violation of the standard of care for licensees to place and
18 service insurance policies and coverage requested by the licensee's
19 customers. A licensee has no duty or obligation to advise a
20 customer or other person about the customer's insurance needs or
21 requirements or to explain the coverage to a customer or other
22 person. Except as provided in section 1207 of the insurance code of
23 1956, 1956 PA 218, MCL 500.1207, a licensee is not a fiduciary and
24 does not have fiduciary obligations.

25 Sec. 6. If a special relationship is found to exist with the
26 customer as to the specific matter or issue that is in dispute, the
27 licensee shall comply with the standard of care in fulfilling the

1 additional duties or obligations agreed to, to clarify the
2 ambiguous request, to give accurate and responsive advice and
3 explanations, and to accurately respond to the inquiries or
4 questions.

5 Sec. 7. Unless the standard of care and breach or violation of
6 the standard of care is acknowledged or admitted by the licensee or
7 readily apparent under the facts without expert testimony, proof of
8 insurance agent errors and omissions liability requires expert
9 testimony or opinions to establish the standard of care, breach or
10 violation of the standard of care, and whether damages proximately
11 resulted from the breach or violation of the standard of care.

12 Sec. 8. The liability and damages of a licensee for insurance
13 agent errors and omissions liability as a result of breaching or
14 violating the standard of care is limited to the loss, damages, or
15 benefits that would have been recovered or received by the customer
16 or another person had there been no error or omission by the
17 licensee, plus statutory interest, and does not include other
18 amounts or damages such as, by way of example only, mental distress
19 and upset damages; loss of profits that would not have been payable
20 under the policy or policies procured or to be procured in the
21 absence of the error or omission; punitive or exemplary damages; or
22 any other loss or damages that would not have been covered by the
23 policy or policies at issue in the absence of the error or omission
24 of the licensee.

25 Sec. 9. A person shall not commence an action or arbitration
26 or otherwise make a claim for insurance agent errors and omissions
27 liability against a licensee more than 2 years after the licensee

1 last provided services to the customer with respect to the specific
2 policy or coverage at issue or more than 6 months after the date
3 the customer knew, discovered, or should have discovered through
4 the application of ordinary care that an error or omission may have
5 been committed.

6 Sec. 10. This act applies to a cause of action that arises or
7 an action, arbitration, or claim filed or made on or after the
8 effective date of this act.