

HOUSE BILL NO. 4376

April 11, 2023, Introduced by Rep. Brenda Carter and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 1207 (MCL 500.1207), as amended by 2018 PA 449.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1207. (1) An agent is a fiduciary for all money received
2 or held by the agent in ~~his or her~~ **the agent's** capacity as an
3 agent.

4 ~~Failure by an agent in a timely manner to turn over the money~~
5 ~~that he or she holds in a fiduciary capacity to the persons to whom~~
6 ~~it is owed is prima facie evidence of violation of the agent's~~
7 ~~fiduciary responsibility. An agent shall not accept payment of a~~

1 ~~premium for a medicare supplemental policy or certificate in the~~
2 ~~form of a check or money order made payable to the agent instead of~~
3 ~~the insurer. On receiving payment of a premium for a medicare~~
4 ~~supplemental policy or certificate, an agent shall immediately~~
5 ~~provide a written receipt to the insured.~~

6 ~~(2) An agent shall use reasonable accounting methods to record~~
7 ~~funds received in his or her fiduciary capacity including the~~
8 ~~receipt and distribution of all premiums due each of his or her~~
9 ~~insurers. An agent shall record return premiums received by or~~
10 ~~credited to him or her that are due an insured on policies reduced~~
11 ~~or canceled or that are due a prospective purchaser of insurance as~~
12 ~~a result of a rejected or declined application. Records required by~~
13 ~~this section must be open to examination by the director.~~

14 **(2) An agent shall treat all premiums and return premiums as**
15 **fiduciary money and segregate the premiums from the agent's own**
16 **money. An agent shall not comingle premiums or return premiums with**
17 **any other money of the agent.**

18 **(3) The separate account under subsection (2) must be**
19 **established and maintained in any state or federally chartered**
20 **financial institution that is federally insured. The separate**
21 **account may be interest-bearing.**

22 **(4) An agent may hold returned premiums in the separate**
23 **account for the purpose of paying future premiums on behalf of an**
24 **insured with the insured's written authorization. An agent may**
25 **establish the account with an initial deposit of the agent's own**
26 **money only if the deposit is required to open the account or to**
27 **avoid bank charges or fees for maintaining the account. Once the**
28 **first deposit of premiums or return premiums is made into the**
29 **account, the agent must immediately withdraw the money or maintain**

1 money within the account and separately account for the money.

2 (5) An agent shall use reasonable accounting methods to record
3 money received in the agent's fiduciary capacity, including the
4 receipt and distribution of premiums due each of the agent's
5 insurers.

6 (6) An agent who receives fiduciary money must document the
7 receipt of the fiduciary money in sufficient detail to determine,
8 at a minimum, the date received, the name of the payee, the amount
9 received, and a description of the money.

10 (7) An agent shall record return premiums received by or
11 credited to the agent that are due an insured on policies reduced
12 or canceled or that are due a prospective purchaser of insurance as
13 a result of a rejected or declined application.

14 (8) Failure by an agent in a timely manner to turn over the
15 money that the agent holds in a fiduciary capacity to the persons
16 to whom it is owed is prima facie evidence of violation of the
17 agent's fiduciary responsibility.

18 (9) An agent shall not accept payment of a premium for a
19 Medicare supplemental policy or certificate in the form of a check
20 or money order made payable to the agent instead of the insurer. On
21 receiving payment of a premium for a Medicare supplemental policy
22 or certificate, an agent shall immediately provide a written
23 receipt to the insured.

24 (10) Records required by this section must be open to
25 examination by the director.

26 (11) ~~(3)~~—Except as provided in sections 1211, 1212, and
27 subsection ~~(4)~~, ~~(12)~~, an agent shall not reward or remunerate any
28 person for procuring or inducing business in this state, furnishing
29 leads or prospects, or acting in any other manner as an agent.

1 (12) ~~(4)~~—If an agent is unable to immediately provide, through
2 ~~his or her the agent's~~ insurers that are authorized to underwrite
3 the coverage, all or a part of the coverage requested on a risk,
4 the agent may obtain the part of the coverage refused by ~~his or her~~
5 **the agent's** insurers through another licensed agent or through a
6 risk sharing plan permitted by state law. An agent who attempts to
7 place the refused part of the coverage through another licensed
8 agent shall advise the buyer in writing that the refused part of
9 the coverage is not in effect until the buyer receives written
10 evidence of insurance.

11 (13) ~~(5)~~—A person shall not sell or attempt to sell insurance
12 by means of intimidation or threats, whether express or implied.
13 Except as provided in section 2077(4), a person may not induce the
14 purchase of insurance through a particular agent or from a
15 particular insurer by means of a promise to sell goods, lend money,
16 or provide services, or by a threat to refuse to sell goods, lend
17 money, or provide services.

18 (14) ~~(6)~~—After January 1, 1973, an insurer or an agent may not
19 be a party to a contract under which the agent assumes any
20 responsibility or obligation for payment, from ~~his or her the~~
21 **agent's** commission or any allocation of premium to ~~him or her the~~
22 **agent** by the insurer, of any losses on insurance policies sold by
23 the agent unless the claim adjusting is done by insurance company
24 adjusters or licensed independent adjusters.

25 Enacting section 1. This amendatory act takes effect 180 days
26 after the date it is enacted into law.