

Act No. 566
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. Crawford and Kelly

ENROLLED HOUSE BILL No. 4576

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” by amending section 102 (MCL 500.102), as amended by 2000 PA 252, and by adding chapter 12A.

The People of the State of Michigan enact:

Sec. 102. As used in this act:

(a) “Commissioner” means the director.

(b) "Department" means the department of insurance and financial services.

(c) "Director" means, unless the context clearly implies a different meaning, the director of the department.

CHAPTER 12A

Sec. 1261. 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) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(c) "Certificate" means a document issued by the director authorizing a person to act as a navigator or certified application counselor for the qualifications specified in the document. The certificate itself does not create any actual, apparent, or inherent authority in the certificate holder to represent or commit an insurer.

(d) "Certificate holder" means a person issued a certificate under this chapter.

(e) "Certified application counselor" means an individual who is certified as a certified application counselor under this chapter and is authorized by the United States department of health and human services to perform the duties described in 45 CFR 155.225.

(f) "Certified navigator" means a person that is certified as a navigator under this chapter.

(g) "Exchange" means an American health benefits exchange established or operating under the affordable care act.

(h) "Insurance" means any of the kinds of insurance described in chapter 6.

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

(j) "Navigator" means a person that receives any funding from an exchange or the federal government and is designated or selected by an exchange or the federal government to perform any of the duties described in 42 USC 18031(i)(3).

(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.

(l) "Qualified health plan" means that term as defined in section 1301 of the affordable care act.

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

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

Sec. 1262. (1) Beginning June 30, 2015, an individual shall not act as a navigator unless he or she has filed an application under section 1263(1) and is certified with this state as a navigator.

(2) Unless certified as a navigator, an individual shall not receive funding from an exchange.

(3) Subject to the affordable care act, a certified navigator shall do all of the following:

(a) Conduct public education activities to raise awareness of the availability of qualified health plans.

(b) Distribute fair and impartial information concerning enrollment in all qualified health plans offered within the exchange and the availability of the premium tax credits under section 36B of the internal revenue code of 1986, 26 USC 36B, and cost-sharing reduction under section 1402 of the affordable care act.

(c) Facilitate selection of a qualified health plan.

(d) Provide referrals to appropriate state agencies for an enrollee with a grievance, complaint, or question regarding the enrollee's health plan, coverage, or a determination under such plan coverage.

(e) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population served by the exchange.

(4) A certified navigator shall not do any of the following:

(a) Sell, solicit, or negotiate health insurance.

(b) Recommend a particular health benefit plan.

(c) Provide any information or services related to insurance regulated under this act other than health benefit plans or other products offered in the exchange.

(5) If an exchange is operational in this state, the director shall determine whether a program to certify and train navigators protects the privacy and security of personally identifiable information of the residents of this state under the laws of this state. If the director determines that the program does not protect the residents of this state under this subsection, the director shall do all of the following:

(a) Establish a certification and training program that must include, but is not limited to, all of the following:

(i) A criminal history check using the department of state police's internet criminal history access tool (ICHAT).

(ii) Training on privacy and security of personal identifying information, training on ethics, training on provisions of the affordable care act relating to navigators and certified application counselors and any necessary state-specific training as determined by the director.

(b) Develop an application and disclosure form by which an applicant for a certificate shall disclose any potential conflicts of interest, as well as any other information required by the director.

(c) Submit an annual report to the standing committees of the senate and house of representatives with jurisdiction over health policy. The report must include all of the following:

(i) The director's assessment of any federal program to certify and train navigators and certified application counselors.

(ii) Any changes implemented by the department as a result of a federal program to train navigators and certified application counselors.

Sec. 1262a. (1) An individual shall not act as a certified application counselor unless he or she has filed an application under section 1263(2) and is certified with this state as a certified application counselor.

(2) Unless certified as a certified application counselor, an individual shall not receive funding from an exchange.

(3) Subject to the affordable care act, a certified application counselor may do all of the following:

(a) Conduct public education activities to raise awareness of the availability of qualified health plans.

(b) Distribute fair and impartial information about all qualified health plans offered within the exchange and the availability of the premium tax credits under section 36B of the internal revenue code of 1986, 26 USC 36B, and cost-sharing reduction under section 1402 of the affordable care act.

(c) Assist individuals applying for coverage in a qualified health plan.

(d) Facilitate selection of eligible individuals in a qualified health plan.

(e) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population served by the exchange.

(f) Refer an individual with limited English proficiency to a navigator, insurance producer, or other source of assistance.

(4) A certified application counselor shall not do any of the following:

(a) Sell, solicit, or negotiate health insurance.

(b) Recommend a particular qualified health benefit plan.

(c) Provide any information or services related to insurance regulated under this act other than qualified health benefit plans or other products offered in the exchange.

(5) Before providing services to or acting for an individual under subsection (3), a certified application counselor shall disclose any potential conflict of interest to the individual.

Sec. 1263. (1) An individual applying for a navigator certificate shall file with the director the uniform application required by the director and shall declare under penalty of refusal, suspension, or revocation of the navigator certificate that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a navigator certificate shall not be approved unless the director finds that the individual meets all of the following criteria:

(a) Is at least 18 years of age.

(b) Has not committed an act listed that would be a ground for denial, suspension, or revocation of an insurance producer's license in section 1239(1).

(c) Has completed all required training courses under section 1262.

(d) Has paid the fees required by the director.

(e) Has successfully passed any required examination.

(f) Has successfully completed a criminal history check under section 1262.

(2) An individual applying for a certified application counselor certificate shall file with the director the uniform application required by the director and shall declare under penalty of refusal, suspension, or revocation of the certified

application counselor certificate that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a certified application counselor certificate shall not be approved unless the director finds that the individual meets all of the following criteria:

(a) Is at least 18 years of age.

(b) Has not committed an act listed that would be a ground for denial, suspension, or revocation of an insurance producer's license in section 1239(1).

(c) Has completed the entire United States department of health and human services training for certified application counselors, has successfully completed all testing, and has received certification as a certified application counselor from the federal government.

(d) Has paid the fees required by the director.

(e) Has successfully completed a criminal history check using the department of state police's internet criminal history access tool (ICHAT).

(3) If the United States department of health and human services discontinues the training and testing program for certified application counselors, the director shall create a training and testing program for certified application counselors regarding qualified health plan options, insurance affordability programs, eligibility, and benefit rules, and regulations governing all insurance affordability programs operated in this state.

(4) A business entity acting as a navigator or certified application counselor shall obtain a certificate. A business entity applying for a certificate shall file with the director the uniform business entity application required by the director. An application for a certificate under this subsection shall not be approved unless the director finds that the business entity meets all of the following:

(a) The business entity has paid the fees required by the director.

(b) The business entity has designated an individual certificate holder responsible for the business entity's compliance with this chapter.

(c) The business entity has not committed an act listed in section 1239(1).

(5) The director may require the production of any documents reasonably necessary to verify the information contained in an application.

Sec. 1264. (1) In addition to any other powers under this act, the director may place on probation, suspend, or revoke a certificate or may levy a civil fine under section 1270 or any combination of actions, and the director shall refuse to issue a certificate under section 1263, for any 1 or more causes that would be a ground for refusal, suspension, or revocation of an insurance producer's license under section 1239. The director may revoke a certificate of a person or refuse to issue a certificate for a person that receives financial compensation, including monetary and in-kind compensation, gifts, or any compensation related to enrollment from an insurer offering qualified health benefits through an exchange operating in this state. The director may deny, suspend, approve, renew, or revoke a certificate if the director considers it necessary to protect insureds and the public.

(2) The certificate of a business entity may be suspended, revoked, or refused if the director finds, after hearing, that an individual certificate holder's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

(3) The director may examine the books and records of a certificate holder to determine whether the certificate holder is conducting its business in accordance with this chapter. For the purpose of facilitating the examination, the certificate holder shall allow the director free access, at reasonable times, to all of the certificate holder's books and records relating to transactions to which this chapter applies.

Sec. 1265. A business entity issued a certificate shall, in a manner prescribed by the director, make available a list of all individual certificate holders that the business entity employs or supervises or with which the business entity is otherwise affiliated.

Sec. 1266. A business entity that terminates the employment, engagement, affiliation, or other relationship with an individual certificate holder shall notify the director using a format prescribed by the director of the termination within 30 days following the effective date of the termination if the reason for termination is 1 of the reasons listed in section 1239(1) or the business entity has knowledge the individual was found by a court or government body to have engaged in any of the activities listed in section 1239(1).

Sec. 1268. (1) When applying for a certificate, the applicant shall report his or her mailing and electronic mail address to the director. A certificate holder shall notify the director of a change in his or her mailing or electronic mail address within 30 days after the change. The director shall maintain the mailing and electronic mail address of each certificate holder on file.

(2) A notice of hearing or service of process may be served upon a certificate holder in an action or proceeding for a violation of this act by mailing the notice or process by first-class mail to the certificate holder's mailing address reported to the director under subsection (1).

Sec. 1269. (1) The director shall refuse to grant a certificate to an applicant who fails to meet the requirements of this chapter. Notice of the refusal shall be in writing and shall set forth the basis for the refusal. If the applicant submits a written request within 30 days after mailing of the notice of refusal, the director shall promptly conduct a hearing in which the applicant shall be given an opportunity to show compliance with the requirements of this chapter.

(2) The director, after notice of and opportunity for a hearing, may suspend or revoke a certificate of a certificate holder who fails to maintain the standards required for initial certification or who violates this act.

(3) Without prior hearing, the director may order summary suspension of a certificate if he or she finds that protection of the public requires emergency action and incorporates this finding in his or her order. The suspension shall be effective on the date specified in the order or upon service of a certified copy of the order on the certificate holder, whichever is later. If requested, the director shall conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the summary suspension unless the person whose certificate is suspended requests a later date. At the hearing, the director shall determine if the suspension should be continued or if the suspension should be withdrawn, and, if proper notice is given, may determine if the certificate should be revoked. The director shall announce his or her decision within 30 days after conclusion of the hearing. The suspension shall continue until the decision is announced.

(4) The director, or his or her designated deputy, may issue subpoenas to require the attendance and testimony of witnesses and the production of documents necessary to the conduct of the hearing and may designate a department employee to make service. The subpoenas issued by the director, or his or her designated deputy, may be enforced upon petition to the circuit court of Ingham county to show cause why a contempt order should not be issued, as provided by law.

Sec. 1270. (1) If the director finds that a person has violated this chapter, after an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the director may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the director may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the director under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of this state.

(b) The suspension or revocation of the certificate.

(2) The director may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the director conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the certificate, or both. An order issued by the director under this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of this state.

(4) The director may apply to the circuit court of Ingham county for an order of the court enjoining a violation of this chapter.

Sec. 1271. The director shall develop and implement a process for receipt, investigation, and referral to a federal exchange of citizen complaints regarding navigators and certified application counselors. The director shall submit an annual report that describes this process to the standing committees of the senate and house of representatives with jurisdiction of health policy.

Sec. 1272. This chapter does not authorize or shall not be construed to authorize the establishment or operation of an American health benefit exchange in this state under the affordable care act.

Enacting section 1. (1) This amendatory act shall not be construed to do any of the following:

(a) Authorize this state or an agency of this state to conduct or oversee state-level governmental consumer assistance functions for an American health benefit exchange established or operating in this state under 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) Convey any administrative, statutory, rule-making, or other power to this state or an agency of this state to authorize, establish, or operate an American health benefit exchange in this state that did not exist before the effective date of this amendatory act.

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor