

SUBSTITUTE FOR
HOUSE BILL NO. 4376

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~~
8 ~~premium for a medicare supplemental policy or certificate in the~~
9 ~~form of a check or money order made payable to the agent instead of~~

1 ~~the insurer. On receiving payment of a premium for a medicare~~
2 ~~supplemental policy or certificate, an agent shall immediately~~
3 ~~provide a written receipt to the insured.~~

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

12 **(2) An agent shall treat all premiums and return premiums as**
13 **fiduciary money and segregate the premiums from the agent's own**
14 **money. Except as otherwise provided in this subsection, an agent**
15 **shall not commingle premiums or return premiums with any other**
16 **money of the agent. An agent may make an initial deposit from the**
17 **agent's own money to establish the separate account. An agent may**
18 **make additional deposits from the agent's own money into the**
19 **separate account solely for the purpose of paying or avoiding**
20 **financial institution charges or fees, or both, required to**
21 **maintain the separate account. Any of the agent's own money**
22 **deposited into the separate account under this subsection must be**
23 **separately accounted for and identifiable in the agent's books and**
24 **records.**

25 **(3) The separate account under subsection (2) must be**
26 **established and maintained in any state or federally chartered**
27 **financial institution that is federally insured. The separate**
28 **account may be interest-bearing.**

29 **(4) An agent may hold returned premiums in the separate**

1 account for the purpose of paying future premiums on behalf of an
2 insured with the insured's written authorization.

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

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

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

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

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

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

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

1 leads or prospects, or acting in any other manner as an agent.

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

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

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

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