

Ethics and Regulations for the Michigan P/C Producer



Michigan Course #67239

Ethics and Regs for the Michigan PC Producer



American Education Systems, L.C.

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Chapter One - General Insurance Regulations

STATE GOVERNMENT AND INSURANCE REGULATION

- **Continuity and Change**

The insurance and financial services industries are major factors in Michigan's economy. These industries directly employ more than 150,000 Michigan residents and generate more than \$9 billion in annual payroll. Michigan is home to 149 insurance companies, and nearly 1,500 out-of-state insurance companies also do business in the state. In addition, Michigan serves as a port of entry and chief U.S. regulator for five Canadian insurance companies. Due to the size, importance, and complexity of the insurance industry in Michigan, the regulatory landscape has continuously evolved.

On January 17, 2013, Governor Rick Snyder signed an executive order establishing the Department of Insurance and Financial Services (DIFS). The order becomes effective 60 days from the signing. At that time, all authority and responsibilities previously bestowed upon the Commissioner of Office of Financial and Insurance Regulation (OFIR) will be transferred to the DIFS Director, including all board and commission roles.¹

DIFS Director

The DIFS Director holds all the powers of the Commissioner of Insurance. The Director is the chief executive officer of the office, and is appointed by the governor for a four-year term, subject to legislative approval. The Director must be a Michigan citizen. He or she is prohibited from being a stockholder in an insurance company, and cannot be directly or indirectly involved in an insurance company's management. Upon being appointed, the Director is required to post a \$50,000 bond. In addition, the Director shall serve as a member of the Governor's Cabinet.

¹ OFIR was created by a merger of the Michigan Insurance Bureau, the Financial Institutions Bureau, and the securities division of the Corporation, Securities and Land Development Bureau, and is responsible for developing and adopting regulations that will effectively explain how to comply with Michigan insurance law.

The Director is a member or chairperson of the following boards or commissions:

- a. State Employees Retirement System Board. MCL 38.3(1)(a).
- b. Interstate Insurance Product Regulation Compact Commission. MCL 3.1031 Art. II (4), (5) & (8).
- c. State Advisory Council on Mental Health and Aging. MCL 330.1941(1).
- d. Governing Board, Data Collection Agency for Workers Compensation Data. MCL 500.2402(2)(f).
- e. Catastrophic Claims Association Board. MCL 500.3104(13).
- f. Multiple Employer Welfare Arrangement Security Fund Board of Trustees. MCL 500.7080(2).

Broad Powers and Duties

The Director is given a broad range of powers and duties. However, these powers and duties do not include passing insurance laws, which is the sole province of the Michigan legislature. The Director's role is to implement and enforce laws governing insurance. The responsibilities of the Director include all aspects of managing the department's affairs.

Examination of Records

Among the most significant of the commissioner's duties is the examination of the books, records, and affairs of insurance companies operating in Michigan. The commissioner will investigate domestic companies at least once every five years; all other companies may be examined at any time. Examinations of alien insurers are limited to their business in the United States. All costs pertaining to the investigation are carried by the insurer under review.

The commissioner can examine officers and agents of the insurer and any other person having material information regarding the insurer under oath. All materials relating the insurer's business must be produced in the course of the examination.

Upon completion of the examination, the insurer will be given an examination report. The insurer may request the commissioner to hold a hearing before the report is filed. The insurer has the right to request that this hearing be closed to the public. Each examination report will be withheld from public inspection until a finalized report is filed with the commissioner's office.

In addition, the commissioner may withhold any examination report or any analysis of an insurer's financial condition from public inspection for such time as he deems proper.

Should assurance be provided that the information will remain in trust, the commissioner may disclose confidential work papers, correspondence, memoranda, reports, records, or other information to the governor or state attorney general, any regulatory agency (state or federal), persons authorized by the Ingham County Circuit Court, law enforcement officials, or anyone legally entitled to receive the information to perform duties described in this section.

The commissioner also has the right and duty to examine the pertinent records of any agent, adjuster, counselor, or insurance company officer or director. Anyone owning more than ten percent or more of the voting stock of an insurer is subject to having his or her records examined.

Notice of Hearings

Anyone suspected of violating Michigan insurance and/or trade practice laws and regulations also may have his or her records examined. For an insurance investigation to commence, it must be preceded by a formal notice of hearings. This is a written document submitted to the person who has been charged with a complaint. It summarizes the action or proceedings that are to take place.

Before a public hearing may take place, the person under investigation must be given chance to respond to the charges. The period of time during which a person may respond is 30 days from receipt of the notice. This informal hearing is with the commissioner and/or the commissioner's representative.

If the matter cannot be resolved during the informal meeting, a formal hearing is conducted. At the hearing, the commissioner has the power and authority to administer oaths, subpoenas, examine and cross-examine witnesses, and issue cease and desist orders.² The accused has the right to a legal defense.

No one may be excused from providing testimony when subpoenaed by the commissioner's office for a hearing. Failure to obey a subpoena can result in a contempt of court charge. If testimony or evidence would prove self-incriminating, the witness will be granted immunity from prosecution or criminal action as a result of the testimony.³

Following completion of the hearing, the commissioner is required to make a written report to the insurer or individual. The insurer or individual may request a review of any findings provided that the request is made in writing and filed with the circuit court within 30 days of receipt of the commissioner's report. The commissioner has 10 days from receipt of the review to file a copy of the report with the county clerk. If he or she deems it to be in the interest of the general public, the findings of the commissioner's investigation and hearing may be published in a newspaper.

² If criminal violations are uncovered during the investigation, the commissioner is required to turn the affair over to the Michigan attorney general for prosecution.

³ An exception is perjury, which will result in the witness being charged accordingly.

Findings, Orders and Penalties

Engaging in Unfair Competition / Deceptive Acts

If found guilty of engaging in unfair competition or deceptive acts, the commissioner may do any of the following:

1. Issue a cease and desist order

A cease and desist order requires an individual to refrain from continuing their activities. Violation of a cease and desist order is punishable by fine of \$10,000 per violation, not to exceed a total of \$50,000.

2. Impose fines

The commissioner may impose fines of not more than \$500 for each violation, not to exceed an aggregate of \$5,000 in any six-month period. If it is determined that the person was aware of the violation, the commissioner may increase the fine to \$2,500 per violation, not to exceed an aggregate penalty of \$25,000 in any six-month period. In addition, the commissioner may order refunds for any overcharges that resulted from the violation.

3. Suspend or revoke license(s) or certificate of authority

The commissioner may also suspend or revoke an agent's license(s) or an insurer's certificate of authority. However, before a license or certificate of authority can be revoked, the commissioner must provide notification in writing of the action, and a hearing must be held within 15 days of receipt of the notification

Violation of Insurance Law

The commissioner also has the power to impose civil penalties when it is determined that Michigan's insurance laws have been violated. These penalties are dependent upon the particular law violated. If no specific penalty is provided for a particular violation of the Michigan Insurance Code, the commissioner may apply the General Penalty. This penalty is a fine of up to \$5,000 and/or imprisonment for up to six months. The total for civil penalties cannot exceed \$10,000.

Any insurer, agent, solicitor, association, or corporation violating sections 2064 and 2066 of the Michigan Insurance Code is guilty of a misdemeanor. Upon conviction of violating section 2066, the offender will be sentenced to pay a fine of not more than \$100 for each violation. Upon conviction of violating section 2064, the offender will be sentenced to pay a fine of not more than \$1,000 for each violation.

Report of Administrative Actions and Criminal Prosecutions

MCL 500.1247 requires an insurance producer report to the Director any administrative action taken against him in another jurisdiction or by another governmental agency in this state within 30 days after the final disposition of the matter. The producer's report is to include a copy of the order, consent to order, or other relevant legal documents.

Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

GENERAL INSURANCE DEFINITIONS

Insurer

Any recognized entity engaged in the business of making insurance or surety contracts. Possibilities include individuals, corporations, associations, and fraternal benefit societies.

Authorized and Unauthorized Insurers

Authorized insurers have been authorized by the Office of Financial and Insurance Services to operate in Michigan. Unauthorized insurers have either not applied for, or have applied and been rejected, authorization. An authorized insurer is referred to as "admitted" and an unauthorized insurer is "not admitted."

Certificate of Authority

An insurer's authorization is given by the commissioner through issuing a certificate of authority. The certificate grants the insurer the authority to carry out insurance transactions in Michigan.

Insurance Transactions

Insurance transactions encompass the full range of conducting business. Specifically, insurance transactions include soliciting applications for insurance, collection of consideration in the form of premiums, assessments, or membership fees, and issuing and delivering policies.

Domestic Insurer

A domestic insurer is an insurer that was formed and incorporated in Michigan.

Foreign Insurer

A foreign insurer is an insurer that was formed and incorporated outside of Michigan's borders, but within the borders of the United States and its territories.

Alien Insurer

An alien insurer is an insurer that was formed and incorporated outside of the United States and its territories.

Stock Insurance Company

A stock insurance company is an insurer owned and controlled by stockholders. If a dividend is declared by a stock insurance company's board of directors, it will be paid to the stockholders.

Mutual Insurance Company

A mutual insurance company has no capital stock (and therefore, no stockholders). A mutual insurer is owned by the policy owners, and run by an elected board of directors. If a dividend is declared by a mutual company's board of directors, it is paid to the policy owners.

Risk Retention Group

A risk retention group is a form of self-insurance. Risk retention groups can be corporations or associations owned by its own members and sharing similar risks due to involvement in the same business or industry. Risk retention groups are formed in order to spread the liability of its members. Risk retention groups are limited to providing liability insurance.

The risk retention group must have a certificate of authority, be licensed as an authorized insurer, and comply with all the laws and regulations pertaining to insurance in Michigan.

Purchasing Group

A purchasing group is made up of members sharing similar risks due to involvement in the same business or industry. Belonging to a purchasing group allows its members to purchase liability insurance on a group basis. The purchase of insurance must be only for group members, and only to cover similar liability exposures. The person representing the purchasing group must be licensed as an agent.

Licensing Requirements and Limitations

An individual may not act as an insurance agent in Michigan unless licensed. In order to become licensed, an individual must accomplish the following:

1. Successfully complete the required number of pre-licensing education hours.
2. Be appointed by an admitted insurer.
3. Pass the state licensing examination.
4. Submit a properly completed license application to the DOI

The commissioner is required to make a decision on applications within 60 days of receipt. The commissioner reviews the application in order to determine whether the individual meets Michigan's licensing standards. In order to qualify, the applicant must:

1. be at least 18 years of age;
2. be competent and understand the insurance laws;
3. be honest and trustworthy;
4. have a good business reputation;
5. be fit and proper; and
6. demonstrate good moral character (with qualifying statements in the following paragraph.)

A definition of "good moral character" remains in MCL 500.1200 because "good moral character" is still a qualification standard for determining whether or not issue a license to an insurance solicitor, an insurance counselor or an insurance adjuster. However, since March 1, 2002, "good moral character" has not been a qualification standard for determining whether or not the OFIR Commissioner will issue an insurance producer license. Before Michigan enacted the provisions of the NAIC Uniform Producer

Licensing Model Act on March 1, 2002, the Commissioner was required to issue an insurance agent's license to an applicant who, among other qualifications, possessed good moral character to act as an agent. This requirement was eliminated and replaced by Section 1239 (1)(a-n).

The Licensing Process

DFIS requires applicants for both resident and non-resident insurance producer licenses to complete the NAIC Uniform Application for Insurance Producer License. This application contains 7 standard background information questions which applicants must answer "yes" or "no". "Yes" answers require additional information and documentation.

Neither a yes answer to any background question nor an entry in the NAIC RIRS (Regulatory Information Retrieval System) or SAD (Special Activities Database) is automatically a cause for application denial. To support a recommendation for application denial, a yes answer to a background question or a RIRS or SAD entry must demonstrate one or more of the 14 causes for refusal to issue an insurance producer's license listed in MCL 500.1239(1)(a)-(n).

The qualification review process begins with the online submission of the NAIC uniform application. OFIR insurance licensing staff will review the qualification information required to complete the application and may also review information obtained from the NAIC RIRS and SAD, as well as from criminal history databases such as CRIMLAW and ICHAT. At this time, no criminal background check based on fingerprints is conducted. While the qualifications review is on-going, the application is in a pending status.

When information associated with an application indicates a possible qualification problem, OFIR insurance licensing staff will review the information and request additional information from the applicant. They will then review any additional information received and recommend approval or denial of the application. If an application is approved, OFIR will electronically report the approval to NIPR. The NIPR database is updated every evening and NIPR will automatically send an email notification of the approval to the applicant. A physical license will be sent out the next business day by regular mail.

Recommendations for denial are implemented when the Deputy Commissioner of the insurance licensing section accepts the recommendation. If an application is denied, a Notice of Denial will be sent to the applicant by certified mail. The Notice will also include all instructions for appealing the denial.

Pre-Licensing Education Requirements

Before being permitted to sit for the state's licensing exam, applicant's must satisfy the state's pre-licensing education requirements. Pre-licensing education may be satisfied by

classroom or self-study courses. Successful completion of a pre-licensing course results in a certificate that must be submitted to a test center on the scheduled test date in order for the applicant to take the state exam. The submitted certificate must be an original.

The completion of a required pre-licensing education course may not precede the date of application by more than six months. If the application is not submitted within six months from the date of course completion, the applicant will be required to retake a pre-licensing course before sitting for the state exam.

Waivers of Pre-licensing Education Requirements

Certain situations exist in which the pre-licensing education requirement may be waived. In order to apply for a waiver, the applicant must submit proofs as stated below together with a copy of the applicant's social security card to the Michigan Insurance Bureau.

- Waivers of the life and/or accident and health pre-licensing education requirement may be granted for persons with the Chartered Life Underwriter (CLU) or Chartered Financial Consultant (ChFC) designation.
- The pre-licensing education requirements may be waived for persons who possess a concentration of credits in insurance from an accredited college. A "concentration of college credits" is deemed 21 term-credit hours or 17 semester-credit hours. A concentration of life insurance, health insurance, and/or estate planning courses can waive the requirement for life, accident and health pre-licensing education.
- A waiver may be granted to an applicant who is currently licensed in another state, or who was previously licensed within the preceding 24 months and is moving to Michigan.⁴

Exclusions from Pre-licensing Education Requirements

Pre-licensing education requirements are not required for the following licenses: Limited Lines Property & Casualty, Title Insurance, Adjusters, Counselors, Agency Service Managers, Surplus Lines, or Variable Contracts. An outline with the content of the material that appears on these exams is available on the Michigan Office of Financial and Insurance Services at www.michigan.gov/ofis.

⁴ In this instance, the applicant needs to submit to the Michigan DOI an original Letter of Clearance or original Letter of Certification from the home state that is not older than 60 days. Waivers expire 24 months from the date of clearance from the previous state.

Permitted Range of activity for CSRs and Telemarketers

Telemarketers DO:

- Set up appointments or obtain expiration dates of policies from consumers who they call
- Provide information about the insurance producer agent or agency, and offer to send out brochures about a producer's insurance services
- Give a licensed producer the name and telephone number of an interested customer

Telemarketers DO:

- Attempt to solicit the sale of any type of insurance product
- Give advice or describe the characteristics or coverage of an insurance product

Unlicensed office personnel, meaning personnel within the confines of the producer's main office -- including CSRs – DO:

- Hand out brochures
- Receive premiums in the office of your employer
- Secure x-dates from potential customers
- Give general information on the availability of products and services
- Inform the client of the presence of a licensed producer on the premises
- Record information on the application, BUT unlicensed personnel may not sign the application
- Refer a client to licensed personnel if the client is unable to complete the application without further assistance
- Introduce the client to a licensed producer
- Set appointments for clients with a licensed producer
- Give a client the location and phone number of an insurer
- Give a client the name and phone number of a licensed producer
- Give a licensed producer the name and phone number of an interested customer
- Quote policy rates
- Transact the servicing of policies with the insurer
- Make changes to existing policies directly with a client
- Set up policies of insurance
- Invoice insurance transactions
- Take claims information and forward the information to the insurer
- Receive completed applications and checks made payable to insurers
- Deposit a check into the insurer's premium account
- Attach a receipt to an application
- Forward a signed application and transaction receipt to the licensed producer

Unlicensed office personnel -- including CSRs – DO NOT:

- Solicit customers to purchase insurance or annuities
- Discuss, interpret or elaborate upon the information contained in the brochure, application or other sales literature
- Give advice or describe the specific characteristics or coverages of an annuity or insurance product

- Discuss rates, sales charges, or tax treatments of any product or attempt to answer any insurance or annuity questions; customers who request additional information must be referred to a licensed producer
- Sign an insurance application using his or her own name or a producer's signature stamp
- Receive any compensation which varies with the volume of applications or premiums

Types of Licenses

Resident Producer

The proper term for an insurance agent in Michigan is producer. Producers (i.e., agents) may be resident or nonresident. A resident producer's license is issued to *Michigan residents* who complete the following requirements: are 18 years or older, successfully complete a pre-licensing education course or secure a waiver, secure at least one appointment, submit a properly completed license with all the necessary fees, pass the commissioner's review, and pass the state licensing exam.

Nonresident Agent

A nonresident agent may also be licensed in Michigan, subject to any restrictions under which a Michigan resident would be licensed in the nonresident's home state. An individual who was previously licensed for the same qualifications in another state is not required to complete any prelicensing education or examination.

The nonresident license is dependent upon the status of the agent's resident license in his or her home state. If the nonresident agent loses his or her home state license authority, the Michigan resident license is terminated immediately.

Managing General Agent

A managing general agent, or MGA, is a person who negotiates and binds ceding reinsurance on behalf of an insurer, or who manages all or part of an insurer's business. This could include the management of a separate division, department, or underwriting office.

In addition, an MGA acts as an agent for an insurer. He or she produces and underwrites gross direct written premiums of at least 5 percent of the policy owner surplus as reported in the last annual statement of the insurer in any one quarter or year. The MGA also

adjusts or pays claims in excess of an amount determined by the Insurance Commissioner, or negotiates reinsurance on behalf of the insurer.

Counselor

In Michigan, only persons licensed as counselors may do the following:

- audit or abstract insurance policies or annuities.
- Provide advice, counsel, or opinion with respect to benefits promised, coverage afforded, terms, value, effect, advantages, or disadvantages of a policy of insurance or annuity;
- Advertise, solicit business, hold themselves out to the public as an insurance counselor, or use such terms as “consultant,” “consulting services,” or any other language that implies licensed insurance counselor status.⁵

In order to be a counselor, a person must possess a reasonable understanding of the insurance laws of Michigan, intend in good faith to act as an insurance counselor, possess a good business reputation and good moral character, and pass the state counselor license examination. Counselor licenses exist for both the Life qualification and the Property and Casualty qualification.

A life insurance counselor is required to prepare a written agreement that outlines the nature of work to be performed and the fees to be charged. The agreement must also state that the fee may not be waived under any circumstance, and that the counselor will receive a commission from the insurer on any insurance written by the counselor acting as agent. In addition, the agreement must be signed by both parties, and kept in the counselor’s files for at least two years after providing services.

Temporary

Certain circumstances exist in which a temporary insurance license may be issued. These temporary licenses are allowed under Section 1206 of the Insurance Code. Temporary licenses are issued without examination, and are active for 90 days. Temporary licenses are issued under the sole discretion of the DOI, and in no way obligates the Insurance Bureau to subsequently issue the applicant a permanent license.

Temporary licenses can be issued to permit a person to complete the affairs of a deceased or physically handicapped agent. Temporary licenses issued in this instance are renewable for additional 90-day periods at the commissioner’s discretion. Another reason for issuing a temporary license is to allow for the collection of premiums on industrial

⁵ A partial exception to this occurs with attorneys, who are not required to obtain a license to *counsel* insurance. However, attorneys may not *represent* themselves to be license insurance counselors without first obtaining an insurance counselor’s license.

insurance policies. Temporary licenses in this instance are *only renewable for one additional 90-day period*.

Surplus Lines

A surplus lines agent is authorized to place insurance on risks in Michigan with eligible unauthorized insurers. A surplus lines agent may act in the capacity of agent as determined by the contractual relationship with the eligible unauthorized insurer.

Before placing coverage with an unauthorized insurer, a surplus lines agent must inform the insured (or the insured's authorized representative) that the coverage is being placed with an insurer not licensed in Michigan and that payment of loss may not be guaranteed in the event of insolvency of the eligible unauthorized insurer.

Surplus Lines Licensing

One may not solicit insurance, bind coverage, or act as an agent in any other manner in the transaction of surplus lines insurance in Michigan unless licensed to do so. To obtain a surplus lines license, a person must do all of the following:

- File a surplus lines producer application with the DOI
- Complete an examination testing his knowledge of the Insurance Code and the surplus lines insurance business. The examination may be waived by the commissioner for a person who has been licensed as a surplus lines agent within the preceding 12 months
- Comply with all other Michigan insurance producer licensing requirements
- Agree to file with the commissioner's office, not later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed, and the amounts returned on the insurance cancelled, for the preceding 6 month period ending December 31 and June 30, respectively. At the time of the filing, the surplus lines agent will pay the 2% tax on premiums written and a 0.5% regulatory fee on all premiums written.

Types of License Qualifications

The following are license qualifications, or lines of authority, available for Michigan producers.

- Accident and Health
- Life - life, credit life
- Property - property, marine
- Casualty - steam boiler, liability, workers compensation, auto, plate glass, sprinkler, credit, burglary, livestock, malpractice
- Variable Annuities

- Personal Lines - personal auto and homeowners insurance; if already licensed for Property and Casualty, Personal Lines is covered
- Limited Life - may sell only "associated life" (pre-need) policies and cannot hold any other lines of authority
- Limited Lines Property and Casualty - aviation; legal expense; livestock mortality; malpractice and professional liability; turkey
- Crop
- Surety - surety and fidelity; bail bondsmen
- Travel
- Credit Products - credit life, credit disability; credit property; credit unemployment; involuntary unemployment; mortgage disability; mortgage guaranty; mortgage life; guaranteed auto protection; if already licensed for Accident and Health, Life, Property, and Casualty, the Credit Products line of authority may be obtained through submission of a Credit Products appointment
- Title

Crop will be automatically granted to any licensee who currently holds a P&C or limited lines P&C license and an active turkey, crop and hail appointment.

Surety will be automatically granted to any licensee who currently holds a P&C or limited lines P&C license and an active fidelity & surety appointment.

Travel will be automatically granted to any licensee who currently holds a P&C or limited lines P&C license and an active travel, accident and baggage appointment.

Additional Licensing Requirements

Flood Insurance Training

Section 207 of the Federal Flood Insurance Reform Act of 2004 (Act), requires all producers selling flood insurance policies under the NFIP to be properly trained and educated about the NFIP to ensure producers may best serve their clients.

The Act directs the Director of the Federal Emergency Management Agency (FEMA), in cooperation with the insurance industry, State insurance regulators, and other interested parties to establish minimum training and education requirements for all insurance agents who sell flood insurance policies. FEMA and state approved continuing education providers have developed courses related to the NFIP. An insurance producer who sells flood insurance may satisfy the minimum training and education requirements of the Act by completing a course related to the NFIP. Failure to comply with the training and education requirements of the Act will jeopardize an insurance producer's authority to write insurance through the NFIP.

All Michigan licensed resident insurance producers who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the Act,

and basic flood education as outlined at 70 Fed. Reg., 521 17 (Sept. 1,2005) 2, or such later requirements as are published by FEMA, whether or not they receive Michigan continuing education credit for the course work.

Licensed insurers must demonstrate to the DFIS director, upon request, that their licensed and appointed producers who sell federal flood insurance policies through NFIP have complied with the minimum federal flood insurance training requirements, as described above.

Special Instances in Licensing

Bail Bondsmen

Bondsmen representing surety and fidelity insurers must be licensed. To become licensed, the resident applicant must take the relevant examination. Either the limited lines property and casualty or the full property and casualty qualify. The applicant must apply for the Surety, Limited Lines P&C, or full P&C line of authority, as well as an active fidelity & surety appointment with each insurer.

Bondsmen must obtain and maintain prior approval of their financial status and business character by each court and jurisdiction in which they operate. Each jurisdiction has its own registration forms, requirements, and procedures. You will need to contact each jurisdiction to determine requirements.

Bondsmen are not permitted to delegate their signature authority to any other person nor delegate the court's prior approval. The bondsmen may utilize non-licensed employees (runners) to perform certain services (i.e. defendant surveillance, delivering defendants to court, delivering bonds to court, etc.), but such employees **cannot** solicit the bonds nor take application.

Licensed bondsmen may employ solicitors; however, the solicitors must be licensed, and sponsored by the bondsman. The solicitor may perform all acts of the licensed bondsman except that the solicitor cannot bind the surety company (i.e. sign a bond in the place of, or on behalf of, the sponsoring licensed bondsman).

Dual solicitor and producer licensing

Solicitors and producers may be dually licensed for the Property, Casualty, or Title qualifications. If a solicitor applies for a producer license, or a producer applies for a solicitor license, the original license will remain active unless the individual writes to OFIR and voluntarily surrenders the original license.

If the individual becomes dually licensed, by signing the application form the applicant and the sponsoring producer are, in affidavit form, attesting that the applicant understands the potential for confusion and misunderstanding in the minds of any insured or

prospective insured. The applicant agrees to immediately disclose to the prospect whether they are dealing with a producer for an insurance company who is vested with a degree of authority and responsibility to act on behalf of the company, or with a solicitor who is simply the employee of a producer/agency. If the latter, they will further disclose who will be the producer of record. An erroneous or fraudulent certification on the license application shall subject both the applicant and sponsor to discipline of civil penalty and/or license revocation.

Exceptions and Exemptions to Michigan's Insurance Licensing Laws

Certain exceptions and exemptions to Michigan's agent licensing laws exist which allow persons not licensed as insurance agents to solicit and/or act as an insurance agent.

Fraternal Benefit Society

A person may act as an agent for a fraternal benefit society without being licensed as an insurance agent under the following conditions:

- Less than 50 percent of his or her time is spent in the capacity of selling insurance;
- The person writes less than \$50,000 of death benefit or less than 25 lives in a calendar year; and
- The person is employed by, or authorized to act in writing by, the insurer.

Clerical or Administrative Employee

An agent's clerical or administrative employee may take insurance applications and receive premiums without being licensed as an agent under the following conditions:

- taking applications and/or premiums is incidental to his or her clerical and/or administrative duties; and
- his or her compensation does not vary with the number of applications or amount of premium.

A person working for an agent under these circumstances may only bind coverage that develops at the agent's main office.

Salaried Officers and Managers

Salaried officers and managers of insurance companies may act as agents and be involved in insurance transactions provided they do not receive commissions.

Newspaper Carrier or Manager of a Newspaper Distribution Office

A newspaper carrier or manager of a newspaper distribution office may take applications and collect premiums for limited accident policies so long as such activity is incidental to their overall work duties.

Attorney-in-Fact

An attorney-in-fact for a reciprocal or inter-insurance exchange may act as an agent for the exchange without being licensed.

Solicitors

A licensed solicitor may be appointed by an agent or an agency. As a licensed solicitor, one may solicit, sell, or procure applications for insurance. However, the solicitor may only be appointed by one agent or agency at a time, and may carry out his or her activities for only those companies that have appointed and authorized the sponsoring agent or agency. Solicitors may not appoint other solicitors, nor can they bind coverage.

Designated Responsible Producer

MCL 500.1205(2)(b) requires a producer business entity applicant to identify a designated responsible licensed producer (DRLP) in order to obtain licensure. The DRLP is responsible for the business entity's compliance with state insurance laws, rules and regulations. The DRLP must hold an active Michigan resident or non-resident producer license, but is not required to hold the same line or lines of authority that the business entity holds. An agency may designate one or multiple DRLPs.

Should the DIFS find that an agency no longer has an active DRLP, the business entity will be sent a Notice of Opportunity to Show Compliance (NOSC) advising it has 14 calendar days within which to designate a replacement DRLP or by show it has been in continuous compliance. If the business entity does not respond to the NOSC within 14

calendar days, DIFS will pursue further compliance action which may include a fine and revocation of the agency license.

Conflicting Employment

The Legislature has determined that care must be taken to assure that insurance licensees do not use other employment in conjunction with their insurance occupation to coerce, intimidate, or unduly influence insurance consumers. Where the potential for such conflict exists, an insurance license will not be issued until DFIS is assured that the applicant understands the restrictions and agrees not to conduct insurance business in a prohibited manner.

Agent Appointment

A sponsoring appointment from an admitted insurer is the authorization one needs to represent the insurer as an agent. An applicant for an insurance license does not need an appointment with an admitted insurer in order to take the state's licensing exam; however, in order to sell insurance products, an agent must have at least one active appointment. The agent also may obtain additional appointments from other insurers.

To appoint an individual as its agent, an insurer must file a notice of appointment within 15 days from the date the agency contract is executed or the first insurance application is submitted. Upon receipt of the notice of appointment, the commissioner verifies within a reasonable time not to exceed 30 days that the individual is eligible for appointment. Should the individual be determined to be ineligible for appointment, the commissioner shall notify the insurer within 5 days of that determination.

Termination of Appointment and Authority

If an insurer terminates the appointment of an agent, it is required to provide the commissioner written notification within 30 days following the effective date of the termination. If the termination is for cause (i.e. the grounds for cancellation is listed in Section 500.1239), the insurer is required to specify the reasons for termination. Upon request of the commissioner's office, the insurer shall provide an additional pertinent information, documents, or records relevant to the terminated agent's activities. Should the termination occur simply due to lack of production, there is no need to specify the reason.

No later than 15 days from notifying the commissioner, the insurer is required to mail a copy of the termination notification to the agent at his last known address. If the termination is for cause, delivery of the termination notification is to be done by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a reputable carrier.

The agent may file written comments relevant to the substance of the termination notice to the commissioner's office and the insurer. The time frame for the agent's comments occurs within 30 days of his receipt of notification of the termination. These comments become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the agent.

Written notice of termination is not required for:

- Life insurers and their agents
- Agents who are employees of the insurance carrier
- Agents who by contractual agreement represent only one insurer or a group of affiliated insurers if the property rights in the renewal are owned by the insurer or group if insurers and the alteration of the agent's contract (i.e. termination) does not result in the cancellation or nonrenewal of an insurance policy

The agent's authority with the insurer following the termination of appointment is governed by the agency agreement. If the agency agreement does not address this issue, the producer may still receive renewal commissions on existing policies and may continue to service clients. The terminated agent cannot write new business with the insurer, renew a policy, or increase the obligation of the insurer without the approval of the insurer. In addition, an insurer may not cancel or refuse to renew a policy because of the termination of the agent's contract.

Maintenance of the Insurance License

In order to maintain their licenses in good standing, Michigan insurance agents are required to meet a 24 credit hour continuing education (CE) requirement every two years. Of the 24 credit hours, a minimum of 3 must be qualify as "ethics." For the purposes of CE, the Life and Accident and Health licenses and Property and Casualty licenses are treated as a single license (e.g. LAH and PC).

The Old System

Previously, an agent’s date of CE credit review was determined by a formula in which the first letter of the last name is matched to the last digit of the license number.

CE REVIEW DATES – Past and Present

License Number	Agent’s Last Name Last Digit of the Agent’s	
	A – L	M – Z
1	1-1-07	1-1-08
2	2-1-07	2-1-08
3	3-1-07	3-1-08
4	6-1-07	6-1-08
5	7-1-07	7-1-08
6	8-1-07	8-1-08
7	9-1-07	9-1-08
8	10-1-07	10-1-08
9	11-1-07	11-1-08
0	12-1-07	12-1-08

An example of this formula at work would be as follows: an agent with the last name of “Smith” and a final license number digit of “0” would need to have his or her CE requirements completed by 12-1-08 in order to maintain the license. The subsequent CE review date would be 12-1-10.

The Current System

As of 2010, Michigan revised its procedure for determining CE review dates. Under current law, the review date is assigned according to the agent’s month and date of birth that is at least 12 months after the issuance of the initial license. The actual CE review date is NOT, however, the agent’s actual birth date but the first day of the birth month. For example, consider the chart below:

Date of Initial License	Date of Birth	1st CE Review Date
9/6/09	9/10/71	9/1/11
6/22/09	6/14/88	6/1/12
1/13/10	3/16/84	3/1/12
5/9/10	6/23/69	6/1/11
3/24/11	12/15/87	12/1/13
7/16/11	1/26/90	1/1/14

Agents that do not meet their mandatory CE requirements in a timely fashion will have their licenses suspended for 90 days until they have complied with the requirement. During this time, they may manage and service their existing accounts, but are barred from soliciting or selling new policies. If they complete their required 30 credit hours of CE within the 90-day grace period, their license will be automatically reinstated. If they do not complete their mandatory CE requirements during this time, their license will be terminated.

Reinstatement can occur for a period up to 12 months from CE compliance date. To reinstate the license, the agent must reapply for a license, submitting the properly completed application forms and demonstrating compliance with the CE requirement. After 12 months from the compliance date, the agent has lost the license and must reapply for a new license.

In addition to meeting CE requirements, Michigan agents are also required to report any home address changes to the DOI within 30 days of any change. Individual licensees must have a residence address that is a physical address. PO boxes are allowed for business and mailing addresses. A new license is not automatically generated when an address change is processed.

License Termination, Revocation, and Suspension

In most cases, Michigan insurance licenses are issued on a perpetual basis, subject to proper maintenance of the license's requirements. However, a Michigan insurance license can be terminated. Reasons for termination include failure to meet CE requirements, failure to keep an active appointment, and failure to pay all necessary renewal fees. A license can also be terminated due to the death of an agent or the dissolution of an agency.

The DFIS Director may place on probation, suspend, or revoke an agent's license for any of the following reasons:

- Having been convicted of a felony
- Having admitted or been found to have committed any unfair trade practice or fraud as it relates to insurance
- Providing incorrect, misleading, incomplete, or materially untrue information in a license application
- Obtaining or attempting to obtain a license through misrepresentation or fraud
- Improperly withholding, misappropriating, or converting any money or property received while transacting insurance business
- Violating any insurance laws, regulations, orders or subpoenas
- Employing fraudulent, dishonest, or coercive methods in the conduct of business

- Demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business
- Forging a name to an insurance application or any document related to an insurance transaction
- Having an insurance license or its equivalent denied, suspended, or revoked in any other state, district, territory or province
- Failing to comply with an administrative or court order to meet child support obligations

Before a license or certificate of authority can be revoked, the commissioner must notify the individual of the complaint in writing and give the individual at least 15 days' notice to appear at a hearing. The order for a revocation of a certificate or license cannot occur until after a hearing; the revocation cannot take effect until 10 days after the issuance of the order. The agent must be notified in writing of the revocation.

An appeal to review the order for revocation may be made within 10 days following the hearing. The appeal to review is made to the state supreme court. The certificate or license will remain in force until the final determination of the appeal. Should the commissioner's order to revoke the certificate or license be upheld, the revocation will date from the time that the appeal was determined.

Finally, some licenses are terminated at the request of the agent. This is referred to as voluntary surrender. Voluntary surrender typically takes place at retirement, or when leaving Michigan.

License Status Definitions

Active (AC) - Indicates that the licensee is in good standing for the license, qualification or appointment for which this status is attached.

Application Required (AR) - A new application and fee are required to reinstate the license. The licensee has up to 12 months from the date of original loss of qualification and/or license to reinstate. After that the license is made Inactive. The licensee must reapply and reexamine to reinstate the qualification/license.

Inactive (IN) - Indicates that the licensee is no longer eligible for the license, qualification or appointment for which this status is attached.

Revoked (RV) - A disciplinary status indicating that the licensee was taken through the administrative legal procedures for activities which violate the insurance code, and determined by the Commissioner to no longer be fit and proper for the business of insurance or the public's trust.

Suspended for Compliance (SC) - A disciplinary status indicating that the licensee was taken through the administrative legal procedures for activities which violate the

insurance code, and determined by the Commissioner to no longer be fit and proper for the business of insurance or the public's trust for a specific length of time.

Suspended for Education (SE) - Solicitors and most Producers must earn 24 credits every 24 months with a minimum 3 of those credits in ethics courses. If a licensee fails to earn the appropriate required credits by the due date the license or qualification will go into Suspended for Education status. It will remain in this status for 90 days. During this status the individual may continue to service existing business, but may not produce new business. On the 91st day if they have not earned the appropriate and required credits their license is Terminated for Education.

Terminated for Education (TE) - If a producer or solicitor is Suspended for Education and does not obtain the necessary credits within 90 days, the license or qualification will go into Terminated for Education status. After 12 months from the due date, if the credits are not earned and reported the license goes Inactive and the person must reapply and reexamine to reinstate the qualification/license.

Voluntary Surrender (VS) - Indicates that the licensee voluntarily surrendered a license or specific qualification. Retirement is an example.

Brokerage Business

An insurance broker is an insurance salesperson who searches the marketplace in the interest of clients, not insurance companies. Michigan insurance law forbids brokering.

An insurance agent may experience situations in which a life application is declined by the underwriting department. In this case, the agent may place the business with another insurance company.

In addition, insurance companies have limits on the amount of insurance that they will write for any one life. Amounts over these limits are termed excess. In this case, the agent may place the excess amount with another insurance company.

When placing declined or excess insurance with another insurer, an agent must be careful not to act inadvertently as a broker. Before placing the declined or excess insurance, agents must first be appointed by the insurer.

Marketing Practices and Insurer Responsibilities

Unfair Trade Practices Act

An unfair trade practice in insurance refers to an action that is fraudulent or unethical and is illegal under state law. The purpose of the Unfair Trade Practices Act is to prevent unfair and deceptive practices in insurance claims and marketing.

False Advertising

Publishing and disseminating advertisements, announcements, or statements that are untrue, misleading, or deceptive is prohibited. The advertisements may be in written or audio format, and can include newspapers, periodicals, and public communication.

No insurance department or general agency of an insurer operating in Michigan may issue any advertisement or representation that gives the appearance that the department or agency is a separate or independent insuring organization. All type or lettering used must set forth the name of the company assuming the risk more conspicuously than the name of any department or general agency.

Violation of false advertising rules regarding insurer identity is a misdemeanor with a maximum fine of \$500.

Twisting

Twisting is the act of inducing an insured to lapse, surrender, or terminate a life insurance policy for the purpose of replacing it with a new policy. Twisting involves *both* using some illegal inducement or activity *and* the act of terminating an existing policy. Twisting may include use of an incomplete policy comparison, a rebate, a misrepresentation, or some other illegal act.

Twisting is a misdemeanor in Michigan. It is punishable by the revocation of an agent's license for up to one year and a maximum fine of \$1,000, imprisonment, or both.

Misrepresentation

Misrepresentation is also sometimes referred to as false pretence. It is the intent to defraud. Misrepresentations may be written or oral. For the purposes of life insurance, misrepresentations occur when an agent convinces a prospect or client that advantages, benefits, or provisions exist in a policy when they actually do not.

Penalties for misrepresentation include the following: revocation of license for at least one year, plus a fine of not more than \$1,000 for each violation, or imprisonment.

Defamation

Defamation is the making of oral or written statements about another agent or insurer that are false, malicious and derogatory.

Controlled Business

Controlled business occurs when an agent writes life insurance on his or her own life, the life of a spouse or an immediate family member, or a business partner or associate. While writing controlled business is not a violation of Michigan insurance law in and of itself, it is subject to a number of trade practice restrictions.

First, controlled business cannot exceed fifteen percent of the agent's premium for a twelve-month period. Second, commissions can only be paid on controlled business when the agent has produced an aggregate face amount of \$10,000 on at least four other non-controlled lives.

Rebating and Illegal Inducements

Rebating is an illegal inducement to purchase insurance. Rebates can include payments from a portion of the agent's commission, gifts, shares of stock, or anything of value when the purpose is to convince a prospect to purchase insurance. Agents are also not permitted to offer a rebate of the premium payable on any policy as an inducement unless it is specified in the contract. Agents are allowed to give applicants token gifts, but these must be merchandise valued at less than \$5.

Rebating is a misdemeanor and punishable by a maximum fine of \$100 per violation or imprisonment at the county in which the rebating occurred. The agent's license may also be revoked for up to one year at the discretion of the commissioner.

Discrimination

Discrimination between individuals of the same class and life expectancy regarding rates, dividends, or other benefits is illegal. In addition, it is illegal to discriminate because of age, color, or creed with regard to premiums or types of coverage.⁶

Unfair discrimination can result in a misdemeanor that is punishable by a fine of at least \$50, but less than \$500, imprisonment for up to one year, or both.

Bartering

Following the Attorney General's Opinion 6140, 4-1-83, an insurance agent can only receive insurance premiums in the form of money. It is unlawful for an insurer or an insurance agent to charge the insured anything but the insurance rate established under law. Under a barter arrangement, because the insured is not paying premiums in cash, the possibility for incorrect valuation of goods and services exists.

Other Miscellaneous Prohibited Practices

- Boycott, coercion, or intimidation

It is illegal to make actions that result in unreasonable restraint of trade or a monopoly.

- False financial statements

Making false financial statements in the context of insurance transactions is illegal.

- Political contributions

Insurers operating in Michigan are prohibited from making cash or property gifts to influence political parties, committees, or organizations.

Negative Options

A negative option is also referred to as a roll-on. It is a sale of insurance or of additional or changed coverage. For this transaction, a premium is directly charged to the insured, and the insurance becomes effective upon payment unless rejected by the insured.

⁶ Insurers may charge different rates based on sex, age, handicap, or occupation when such factors provide an underwriting basis for the rates.

Bulletin AD 72-2 addresses negative options, stating that it is the opinion of the DOI that the use this form of transaction, when not specifically required by law, constitutes an unfair method of competition. As such, the DOI holds negative options to be an unfair or deceptive act or practice in insurance.

Timely Payment of Claims and Interest Payments

If an insurer does not pay claims on a timely basis, it may be required to pay interest on those claims. The interest on the claim amount is 12% per year. Failure to pay claims on a timely basis or to pay interest on claims when required is an unfair trade practice unless the claim is fairly and recognizably in dispute.

Within 30 days of receiving a claim, an insurer must establish its requirements for filing proof of loss (unless the claim was settled during the initial 30 day period). The claim amount that the proof of loss supports must be paid within 60 days of receipt, and any part of the remainder of the claim that is afterwards supported by proof of loss must also be paid within 60 days of the proof of loss. When proof of loss requires the need for additional medical information to determine the insurer's liability under a life insurance policy, the claim is required to be paid within 60 days after receipt of the necessary medical information.

The above requirements are not applicable should the insurer be unable to pay the claim due to the lack of a legally valid party to receive the payment, or when the insurer is unable to determine who is legally entitled to receive the payment. In the later situation, the insurer is legally required to inform any claimants about the status of the claim and make a good faith offer to promptly pay the claim when it is determined who is entitled to receive payment.

For claims filed by third party tort claimants, interest is only required if the insurer is found by a court to have failed to pay the claim in bad faith. If the loss exceeds the limits of insurance coverage available, interest will be based on the limits of insurance coverage rather than the amount of the loss. Should payment be offered by the insurer but rejected by the claimant, and the claimant does not subsequently recover an amount in excess of the amount offered by the insurer, interest will not be due.

Exceptions for Extraordinary Life Events

An insurer may credit information to provide reasonable exceptions to rates, rating classifications, company or tier placement or underwriting rules or guidelines for an applicant whose credit information has been directly influenced by an extraordinary life event, and is required to provide an applicant or an insured with a notice that reasonable exceptions are available and information on how to inquire further.

“Extraordinary life events” as defined by the statute (MCL 500.2154) include: (a) a catastrophic event, as declared by the federal or state government; (b) a serious illness or injury, or serious illness or injury to an immediate family member; (c) death of a spouse, child, or parent; (d) divorce or involuntary interruption of legally owed alimony or support payments; (e) identity theft; (f) temporary loss of employment for a period of 3 months or more, if it results from involuntary termination; (g) military deployment overseas; (h) predatory lending resulting in the foreclosure of, or commencement of proceedings or an action to foreclose, a mortgage of real property owned by the insured or insurance applicant; and (i) other events, as determined by the insurer.

Bulletin 2013-10-INS provides guidance on how to define the term “predatory lending,” and considers the following practices to be predatory:

- Excessive cost – charging interest rates and/or fees that far exceed reasonable compensation for a lender’s costs or risks.
- Equity stripping – lending at a high interest rate, then repeatedly refinancing at a lower interest rate to strip the borrower’s equity in order to pay new points and fees.
- Failure to report borrower credit information – limiting the ability of borrowers to obtain the lowest interest rate available based on the borrower’s complete credit history. Steering to higher-cost mortgages – referring borrowers to high-cost loans when they are eligible for lower cost financing.
- Credit insurance products that are financed up front – including single premium credit insurance that is paid in a single premium or financed in the loan amount.

Under PA 207, the exception for predatory lending applies if practices such as those listed above result in “the foreclosure of, or commencement of proceedings or an action to foreclose” a mortgage or real property owned by the insured or insurance applicant.

Agent Responsibilities

[Sections 500.1207), 500.1240]

Fiduciary Responsibility

An insurance agent acts as a fiduciary. A fiduciary is a person who holds money or property while acting on behalf of another in trust. A fiduciary is expected to act with due care.

The insurance agent has a fiduciary responsibility to promptly remit all premiums and insurance proceeds to the insurer. He or she is also expected to maintain records of all funds received in a fiduciary capacity. The agent is legally required to keep all premiums and insurance proceeds separate from his or her personal accounts. The mixing of personal and company funds is called commingling, and is prohibited by insurance and civil law.

It is customary that most financial restrictions and requirements and record-keeping requirements are set forth by the agency in the insurer-agency contract agreed to at the time of appointment of a producer. The Michigan Insurance Code requires that a producer use reasonable accounting methods to record funds received in a fiduciary capacity.

MCL 500.1207 states that a producer shall not accept payment of a premium for a Medicare supplemental policy or certificate in the form of a check or money order made payable to the producer instead of the insurer. By statute, a producer must immediately provide a receipt to the insured upon receiving payment of a premium for a Medicare supplemental policy.

In addition, the Code also requires that a licensee make records available to the Commissioner or regulatory staff, as OFIR may audit the records of a producer or agency to determine compliance with statutory requirements. Best practices dictate that all licensee records be maintained for seven (7) years. Licensees who do not maintain records in a manner which meets the statutory requirements may be subject to discipline including fines, suspension, or revocation.

Commission Sharing

Agents may share commissions with other licensed agents, but both agents must be licensed under the same qualification. It is illegal to share commissions with non-licensed individuals; it is also illegal to provide financial rewards or share commissions with persons who provide the agent with sales leads.

Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in Michigan as long as the person was properly licensed at the time of the sale, solicitation, or negotiation.

Safeguarding Customer Information

Bulletin 2010-21-INS was issued December 29th, 2010 to underscore the requirements of Section 500.547 of the Michigan Insurance Code and to emphasize the importance of protecting customers' nonpublic personal financial information. Under Section 500.547, Michigan resident and non-resident insurance producers are required to "adopt policies and procedures for administrative, technical, and physical safeguards for the protection of customer records and information."

Specifics for the Section 500.547 requirements are spelled out under administrative rule R 500.553, which states that producers must implement a comprehensive written information security program for the protection of customer information. The standards to follow for developing and implementing safeguards to protect the security, confidentiality, and integrity of customer information are found in administrative rules R 500.555 – R 500.560.

OFIR provides the following guidelines for assisting producers in formulating and implementing procedures for meeting these requirements. For example, the Bulletin recommends that producers be aware that documents containing customer information create the potential for identity theft. Keeping this in mind, producers are well advised to avoid such hazards as heedlessly tossing old records or leaving them in an unsecured or abandoned location. Insurance carriers will have established best practices on how to store customer records and methods for properly disposing of those records (shredding, offsite storage, etc.) and these should be followed.

Producers are also encouraged to stay ahead of the curve on matters of data security. OFIR recommends that they periodically review their information security program. As new circumstances arise (e.g. changes in technology, changes in the sensitivity of the customer information, new internal or external threats, etc.) adjustments will invariably need to be made to maintain the security program's efficacy.

Effective data security is also a matter of the prevailing office culture. Best practices require that the management team treat the matter with gravity, and train staff on an ongoing basis. All members of the producer's team need to understand that failure to have in place an appropriate security program to protect customer information and prevent unauthorized access to or use of that information is "an unfair or deceptive act or practice in the business of insurance" under Section 500.2013 that may result in disciplinary action. Likewise, a breach of the security of a database containing personal customer information may subject a producer to penalties under the Identity Theft Protection Act, MCL Section 445.61 *et seq.*

Chapter Two - Property and Casualty Regulations

SOLICITORS

- Solicitor Appointment and Licensing Requirements

[Sections 500.1201a, .1211, 1214, .1242]

A person licensed as a solicitor is authorized to solicit insurance applications and collect premiums on behalf of a licensed agent. The agent authorization must be expressed in writing.

In order to acquire a solicitor's license, the applicant must first pass an approved program of insurance study. Passing the approved study program will result in a certificate of completion that will allow the applicant to sit for the state examination. The applicant has 6 months from the completion date of the certificate to take the state examination. Before sitting for the state examination, the solicitor must also complete the solicitor's license application form and secure an appointment notice from the sponsoring agent.

If an applicant fails his examination, he may retake it after waiting for 24 hours.

It is possible for an applicant to have the examination requirement and/or study requirements waived. The waiver may occur with an applicant for a limited lines license or one who has been licensed as an agent or solicitor within the last 2 years.

In the course of the application process, the commissioner may conduct investigations and interrogatories concerning the applicant's character, qualifications, residence, and business affiliations that are relevant to the applicant's qualifications as a solicitor. An applicant for a solicitor's license must demonstrate understanding of the type of insurance he will be licensed to solicit, show familiarity with Michigan insurance law, have a good character, and demonstrate trustworthiness as well as the intention to act in good faith as a solicitor.

The commissioner will decide on the application within 60 days of the applicant's successful completion of the state examination or within 60 days after receipt of a properly completed application and notice of appointment forms. The commissioner may

refuse to issue the license if he deems refusal necessary to protect the public. The commissioner may also refuse to issue a license if he believes that any employer, partner, or employee who can materially influence the applicant is not a fit and proper person under the standards of Michigan insurance law.

It is required that the solicitor's license include the name of the solicitor and the lines of insurance covered by the license. A solicitor's license is perpetual, and will continue in effect as long as the solicitor meets his continuing education requirements or until the license is voluntarily surrendered or revoked by the commissioner.⁷

The commissioner is empowered to demand surrender of a solicitor's license if the licensee is without authority from any agent (i.e. no longer has an active appointment with an agent). In addition, the commissioner may reexamine a solicitor at any time after issuing a written notice of the impending reexamination.

● **Termination of Contract/Authority**

Whenever an agent terminates the authority of a solicitor to represent him, he is required to immediately notify the DOI. This notice must be a full disclosure; as such, any acts or omissions by the solicitor that may be a violation of this Act or that may adversely affect the public interest must be stated along with any supporting evidence.

● **Fiduciary Capacity and Commission Sharing**

A solicitor is a fiduciary for all monies received in his capacity as solicitor, and is under obligation to follow the rules and regulations governing insurance fiduciaries. As such, a solicitor must use reasonable accounting methods to record funds received as fiduciary in all insurance transactions. Any failure to remit monies to whom it is owed is violation of the solicitor's duties as fiduciary. The solicitor may have his financial records examined by the commissioner.

Solicitors are not permitted to appoint "sub-solicitors," nor are they able to share commissions. This means that the solicitor may not reward or remunerate another for procuring business, enacting insurance transactions, or furnishing prospect leads.

⁷ The mandatory continuing education requirements for maintaining the solicitor's license are identical with those of the Michigan agent/producer. See page 16 of this manual, "Maintenance of the Insurance License."

PROPERTY AND CASUALTY GUARANTEE ASSOCIATION

[500.7921, .7925, .7931]

The purpose of the Property and Casualty Guaranty Association is to pay covered claims for property-casualty insurers who become insolvent or financially impaired. All insurers transacting property-casualty insurance in Michigan are required to be members of the Association as a condition of their authority to do business in the state. The Association is funded by assessments levied on members. The assessed funds are subsequently used to pay covered claims in excess of \$10. The Association's rights are the same as the insolvent insurer would have had if it had not become insolvent.

SURPLUS LINES

● Definitions

[500.1206a(4), .1903(1)(d), .1905, .1910, .1915]

Surplus lines insurance is defined as insurance coverage procured from or continued or renewed with eligible unauthorized insurers. An eligible unauthorized insurer is defined as an insurance carrier that is not licensed to do business in Michigan, but is eligible to write insurance under the surplus lines laws of the state.

Surplus lines insurance transactions can only be done by an individual licensed as a surplus lines agent. In order to be licensed, the applicant must:

- File a surplus lines producer application with the DOI
- Complete an examination testing his knowledge of the Insurance Code and the surplus lines insurance business. The examination may be waived by the commissioner for a person who has been licensed as a surplus lines agent within the preceding 12 months
- Comply with all other Michigan insurance producer licensing requirements
- Agree to file with the commissioner's office, not later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed, and the amounts returned on the insurance cancelled, for the preceding 6 month period ending December 31 and June 30, respectively. At the time of the filing, the surplus lines agent will pay the 2% tax on premiums written and a 0.5% regulatory fee on all premiums written.

Upon acquiring a surplus lines license, one may place insurance with eligible unauthorized insurers in the capacity of agent. However, before placing insurance

coverage with an eligible unauthorized insurers, the surplus lines agent must communicate to the insured that the coverage being placed is with an unlicensed insurer. Because the insurer is unlicensed (i.e. unauthorized) in the state of Michigan, payment of a loss may not be guaranteed if the insurer becomes insolvent.

When insurance is available from an authorized insurer, an agent may not place coverage with an unauthorized insurer. Coverages such as automobile and homeowners coverage are typically available from a host of authorized insurers. The DOI publishes a quarterly listing of lines of insurance deemed typically unavailable by the authorized insurers in the state.

In some instances, one portion of a risk may be acceptable to an authorized insurer, but another part of the risk may not be acceptable. In this situation, the entire coverage may be placed legally with an eligible unauthorized insurer if the agent can demonstrate that the insurer would only accept the entire coverage.

Should a surplus lines demonstrate in good faith an honest effort to place coverage amount authorized insurers and fail to find coverage, he is legally permitted to search for an eligible unauthorized insurer.

Surplus lines agents may charge a fee in addition to the premium for coverages placed with eligible unauthorized insurers. The fee cannot be excessive or discriminatory. All documentation pertaining to fees charged must be kept by the agent. A fee in excess of \$25 cannot be charged unless the fee amount has been approved by the commissioner, or the actual costs incurred for services performed by individuals or entities unrelated to the agent exceed that sum.

Surplus lines fees may not be included as a part of the policy premium when calculating premium taxes.

FINANCING PREMIUMS

[Bulletin 84-12, 500.1502, .1503]

● Premium Financing by Agents/Products

If an agent is not licensed as a premium finance company, the maximum interest rate he can charge is established by the state usury statute at 5% per year for verbal agreements and 7% per year if there is a written agreement.

● Insurance Premium Finance Companies

An insurance premium finance agreement is an agreement where an insured pays an amount advanced by an insurer for payment of premiums to a licensed entity referred to as an insurance premium finance company. Insurance premium finance company licenses are renewed annually April 1 upon payment of the \$200 licensing fee. Payments arranged for under these types of agreements are subject to a service charge.

● Penalties

Anyone who transacts insurance financing business without a license is subject to a fine of up to \$200.

RISK RETENTION AND PURCHASING GROUPS

[500.1801, .1803, .1835]

A risk retention group is defined as an insurance company organized by a group of businesses or institutions in the same line of business to provide liability insurance for the owners or organizers (i.e. group members). A risk retention group can also provide reinsurance with respect to the liability of another risk retention group, or any members of that other group, that is engaged in business or activities allowing the group or member to meet membership requirements.

A risk retention group is required to have a certificate of authority from the commissioner, be licensed as a domestic stock or mutual casualty insurer and comply with the laws and regulations applicable to domestic stock and mutual casualty insurers. The certificate of authority issued to risk retention groups in Michigan is limited to liability insurance.

Before a risk retention group can operate in Michigan, it is required to submit a business plan or feasibility study to the commissioner's office for approval.

A purchasing group acquires liability insurance for its members on a group basis. It is comprised of members whose business or activities expose them to similar liabilities

Chapter Three - Property Insurance Regulations

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION

[Sections 500.2901, .2920, .2924, .2925, .2925A, .2930(1)]

● **Purpose of the Association**

The Michigan Basic Property Insurance Association is referred to as the MBPIA or “the Pool.” It writes basic property and home insurance for qualified applicants; its primary purpose is providing property insurance for persons ineligible for coverage in accordance with the Essential Insurance Act. All insurers who write basic home and property insurance in Michigan are required to be members of the Pool as a condition of their authority to do business in the state.

● **Definitions**

Basic Property Insurance

The phrase “basic property insurance” refers to insurance against direct loss to any property caused by those perils defined and limited in a fire policy, a vandalism and malicious mischief endorsement, or a combination of both. It also includes the following coverages that meet requirements established by Michigan law: mercantile open stock burglary; mercantile robbery; mercantile safe burglary; office burglary and robbery; residence burglary and robbery; and storekeeper’s burglary and robbery.

Inspection bureau

Inspection bureau refers to an organization designated by the commissioner to inspect risks and make surveys for the use of companies in their underwriting.

Qualified property

A qualified property for the purposes of the Michigan Basic Property Insurance Association refers to real and tangible personal property at fixed locations that meets specified requirements.

● Issuing Policies

A homeowner or tenant may apply to the Pool for coverage provided:

- The applicant was unable to obtain coverage through the primary insurance market
- The property has been inspected within 6 months of application by the Association's Inspection Bureau. Any inspection waiver issued by the Association is valid for 2 years.
- There is no unpaid premium on prior insurance on the property
- The property constitutes an acceptable risk

Policies issued by the Association have a term of one year. If the coverage is renewed for 2 consecutive years, subsequent additional inspections are waived. The Association may issue binders for up to 60 days on property or dwellings that are not in compliance with the Association's guidelines and must be improved. The applicant may appeal any decision by the Association or to the commissioner within 30 days of the decision; the commissioner must give 10 days written notice of any formal hearing to both parties.

● Underwriting

The Association must adopt reasonable underwriting standards to determine whether or not a risk is acceptable. These standards may include, but are not limited to, protective devices, deductibles, coinsurance provisions, appropriate record keeping, and insurance limits provided to any one risk. In addition, the Association is required to establish a underwriting program for home insurance under which all eligible applicants can obtain home insurance on qualified property in a manner that is reasonable and convenient. Through this program, the insured value under a replacement cost policy must be equal to at least 80% of the replacement cost of the property to be insured, as determined by inspection. The minimum insured value requirement for a repair cost policy must be equal to at least 100% of the market value of the property to be insured. Policies may be issued in amounts up to 120% of the market value of the property to be insured.

FIRE POLICY

[500.2826, .2827, .2833]

All fire insurance policies issued or delivered in Michigan are variations of the New York Standard Fire Policy. Michigan Standard Fire Policies cover the perils of fire, lightning, and removal. All fire insurance policies written in Michigan must contain the following:

- Coverage for actual cash value of the property at the time of the loss
- Coverage for loss by fire and lightning and pro rata coverage for five days for insured property removed to another location to protect it from further damage
- Language stating that the policy may be void due to misrepresentation, fraud or concealment
- Language stating the policy may be cancelled at any time by the insured
- Language stating the policy may be cancelled at any time by the insurer with at least 10 days' written notice of cancellation⁸
- Language that the policy may be cancelled at any time at the request of the insured
- Language that the policy may be cancelled at any time at the request of the insured. The minimum earned premium shall not be less than the pro rata premium for the expired time or \$25.00, whichever is less.

Losses are payable within 30 days after receipt of proof of loss.

Common endorsements of the policy are:

- Coinsurance clause
- Assignment clause
- Replacement cost endorsement
- Repair cost endorsement

Under a replacement cost endorsement, the insurer agrees to reimburse the insured for the difference between the actual cash value of the insured property at the time the damage occurs and the amount actually spent to repair, rebuild or replace the property with new materials of like size, kind and quantity—up to the policy's liability limits.

A repair cost endorsement obliges the insurer to reimburse the insured for the difference between the actual cash value of the insured property at the time of the damage and the amount actually necessary to repair, rebuild or replace the lost or damaged property to a condition and appearance approximate to that which existed at the time of loss or damage.

⁸ In the event of an insurer-initiated cancellation, the insurer is required to refund pro rata any premium paid in excess of the period that coverage was provided.

ESSENTIAL INSURANCE ACT – I (HOME)

[500.2101-.2104, 500.2116, .2122, 500.2111, 500.2123, .3020, 500.2129, 500.2113, .2114, 500.2103(2), 500.2103(3), 500.2117, 500.2121. R500.1501-.1520]

The purpose of the Michigan Essential Insurance Act is to guarantee access to specific insurance coverages to eligible persons. Through this Act, insurers are not permitted to refuse to insure, continue to insure, or limit coverage unless the insurer has specific underwriting rules allowing the insurer to reject an eligible applicant.

● Duties of the Insurer and Producer

Under the Michigan Essential Insurance Act, the insurer is not permitted to penalize a particular individual agent by compensating him less because of the geographical location of the business written.

Under the Act, an agent is required to do the following:

- Provide each eligible person seeking automobile or home insurance the lowest available premium quotation for the types of insurance coverages that are offered by the insurers represented by the agent
- Inform the eligible person of the number of insurers that he or she represents
- Not influence an eligible person to not select an insurer or coverage for the purpose of avoiding the agent's obligation to submit an application or an insurer's obligation to accept an eligible person
- Submit an application for auto or home insurance to the insurer selected by the eligible person

In the case of auto insurance, the agent is legally required to supply the following information with renewal policies should it not have been supplied by the insurer:

- An explanation of the insurance eligibility point system
- A statement that if the insured is considered an eligible person, he or she may qualify for insurance from more than one insurer, and possibly at a lower rate
- A statement that upon request, the agent will give the insured quotations from all insurance companies represented by the agent from whom the insured may obtain insurance

● Risk Classification – Home Insurance

Home insurance risks must be grouped by territory and a territorial base rate established. These rates are required to be filed with the DOI, but typically are not subject to prior approval by the commissioner before they are used. It is required that the rates not be excessive, inadequate, or unfairly discriminatory.

Risk classification for homeowners insurance must be based on the following:

- Amount of insurance type of coverage
- Security and safety devices present, including smoke detectors, locks, and related items
- Repairable structural defects related to the risk
- Fire protection class
- Construction of the dwelling, based on size, building materials, and number of units
- Loss experience of the insured, based on paid claims that resulted from factors under the insured's control
- Availability of law enforcement or crime prevention services
- Proximity of a fire hydrant
- Use or absence of use of smoking materials inside the dwelling

● Insurance Declined and Termination of Insurance

If an applicant's request for insurance coverage is declined, the insurer must inform him of the specific reason for the refusal of coverage.⁹

Termination of insurance is not effective unless the insurer provides at least 30 days written notice of termination to the named insured. The notice must include the effective date of termination and the specific reason for termination. In addition, at least 20 days written notice of termination is required for policies that have been in effect for 55 days or less. Notice requirements for termination due to nonpayment of premium must be included in the policy language.

● Exemptions

Insurers admitted to do business in Michigan after January 1, 1981 are not eligible for exemptions from the provisions of the Act.

⁹ Refusing to provide an application form is referred to as "declination."

● **Grievance Procedures**

If an applicant believes an insurer has improperly denied him insurance, or has charged an incorrect premium for that insurance, he is entitled by law to a private informal conference with the insurer to resolve the dispute. Should the insurer fail to provide the conference within 30 days of request, or if the applicant disagrees with the proposed resolution, he may have the matter acted upon by the commissioner. If either party subsequently disagrees with the commissioner's decision, the commissioner can be requested to hear the matter as a contested case.

● **Eligibility - Home Insurance**

An "eligible person" for home insurance is a person who lives in and rents or owns a house, condominium, cooperative unit, room, or apartment. The eligible person must occupy the dwelling. The dwelling unit cannot contain more than four units.

"Home insurance" refers to fire insurance on a dwelling and coverage to insure non-business property, obligations and liabilities that are contained in a fire insurance policy. It does not include insurance for commercial, industrial, professional, or business property, obligations, or liabilities.

Persons who are not eligible for home insurance are those who:

- Have in the last five years been convicted of arson or conspiracy to commit arson, malicious destruction of property or violations regarding the use of explosives;
- Have in the last five years been successfully denied payment of a claim for evidence of arson, misrepresentation or fraud (when the claim was in excess of \$2000 or greater than 15% of the amount of insurance in force for a repair cost policy or 10 percent of the amount of insurance in force for a replacement cost policy);
- Have property that is used for illegal and/or particularly hazardous purposes;
- Have refused to purchase insurance for at least 80% of the replacement cost of the dwelling when applying for a replacement cost policy;
- Have refused to purchase insurance for at least 100 % of the actual cash value of contents insured under a tenant or renter's policy;
- Have policies that were canceled for nonpayment in the last 2 years;
- Want to insure a dwelling valued at less than \$7,500 for a repair cost policy or \$15,000 for a replacement cost policy;

- Have failed to procure or maintain membership in a club, group or organization that meets certain insurance law requirements when membership is a uniform requirement of the insurer
- Want to insure a dwelling that does not meet the commissioner's minimum insurability standards; or
- Have not paid real property taxes due on the property for the last two years.
- Underwriting Rules – Home Insurance

It is not permissible for an insurer to refuse to insure, refuse to continue to insure, or limit coverage available to an eligible person for home insurance. The underwriting rules employed by an insurer for home insurance can only be based upon the following:

- Criteria applicable to and employed for the determination of home insurance eligibility
- The insured property's physical condition
- For renewals, the liability claim history of the insured during the preceding 3 year period when that history is based on claims arising from an insured's negligence or failure to correct a physical condition after receiving written notice from the insurer that is related to the liability claim, or that presents a clear risk of a significant loss under the liability policy
- For new policies, physical conditions that present an increased chance of loss under liability coverage
- Relationship between the market value and the replacement cost of the dwelling if it is insured under a replacement cost policy and the insurer offers a repair cost policy
- For nonrenewals, the claim history under the policy, excluding liability claims, when the following exists: 3 paid claims in the last 3 years totaling \$1,500 or more, not including weather-related claims; 3 paid claims in the last 3 years totaling \$2,000 or more including weather claims
- Number of residences within the dwelling are not consistent with those represented in the policy forms
- Existence of an adjacent physical hazard that presents a significant risk of loss
- Dwelling has been unoccupied for more than 60 days if there is evidence of an intent to vacate or keep the dwelling vacant

- Failure of the insured to purchase in excess of 80% of the replacement cost under a replacement cost policy when this is a condition for the sale of the property

● Inspection of Dwellings – Home Insurance

An insurer may use an inspection of a dwelling to determine if an applicant is eligible for home insurance. When this is the case, the criteria for selecting dwelling for inspection may not be based on:

- The dwelling's location
- The age of the dwelling or its heating, electrical or structural components
- The dwelling's market value
- The amount of insurance, or
- The race, occupation, color, creed, marital status, sex, national origin, residence, age or handicap of the applicant

Chapter Four - Casualty Insurance Regulations

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY

[Sections 500.3301, 3303, .3365]

● Purpose of the Placement Facility

The purpose of the Michigan Automobile Insurance Placement Facility is to provide auto insurance coverage to anyone who is unable to obtain this insurance through the regular market. Insurance available from the Placement Facility is comparable to that available through the regular markets. The rates are based on a weighted average of rates used by the 5 largest automobile insurers in Michigan and by applying surcharges to those rates. All insurers writing automobile insurance in Michigan are required by law to be a member of the Placement Facility as a condition of their authority to write business in the state.

● Definitions

For the purposes of the Placement Facility, “automobile insurance” means insurance coverage for automobiles that provides: security required under the state’s financial responsibility laws; comprehensive and collision coverage; personal protections, property protection and residual liability insurance for amounts in excess of the amounts required by law; and other coverages for a private passenger non-fleet automobile as prescribed by the DOI.

For the purposes of the Placement Facility, a “qualified applicant” for automobile insurance is a person who is an owner or registrant of an automobile registered or to be registered in Michigan who holds a valid license to operate a motor vehicle. This definition does not include: a person who is not required to maintain security under the financial responsibility laws UNLESS he plans to reside in Michigan 30 days or more and makes a written statement of that intention on a form approved by the commissioner’s office; a person whose driver’s license is suspended or revoked; or a person whose auto insurance has been cancelled because of nonpayment of premium within the immediately preceding 2 year period, UNLESS the applicant or insured pays in full a premium installment before issuance, continuation or renewal of the policy.

● Eligibility

All persons defined as qualified applicants are eligible for automobile insurance provided through the Placement Facility. Qualified applicants are permitted to request assignment, reject assignment, or request reassignment to any designated, participating member in accordance with Placement Facility's established procedures.

Each designated, participating member is required to notify all persons it insures through the Placement Facility of the eligibility standards for obtaining automobile insurance from insurers in the voluntary market at least one time per year.

AUTO COLLISION COVERAGE OPTIONS

[500.2104(4), .3037]

Michigan law requires that insurers offer the following collision coverage options to the insured:

Limited collision coverage

Limited collision coverage pays for collision damage on the insured vehicle without a deductible amount when the vehicle's operator is not substantially at fault in the accident that caused the damage.¹⁰

Broad form collision coverage

Broad form collision damage pays for collision damage to the insured vehicle regardless of fault, with deductibles that may be waived if the vehicle's operator is not substantially at fault in the accident that caused the damage.

Standard collision coverage

Standard collision coverage provides coverage regardless of fault, but the deductible always applies.

¹⁰ "Substantially at fault" is defined by the Michigan Insurance Code to mean a person's action or inaction was more than 50% of the cause of the accident.

Should a new applicant reject both broad form or limited collision coverage, he is required to sign a waiver form. The waiver explains to the applicant what coverage would apply under the selected option in the event of an accident.

When an application is mailed and returned with the waiver unsigned, the waiver is considered signed upon the applicant's signing the application (or when the applicant was requested to sign the waiver if neither limited nor broad form coverage were selected). The waiver is also considered signed if the application provided the opportunity to select both limited and broad form coverage.

Insurers are required to send a written notice of the insured's present collision coverage annually at the policy's renewal date. The written notice also provides an explanation of other options available to the insured and procedures for the insured to follow should he want to change his current collision coverage.

ESSENTIAL INSURANCE ACT – II (AUTO)

[500.2101-.2104; 500.2116, .2122; 500.2111; 500.2122;
500.2123, .3020; 500.2129; 500.2123, .2114; R500.1501-.1520;
500.2103(1); 500.2103(4), .2119a; 500.2118]

Michigan's Essential Insurance Act disallows an insurer from refusing to insure or continue to insure or limit coverage unless the insurer has specific, written underwriting rules that would allow the insurer to reject an eligible insured.¹¹

● Risk Classification

Insured drivers can be classified on the basis of one or more of the following characteristics for rating purposes only:

- Age, number of years driving, or number of years licensed
- Principal driver, based on the use of the specific vehicle
- Vehicle use
- Average number of miles that the vehicle is driven (weekly, annually, or both)
- Commuting miles
- Total number of cars insured or number of drivers in the household
- Amount of insurance coverage

¹¹ Insurers whose surplus as of the end of 1979 was \$4 million or less are exempt from these requirements. The exemption continues indefinitely as long as the insurer does not experience a disproportionate growth in premium volume or changes in its business that would indicate the insurer is utilizing the exemption to take an unfair competitive advantage. Exempt insurers are required to file an annual statement with the DOI so that it can determine whether the insurer continues to qualify for exempt status.

For the purposes of rating personal protection, the insurer can also apply other factors. These factors include:

- Earned income
- Number of dependents
- Coordination of benefits with other health insurance carried by the insured
- Seat belt usage

● Eligible Person

For the purposes of auto insurance under the Act, an eligible person is the owner or registrant of an automobile in Michigan or a person holding a valid Michigan driver's license. An ineligible person is one who:

- Is not required to carry no-fault insurance
- Has a suspended or revoked driver's license
- Has, in the last 5 years, been convicted of fraud or intent to defraud involving an insurance claim or application for insurance
- Has been denied payment of an auto claim greater than \$1,000 where there was evidence of fraud or intent to defraud on a claim or application
- Has in the last 3 years been convicted of reckless driving, driving under the influence of alcohol or drugs, leaving the scene of an accident that resulted in the death or serious bodily injury, manslaughter, negligent homicide or a motor vehicle felony
- Owns a vehicle that does not meet the motor vehicle safety requirements of Michigan
- Has accumulated more than 6 insurance eligibility points in the last 3 years
- Has had auto insurance canceled for nonpayment of premium in the last 2 years
- Has not maintained required membership in organizations such as the Automobile Association of America (AAA) when membership is a uniform requirement of the insurer

● Eligibility Points

Insurance eligibility points are calculated as follows:

Driving more than 15 mph over the speed limit – 4 points

Driving 11-15 mph over the speed limit – 3 points

Driving 10 mph or less over the speed limit – 2 points

Driving 15 mph or less over the speed limit on a 70 mph freeway – 2 points

First substantially at-fault accident – 3 points

Second (and each subsequent) at-fault accident – 4

In calculating eligibility points, only the highest point value should be assigned when more than one violation pertains to one occurrence.

● Underwriting Rules

All automobile underwriting guidelines, which are developed by insurers, must be in writing and filed with the DOI. Underwriting rules are based on:

- Failure to prove that the vehicle was insured during the last 6 months
- Substantial modifications to a vehicle to increase acceleration or speed
- Accumulation of more than 6 eligibility points by a member of the insured's household who accounts for 10% or more use of the insured vehicle
- The status of the vehicle as a limited production
- Whether the vehicle is extremely expensive to replace or repair
- The insurer not having a filed rate on the vehicle
- Use of the vehicle for hire or commercial purposes (not including volunteer work or car pools)
- Establishment of a minimum deposit upon application or renewal
- Use of claim experience for comprehensive coverage to require a deductible of up to \$150 or refusal to accept the applicant if he does not wish to accept the deductible
- Total abstinence from the consumption of alcoholic beverages (except when such beverages are consumed as part of a religious ceremony)

● Bulletin 2011-10-INS – “Pay as you Drive” Auto Insurance

Under MCL 500.2111(2), an insurance company is permitted to use one or more of the following factors in determining base rates for individual automobile insurance:

- the average miles driven weekly;
- the average miles drive annually;
- the average miles driven weekly and annually; and

daily or weekly commuting mileage. Nor do MCL 500.2109, MCL 500.2403, and MCL 500.2603 prohibit the use of mileage as a sole rating criterion (insofar as rates are not excessive, inadequate, or unfairly discriminatory). As Michigan law does not specify whether mileage should be calculated on an estimated or actual basis, both methods are permissible.

Insurers are therefore permitted to write automobile insurance policies with premiums based primarily, or solely, upon average miles driven weekly, annually, or both; and/or on daily or weekly commuting mileage. Policies utilizing a mileage rating plan are permissible so long as they comply with all applicable laws and regulations, including but not limited to the underwriting requirements set forth in MCL 500.2105(2), MCL 500.2118, and/or MCL 500.2119.

While insurers are permitted to offer policies utilizing mileage rating, they are not required to offer such policies.

FINANCIAL RESPONSIBILITY LAW (NO-FAULT)

[500.3101, 3101A, .3102; 500.3105-.3108, .3142; 500.3037, .3109(3), .3109a; 500.3113; 500.3104(1),(2); 500.3125, .3114(4); 500.3121(1),(2),(3),(4); 500.3123; 500.3121(5); 500.3125; 500.3131; 500.3009; 500.3102, .3103, .3114(5); 500.3135, Bulletin 2013-05-INS]

Financial responsibility laws are often referred to as “no-fault” laws. No-fault laws require liability and limited medical, rehabilitation, and wage loss reimbursement for anyone injured in an automobile accident, regardless of fault.

● Certificate of Insurance

Under Michigan no-fault law, the owner or registrant of a motor vehicle registered in Michigan is required to maintain security for the payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance.

An insurer issuing an automobile insurance policy must provide 2 certificates of insurance to each policyholder. The insurer will mark one copy for the Secretary of State to be filed with the application for vehicle registration.

Anyone who supplies false information or uses an invalid certificate of insurance is guilty of a misdemeanor punishable by imprisonment for up to 1 year, a \$1,000 fine, or both.

A nonresident owner or registrant of a motor vehicle or motorcycle not registered in Michigan may not operate or permit the motor vehicle or motorcycle to be operated in Michigan for a total of more than 30 days in any calendar year unless he or she maintains security for the payment of benefits.

● Personal Protection Insurance (PIP)

All automobile insurance policies in Michigan must offer personal injury protection (PIP) for the payment of benefits for accidental bodily injury arising from the ownership, operation, maintenance, or use of a motor vehicle. Payment of benefits occurs without regard to negligence.

Benefits

PIP benefits include:

- All reasonable medical expenses for products, services, and accommodations for an injured person's care, recovery or rehabilitation
- Between \$1,700 and \$5,000 for funeral and burial expenses
- Payment for the loss of income from an income producer of up to 85% of income lost, with a maximum of \$4,027 per 30 day period for 3 years after the date of the accident¹²
- Survivor's benefits, including up to \$20 per day for expenses the deceased could have performed if the accident had not occurred¹³

PIP benefits are payable as loss accrues. PIP benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. Should reasonable proof not be supplied for the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any portion of the remainder of the claim that is later upheld by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer.

For the purposes of PIP, accidental bodily injury cannot be the result of an accident with a parked vehicle unless any of the following occur:

- The vehicle was parked in a manner that caused unreasonable risk of the bodily injury that occurred
- The injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used or property was being lifted or lowered from the vehicle

¹² Work loss benefits for a person temporarily unemployed are based on the wages earned during the last month of full-time employment.

¹³ Survivor's benefits are payable only for the first 3 years after the date of the accident and are subject to a maximum amount that is adjusted annually.

- The injury occurred while the person was occupying, entering, or leaving the vehicle

In addition, should an injury occur during the course of an employee's employment while moving or operating a parked vehicle, the injury will not be covered under automobile insurance when coverage is available under another state or federal law or the Worker's Disability Compensation Act.

Deductibles and Exclusions

An insurer that provides PIP benefits is permitted to offer, at reduced premium rates, a deductible of a specified dollar amount that does not exceed \$300 per accident. This deductible may be applicable to all or any specified types of PIP benefits; however, it may only apply to benefits payable to the named insured, the insured's spouse, and any relative of the insured or the insured's spouse living in the same household.

An insurer that provides PIP insurance benefits may offer, at reduced premium rates, deductibles and exclusions related to other health and accident coverage on the insured. These deductibles and exclusions are subject to prior approval by the DOI and apply only to benefits payable to the named insured, the insured's spouse, and any relative of either living in the same household.

Insurers may offer deductibles on personal injury protection coverage. Two types of deductibles are available: a *general deductible* (MCL 500.3109(3)) and a deductible that is "reasonably related" to other health and accident coverage (MCL 500.3109a), typically referred to as a *penalty deductible*. Both types of deductibles must be offered "at appropriately reduced premium rates."

A penalty deductible is imposed when the insurer discovers, upon the insured making a claim, that the insured had attested that they had coordinated health or accident coverage (i.e., other health or accident coverage that will pay claims at least up to the coordinated coverage deductible amount shown in the personal auto policy) but, at the time of an accident or claim, does not actually have coordinated coverage. Section 3109a of the Code requires penalty deductibles to receive prior approval from the Director. Penalty deductibles over \$500 per accident will not be approved.

Exemptions

Insurers have the right to exclude from PIP benefits for accidental bodily injury when, at the time of the accident, the insured was:

- Using a motor vehicle or motorcycle knowingly without the owner's permission
- The owner or registrant of a vehicle or motorcycle involved in the accident and did not have the required insurance coverage in effect

- Not a resident of Michigan, occupying a motor vehicle or motorcycle not registered in the state, and not insured by an authorized Michigan insurer

Catastrophic Claims Association

All insurers writing no-fault insurance in Michigan are required to belong to the Catastrophic Claims Association. For medical cost losses occurring under PIP in excess of \$250,000 (for each loss), the insurer can apply for reimbursement from the Association. Beginning on July 1, 2002, the PIP excess loss coverage has been \$3,000 per each loss occurrence, with the excess loss coverage limit increasing each year until it reaches \$500,000 on July 1, 2013. From 2013, the \$500,00 amount will be increased on July 1 of each odd-numbered year by the lesser of 6% or the consumer price index, and rounded to the nearest \$5,000.

Priority of Claims

A person who suffers accidental bodily injury while an operator or passenger of a motorcycle where the accident shows evidence of the involvement of a motor vehicle must claim PIP benefits from insurers in the following order of priority:

1. the insurer of the owner or registrant of the motor vehicle
2. the insurer of the operator of the motor vehicle
3. the motor vehicle insurer of the operator of the motorcycle
4. the motor vehicle insurer of the owner or registrant of the motorcycle

● **Property Protection Insurance (PPI)**

Benefits

Property protection insurance (PPI) pays up to \$1 million per accident for damage done to property arising out of the ownership, operation, maintenance, or use of a motor vehicle. To be eligible for payment, the property damage must occur in Michigan; payment is not made for damage to the insured's vehicle(s).

PPI benefits are paid without regard to fault. Benefits are payable based on the lesser of reasonable repair costs or replacement costs less depreciation. Covered property can include trees, bridges, signs and related items owned by someone other than the insured driver; benefits are also paid for damage to legally parked automobiles owned by someone other than the insured driver or owner.

Exclusions

Damage to the following kinds of property is excluded from PPI benefits:

- Vehicles and their contents, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damages that occur
- Property owned by a person or his or her spouse or relative named in a property protection policy, if his or vehicle caused the property damage
- Property damage from accidents outside Michigan
- Property damage to utility transmission lines, wires or cables arising from the failure of a municipality, utility company or cable company to comply with state law

Persons who experience accidental property damage claim property protection insurance benefits from insurers in a specific order of priority. This ordering is as follows:

- 1) Insurers of owners of registrants of vehicles involved in the accident
- 2) Insurers of operators of vehicles involved in the accident.

● **Residual Liability Coverage**

Benefits

The purpose of residual liability insurance is to cover bodily injury and property damage occurring within the United States and its territories or Canada. The coverage provides an equivalent amount of automobile liability insurance to that required by financial liability laws of the place where the injury occurs.

Minimum Liability Limits

The minimum liability limits provided by this coverage are as follows:

- \$20,000 for bodily injury or death of one person in one accident
- \$40,000 for bodily injury or death of two or more persons in one accident
- \$10,000 for property damage in one accident

Treatment of Motorcycles

When a person experiences accidental bodily injury resulting from an accident involving a motor vehicle and a motorcycle, he must claim personal protection benefits from insurers in the following order of priority:

- 1) The insurer for the owner or registrant of the motor vehicle involved in the accident
- 2) The insurer for the operator of the motor vehicle involved in the accident
- 3) The motor vehicle insurer for the owner or registrant of the motorcycle involved in the accident

The owner or registrant of a motorcycle must provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person arising out of the ownership, maintenance, or use of that motorcycle. The policy must provide the same minimum limits as those required for auto liability policies.

Insurers that provide motorcycle coverage must also offer security for the payment of first-party medical benefits only, in increments of \$5,000, payable in the event the owner or registrant is involved in a motorcycle accident.

Insurers providing first-party medical benefits may offer deductibles, provisions for the coordination of benefits, and provisions for the subtraction of other benefits provided or required to be provided under the laws of any state or federal government, subject to prior approval of the DOI. These deductibles and provisions may apply to benefits payable to the person named in the policy the spouse of the insured, and any relative of either living in the same household.

Right to Sue – Tort Liability

Michigan law retains an aspect of tort liability in the form of the mini-tort provision. Under this mini-tort limited property damage liability, a person will remain liable for non-monetary damages caused by his ownership, maintenance, or use of a motor vehicle only if the injured party suffered death, serious bodily impairment (of a bodily function that affects his or her ability to lead a normal life) or permanent serious disfigurement.

Tort liability can still arise from the ownership, maintenance or use of an insured motor vehicle under the following conditions:

- intentional harm to persons or property
- damages for non-economic loss
- damages for allowable expenses, loss of income, and survivor's benefits
- damages of up to \$1000 to motor vehicles not covered by insurance

Courts can award damages to the injured party on the basis of comparative fault. This means that the court will divide the degree of fault between the parties.

Should a party not be insured at the time of the accident, that party will not be awarded damages. A party that is more than 50% at fault for an accident will not be awarded damages.

Effective October 1, 2012, Michigan's No-Fault Act's "mini-tort" claim provisions increased the mini-tort limits from \$500 to \$1,000 in accordance with the recent passage of House Bill 5362. In addition, owners or registrants of an uninsured vehicle are no longer be able to recover mini-tort damages to their vehicle from an at-fault driver.

WORKER'S COMPENSATION

[418.115, .131, .151, .155, .301, .311; 418.118, .161(1)(a),(b), (c), (d); 418.161(2),(3), .171; 418.305, .311., 315, .319, .345, .351, .355, .401, .621; 418.621; 418.141; 500.2301]

● Definition and Prohibited Defenses

Definitions

Workers compensation is a form of social insurance. Its purpose is to reimburse employees injured in the course of, and arising out of, their employment. The range of reimbursement benefits is broad. It can include loss of wages, hospital and medical benefits, payments for permanent and partial disability, and payments to dependents. Also included in this form of insurance coverage are last sickness and burial expenses.

Prohibited Defenses

Another result of workers compensation insurance is the elimination of common law defenses that had previously been used by employers to defend against these liability issues. An employer in legal action is proscribed the use of the following defenses to avoid a workers compensation claim: 1) contributory negligence; 2) fellow servant; and 3) assumption of risk.

Employers

Michigan's workers compensation law applies to employers in the following categories:

- Private employers who regularly employ 3 or more employees at one time

- Private employers who regularly employ less than 3 or more employees if at least one of them has been employed for at least 35 hours or more per week for at least 13 weeks during the preceding 52 weeks
- Public employers, regardless of the number of people employed
- Agricultural employers of 3 or more employees who are paid hourly wages and are employed for 35 hours or more per week for 13 weeks or more during the preceding 52 weeks. Coverage applies only to regularly employed employees
- Agricultural employers of 1 or more employees who are employed for 35 hours or more per week for 5 or more consecutive weeks must provide for the employees' medical and hospital coverage for all personal injuries arising in the course of employment suffered by the employees. All other agricultural employers not included here are exempt from workers compensation.

Employees

Michigan's workers compensation laws consider the following as employees:

- People working for the state or a county, city, township, village, or school district
- People employed by contractors of the state
- Police officers, firefighters, on-call members of fire departments, safety patrol officers, volunteer civil defense workers, and volunteer ambulance drivers and attendants
- All persons working for another party under a contract of hire and employed full time
- Working members of a partnership
- Persons engaged in a federally funded training program or work experience program
- Every person performing services in the course of the trade, business, profession or occupation of an employer

Excluded Employees and Subcontractors

Excluded employees, while exhibiting aspects of employment for hire, are not considered employees for the purposes of workers compensation coverage and benefits.

- A household domestic servant is not considered an employee when the person is a wife, child or other member of the employer's family residing in the house.
- A private employer is not liable to any person employed as a household domestic servant for less than 35 hours per week for 13 weeks or longer during the preceding 52 weeks¹⁴
- An employee of a limited liability company who owns at least a 10% interest may be excluded by giving written notice of his or her election to do so the insurance company.

¹⁴ Unless the private employer assumes liability.

Under Michigan's workers compensation laws, an employer insurance company is liable to subcontractors for benefits. Sole proprietors who contract to provide services in the course of an employer's business must be covered by the employer unless they have a separate place of business and hold themselves out to render service to the public.

Benefits

For the purposes of paying benefits, Michigan workers compensation laws define "personal injury" as a disease or disability due to causes and conditions characteristic of, and unique to, the employer's business and that arise out of and from employment in that particular business. "Disability" is defined as the limitation of an employee's ability to earn wages in work suitable to his qualifications and training, when this limitation is caused by personal injury or work-related disease. Disability does not create the presumption of a loss of wages.

The benefits available from workers compensation coverage are very broad. The core of workers compensation coverage is benefits for reasonable medical, surgical and hospital care, and medicines. These benefits are provided to covered employees injured during the course of, or arising from, employment for the first 6 months and thereafter as mandated by state law. After 10 days, the employee is allowed to select his own physician for care.

Additional benefits are available for dental services, artificial limbs, eyeglasses, and hearing aids. Medical and vocational rehabilitation services, including retraining and job placement, must be provided if the employee can no longer perform the work for which he has training and experience. Vocational rehabilitation cannot exceed 52 weeks without special authorization.

Indemnity benefits, paid weekly in the amount of 80 % of the employee's after tax wage, not to exceed the maximum weekly rate set by the state, must be paid while the employee is completely unable to work.¹⁵ Conclusive presumption of total and permanent disability does not extend beyond 800 weeks from the date of injury. After that point, the question of total and permanent disability must be determined in accordance with facts as they currently exist.

It is required that compensation be paid promptly and directly to the injured worker and becomes due and payable on the 14th day after the employer has notice and knowledge of the disability or death. All compensation must be paid weekly.

Work loss benefits are payable on the 8th day of disability. Should the disability last longer than 2 weeks, benefits will be paid retroactively from the initial day of injury. After 6 months from the date of injury, a lump-sum payment may be made. A lump-sum

¹⁵ The maximum weekly rate of compensation is adjusted annually with the increase or decrease in average weekly wage of covered employment as determined by the Michigan Employment Security Commission. The maximum weekly rate of compensation for injuries is 90% of the state average weekly wage.

payment requires agreement from all concerned parties. , and is subject to approval from a hearing referee.

Termination of Insurance

Michigan law requires that the Bureau of Workers' Disability Compensation be notified 20 days in advance of the date that a workers compensation policy is terminated or cancelled. The notification sent to the Bureau must contain the date of the termination/cancellation, and the policy is required to stay in force for 20 days after receipt.

The Workers Compensation Placement Facility

The Workers Compensation Facility (Placement Facility) was created by 1982 PA 8, MCL 500.2301 - 500.2352, et seq. It exists as a residual market to provide workers compensation insurance to employers who are unable to purchase this coverage in the regular (voluntary) market.

Because workers' compensation insurance is mandatory coverage for employers, the state has established an insurance "pool" in which all the state's workers' compensation carriers share a portion of the cost of underwriting higher-risk clients. Companies covered by the pool and the Placement Facility, usually pay substantially higher rates than they would in the standard "voluntary" market. The Placement Facility is the "market of last resort" for employers who cannot obtain coverage through the "voluntary" insurance market.

All agent producers authorized to solicit workers compensation insurance on behalf of the Facility must offer to place workers compensation insurance through the facility when requested to do so by the applicant. Agent producers receive commissions for placing insurance through the Facility at rates provided in the Facility's plan of operation.