

**GUIDING PRINCIPLES
FOR MICHIGAN
INSURANCE PRODUCER LICENSURE**



Department of Insurance and Financial Services
Office of Insurance Licensing and Market Conduct

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Introduction

A primary mission of the Michigan Department of Insurance and Financial Services (DIFS) is to protect the public from dishonest and untrustworthy persons. One way DIFS protects the public is through the licensure process. A license is a privilege, not a right. Chapter 12 of the Michigan Insurance Code (Code) makes the Director of DIFS responsible for evaluating the qualifications of applicants for licensure as insurance producers and for refusing to issue licenses to unqualified applicants.

These Guiding Principles are intended to advise applicants of the specific provisions of Michigan law that govern licensure and how they are interpreted and enforced by DIFS.

Background

Michigan belongs to the National Association of Insurance Commissioners (NAIC). Formed in 1871, the NAIC is a voluntary organization of the chief insurance regulatory officials of each of the 50 states, the District of Columbia, and the five U.S. territories. The NAIC was created to address the need to coordinate the regulation of multistate insurers and their agents.

In October 1996, the NAIC created a non-profit affiliate, the National Insurance Producer Registry (NIPR) to reengineer, streamline and make uniform the insurance producer licensing process through online applications and databases. DIFS fully cooperates with NIPR and has adopted an online application process, which may be accessed through DIFS' website or the NIPR website. Both websites lead to the uniform online application approved by the NAIC.

Michigan Law

The NAIC recognizes that each state has its own licensing laws that must be followed and that some of Michigan's provisions may be different from those of other states. In order to protect the public from dishonest and untrustworthy insurance producers, both resident and non-resident insurance producer applications will be denied licensure in Michigan if the applicant has committed acts that are grounds for refusing to issue a license under MCL 500.1239(1).

Effective January 6, 2009, the Michigan Legislature amended Section 1239 to state that "the commissioner shall refuse to issue a license under section 1205 or 1206a for any 1 or more" of the fourteen reasons identified in MCL 500.1239(1). Click here to read Section 1239:
[http://www.legislature.mi.gov/\(S\(ptlizdz23r2z4h45espwdgi2\)\)/mileg.aspx?page=getObject&objectName=mcl-500-1239](http://www.legislature.mi.gov/(S(ptlizdz23r2z4h45espwdgi2))/mileg.aspx?page=getObject&objectName=mcl-500-1239)

Resident Applicants - Section 1205 of the Code (MCL 500.1205) governs the licensure of Michigan residents who are seeking to become insurance producers. It states that an application for a resident producer license shall not be approved if the commissioner finds that the person has committed any act, which is a ground for denial, suspension or revocation under Section 1239. Click here to read Section 1205:
[http://www.legislature.mi.gov/\(S\(ptlizdz23r2z4h45espwdgi2\)\)/mileg.aspx?page=getObject&objectName=mcl-500-1205](http://www.legislature.mi.gov/(S(ptlizdz23r2z4h45espwdgi2))/mileg.aspx?page=getObject&objectName=mcl-500-1205)

Non-Resident Applicants - Section 1206a governs the licensure of non-residents who are seeking to become insurance producers. It states that unless licensure is denied under Section 1239, a non-resident applicant shall be granted a license. Click here to read Section 1206a:

[http://www.legislature.mi.gov/\(S\(ptlizdz23r2z4h45espwdgi2\)\)/mileg.aspx?page=getobject&objectname=mcl-500-1206a](http://www.legislature.mi.gov/(S(ptlizdz23r2z4h45espwdgi2))/mileg.aspx?page=getobject&objectname=mcl-500-1206a)

The Application Process

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

States share information regarding administrative actions taken against licensees. The information is stored in the NAIC Regulatory Information Retrieval System (RIRS) or Special Activities Database (SAD) systems.

Procedure

The qualification review process begins with the online submission of the NAIC uniform application. DIFS insurance licensing staff (staff) review the license application, as well as information obtained from the NAIC RIRS and SAD and information from criminal history databases.

When information associated with an application indicates a possible qualification issue, DIFS staff may request additional information from the applicant, including records of administrative or court proceedings. Staff will then review any additional information received and recommend approval or denial of the application. When an application is approved, DIFS will issue a license document, within one business day, and send it First-Class Mail via the U.S. Postal Service.

Recommendations for denial are implemented when the Office Director signs the Notice of Denial. The Notice of Denial will be sent to the applicant by certified mail and will include instructions for appealing the denial.

The Most Common Reasons for Application Denial under MCL 500.1239(1)

- 1. MCL 500.1239(1)(a): “Providing incorrect, misleading, incomplete, or materially untrue information in the license application.”**

MCL 500.1239(1)(f): “Having been convicted of a felony.”

The first standard background information question on the NAIC uniform application is broken down into three parts:

1 a. Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?

1 b. Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?

1 c. Have you ever been convicted of a military offense, had a judgment withheld or deferred, or are you currently charged with committing a military offense?

The instructions explain and define the question as follows:

*You may exclude the following **misdemeanor** convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving on a suspended or revoked license.*

You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court).

“Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine.

Implications for Michigan licensure:

Having a misdemeanor on your record by itself may not be a reason to deny licensure, however, **failing to report that you have a misdemeanor on your record, unless it is one of those exempted below, IS a reason to deny licensure. When in doubt, disclose it.**

Many applicants with past misdemeanors on their record believe that the misdemeanor will be dropped from their record after the passing of five to ten years. This is NOT correct. The only way that a misdemeanor will be removed from a record is by an action by the court. This means that if you were told at the time of sentencing that if you completed probation and had no other offenses that the conviction would be removed, you must go back and check with the court to be sure that the charge was dismissed and that you do not have a conviction on your record.

Many applicants believed that offenses such as “surfing too close to the shore” and “jet-skiing without a horn” and “fishing after dark” and “improper tagging of a deer” were merely “ticket offenses” and not misdemeanors that were on their record. They were wrong.

Many applicants believed that because past employers had done background checks on them and did not turn up a conviction, it meant that no conviction was on their record. They were wrong.

You can check your Michigan criminal record by going to <http://apps.michigan.gov/ICHAT/Home.aspx>. If you have a conviction from another state, you may check with that State’s Insurance Commissioner or Department of State Police to learn how to check a criminal record.

If you have a conviction on your record from the past, you may be able to petition the court to remove the conviction from your record. In Michigan, the process to “set aside” a conviction requires a judge from the sentencing court to enter an order setting the conviction aside. It does

not require an attorney. The process is set forth in MCL 780.621(or at MCL 712A.18e for juvenile offenses). If you have a conviction from another state, you may check your conviction record by finding similar websites using popular internet search engines or by contacting the court in which you were convicted.

Instructions for setting aside a Michigan juvenile adjudication can be found here:

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/juvenile/jc66.pdf>

<http://courts.mi.gov/Self-help/center/casetype/Pages/SetAsideJA.aspx> (no longer accessible online)

Instructions for setting aside a Michigan adult conviction can be found here:

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/generalcriminal/mc227.pdf>

<http://courts.mi.gov/self-help/center/casetype/pages/setasideac.aspx> (no longer accessible online)

The adoption by Michigan of the uniform licensing application and directions means that the following **misdemeanors** do not have to be reported:

- Traffic citations
- Convictions for DUI or DWI
- Driving without a license
- Reckless driving
- Driving with a suspended license
- Offenses committed and sentenced as a juvenile

Although the statute mentions “incorrect” and “incomplete” information, Section 1239(1)(a) is not concerned with inadvertent errors, typographical mistakes and inconsequential inaccuracies. In assessing the appropriateness of licensure, the staff will focus on whether the error, inaccuracy or mistake appears to have been inadvertent or if it was included as a means to enhance the applicant’s chance of licensure and mislead the agency. Applicants, who by their false statements, attempt to mislead the agency, can be expected to similarly mislead the public when self-interest is at stake. Inadvertent errors, by comparison, do not suggest a similar risk.

One last note: Even though DIFS does not use the mere fact that an applicant has a misdemeanor on his or her record as a reason to deny licensure. However, if the facts surrounding the misdemeanor demonstrate the use of fraudulent, coercive or dishonest practices or that an applicant has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business, the application will be denied under Section 1239(1)(h).

Felony Convictions

Michigan has a very strict law with respect to felony convictions. **IF YOU HAVE A FELONY CONVICTION, no matter how old or for what offense, we strongly suggest that you DO NOT apply for licensure as an insurance producer in Michigan. Your application WILL BE DENIED and the denial will be reported to the NAIC national database.**

If the felony conviction is removed from your record through the process of expungement or set aside, it will not be considered for licensing purposes.

Conviction under the U.S. Uniform Code of Military Justice for serious offenses may also be a cause for refusal to issue an insurance producer's license under MCL 500.1239(1)(f), unless the conviction has been expunged or set aside.

2. MCL 500.1239(1)(b): “Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.”

MCL 500.1239(1)(i): Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

The second standard background information question on the NAIC uniform application asks:

Have you ever been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license, or registration?

The instructions explain and define the question as follows:

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. “Involved” also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions, in your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

Implications for Michigan licensure:

A change in Michigan law has had the effect of highlighting differences in state regulatory efforts. It has become apparent that the regulatory tools used in enforcement efforts are not used by all states in the same way. Often administrative action is taken, not as a means to punish bad actions, but as a means of educating an otherwise law-abiding producer. A state may censure, suspend or revoke a license only to immediately reinstate the producer upon payment of fees or the filing of papers. Immediate reinstatement is an indication that the underlying offense was not considered serious and that the administrative action was to educate and recover regulatory costs, not to punish or impair the producer's ability to carry on business. Thus, a person may have his or her license “suspended” or “revoked” in one state for an offense that Michigan considers “technical” and would not lead to suspension or revocation. In addition, with different

regulations in each of the 56 different jurisdictions, mistakes are sometimes made by agents representing multi-state carriers.

The following administrative actions will not be considered grounds for denial under MCL 500.1239(1)(b) or MCL 500.1239(1)(i) and may be excluded from disclosure on the license application:

- When a licensee fails to complete the continuing education required for license renewal, the license simply expires by operation of law once the grace period is past, not because the licensee violated the law.
- Failure to pay renewal fees.

The following administrative actions will not be considered grounds for denial under MCL 500.1239(1)(b) or MCL 500.1239(1)(i); however, they **MUST** be reported and explained. Additionally, if the facts surrounding the administrative action(s) demonstrate the use of fraudulent, coercive or dishonest practices or that an applicant has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business, the application will be denied under MCL 500.1239(1)(h).

- Terminations due to a failure to update an address.
- Administrative actions that involve settlements that do not contain any findings or admissions of a violation of state insurance laws or orders.
- Administrative actions that involve settlements regarding a one-time violation of a technical nature where no consumers were shown to have been harmed and where the producer's license was not suspended or revoked or, if suspended or revoked, was reinstated and no pattern of repeat violations is apparent.

3. Other reasons for denial:

MCL 500.1239(1)(c): Obtaining or attempting to obtain a license through misrepresentation or fraud. The term "license," as used in this subsection, is not limited to an insurance producer's license.

MCL 500.1239(1)(d): If an applicant has improperly withheld, misappropriated, or converted any money or property received in the course of doing insurance business.

MCL 500.1239(1)(e): An applicant has intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance.

MCL 500.1239(1)(g): An administrative finding, a conviction or an admission of insurance fraud or insurance unfair trade practices.

MCL 500.1239(1)(h): An applicant has demonstrated the use of fraudulent, coercive or dishonest practices or that an applicant has demonstrated incompetence, untrustworthiness or

financial irresponsibility in the conduct of business. This can be any business, not just an insurance related business. Additional considerations under Section 1239(1)(h) include, but are not limited to:

- Misdemeanor convictions that involve fraud or other coercive or dishonest practices, including embezzlement, welfare fraud and convictions for passing bad checks.
- Misdemeanor convictions that involve theft from an employer.
- Bankruptcies involving funds held on behalf of others have the potential to demonstrate financial irresponsibility in the conduct of business. In the case of an applicant who was in the insurance business and filed for bankruptcy, unless otherwise demonstrated, the presumption will be that the bankruptcy involved funds held on behalf of others and therefore demonstrated financial irresponsibility in the conduct of business.
- Being a party to a lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentations or breach of fiduciary duty is a cause for denial under this subsection only if the documentation contains admissions or legal findings of the conduct described in this subsection.

MCL 500.1239(1)(i): This section applies to actions taken by insurance regulatory jurisdictions other than Michigan.

MCL 500.1239(1)(j): An applicant has forged another's name to an application for insurance or to any document related to an insurance transaction.

MCL 500.1239(1)(k): An applicant improperly uses notes or other reference material to complete an examination for an insurance license.

MCL 500.1239(1)(l): An applicant has knowingly accepted insurance business from an individual who is not licensed.

MCL 500.1239(1)(m): Applications will be denied for failure to comply with an administrative or court order imposing a child support obligation if an applicant has a child support obligation in arrearage and is not complying with the order. An applicant who is the subject of a repayment agreement and is current with the payments under that agreement may be approved.

MCL 500.1239(1)(n): A delinquent tax obligation that is not the subject of a repayment agreement is a cause for denial only if the delinquent obligation involves the Michigan Single Business Tax or its successor, the Michigan Business Tax.

MCL 500.1239(3): A business entity insurance producer's license will be refused if an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the Director nor corrective action taken.

Common Questions

1. **Q.** *What if a person was put into a first offender program and successfully completed the program?*

A. Successful completion of a first offender program typically results in the crime being removed from the record. However, if the court has not cleaned up their records, the crime might still show up. In such a case, the applicant should contact the court and get written verification that the program was successfully completed and the record is – or will be – cleared.
2. **Q.** *When is someone considered a juvenile?*

A. As the word “juvenile” has a variety of meanings, Michigan uses “age of majority” to determine juvenile status. In Michigan, if a misdemeanor incident happened before the person’s 18th birthday the incident would not count for licensing purposes and does not have to be reported *unless the applicant was tried as an adult.*

If the incident is a felony, the application will not be denied for a failure to report under Section 1239(1)(a), but will be denied under Section 1239(1)(f) (felony conviction) unless the person was “adjudicated” and not “convicted.”
3. **Q.** *How does Michigan’s Holmes Youthful Trainee Act apply?*

A. An individual who is between the age of 17 and 20 and is alleged to have committed a crime may plead guilty and the court may, without entering a judgment, assign the individual to the status of a youthful trainee. The judge will dismiss all of the charges once the individual sentenced under HYTA has successfully complied with all requirements. No conviction is ever entered.
4. **Q.** *What if a person is over the age of 18, but under the legal drinking age of 21 and is charged with misdemeanor minor in possession (MIP)?*

A. Underage alcohol-related misdemeanor offenses are considered juvenile offenses for purposes of insurance licensing.
5. **Q.** *If a corporate entity is applying for a license, how will a conviction of an officer, owner or director affect the ability of the entity to be licensed as a producer agency?*

A. A corporate entity is the “person” for purposes of insurance licensing. A background check will be conducted on the entity, owners, officers, directors and the designated responsible licensed producer. It is important to note that the *Federal Crime Bill of 1994* does not allow anyone with a felony conviction involving dishonesty or breach of trust to engage in the business of insurance

unless the person obtains written consent from the state's insurance commissioner. See question 6 for more information.

6. Q. *Does the Federal Crime Bill of 1994 prohibit corporate entities from hiring or affiliating with persons with felonies?*

A. Yes. Title 18 U.S.C. Section 1033(e) provides that any individual who has been convicted of “any criminal felony involving dishonesty or a breach of trust” may not engage in the business of insurance. A prohibited individual may seek relief from the prohibition by filing a “1033 waiver” application with the insurance director requesting “written consent” to work in the business of insurance. The waiver application is located at:

http://www.michigan.gov/documents/cis/shortapp1_174283_7.pdf

Note: Although the NAIC uniform application includes an option for persons who are seeking licensure as an insurance producer to indicate whether they have applied for a Section 1033 waiver, **because Section 1239 of the Insurance Code prohibits the licensure of insurance producers with a felony conviction, no such waivers can be granted in Michigan for insurance producer applicants who have been convicted of a felony.**

7. Q. *Is a conviction for an “attempted felony” considered a felony?*

A. When no express provision is otherwise made in the law for the punishment of an attempt, Section 92 of the Michigan Penal Code, MCL 750.92, provides that if the offense attempted is punishable by death, life imprisonment or five years or more in prison, the attempt is a felony; all other attempts are a misdemeanor.