

Act No. 16  
Public Acts of 2020  
Approved by the Governor  
January 27, 2020  
Filed with the Secretary of State  
January 27, 2020  
EFFECTIVE DATE: January 27, 2020

**STATE OF MICHIGAN  
100TH LEGISLATURE  
REGULAR SESSION OF 2020**

Introduced by Reps. Wittenberg, Rendon and Paquette

## **ENROLLED HOUSE BILL No. 5242**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” by amending section 1301 (MCL 500.1301), as amended by 2015 PA 244, and by adding section 1359.

*The People of the State of Michigan enact:*

Sec. 1301. As used in this chapter:

(a) “Enterprise risk” means an activity, circumstance, event, or series of events involving 1 or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition

or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer to be hazardous to policyholders, creditors, and the public.

(b) “Group-wide supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the director under section 1359 to have sufficient contacts with the internationally active insurance group.

(c) “Insurer” means that term as defined in section 106 and includes a nonprofit dental care corporation operating under 1963 PA 125, MCL 550.351 to 550.373. Insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state, fraternal benefit societies, or nonprofit health care corporations.

(d) “Internationally active insurance group” means an insurance holding company system to which both of the following apply:

(i) The insurance holding company system includes an insurer registered under section 1324.

(ii) The insurance holding company system meets all of the following criteria:

(A) The insurance holding company system has premiums written in at least 3 countries.

(B) The percentage of gross premiums written outside the United States is at least 10% of the insurance holding company system’s total gross written premiums.

(C) Based on a 3-year rolling average, the total assets of the insurance holding company system are at least \$50,000,000,000.00 or the total gross written premiums of the insurance holding company system are at least \$10,000,000,000.00.

(e) “NAIC” means the National Association of Insurance Commissioners.

(f) “Person” means that term as defined in section 114, except that it does not include a securities broker performing no more than the usual and customary broker’s function, so long as the securities broker holds less than 10% of the voting securities of an insurer or of any person that controls an insurer.

Sec. 1359. (1) The director may act as the group-wide supervisor for any internationally active insurance group in accordance with this section. However, the director may otherwise acknowledge another regulatory official as the group-wide supervisor if any of the following apply to the internationally active insurance group:

(a) The internationally active insurance group does not have substantial insurance operations in the United States.

(b) The internationally active insurance group has substantial insurance operations in the United States, but not in this state.

(c) The internationally active insurance group has substantial insurance operations in the United States and this state, but the director has determined under the factors set forth in subsections (3), (4), and (8) that the other regulatory official is the appropriate group-wide supervisor.

(2) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the director make a determination or acknowledgement as to a group-wide supervisor under this section.

(3) Subject to subsection (4), in cooperation with other state, federal, and international regulatory agencies, the director shall identify a single group-wide supervisor for an internationally active insurance group. The director may determine that the director is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the director may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The director shall consider all of the following factors when making a determination or acknowledgement under this subsection:

(a) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group’s written premiums, assets, or liabilities.

(b) The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group.

(c) The location of the executive offices or largest operational offices of the internationally active insurance group.

(d) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the director determines to be either of the following:

(i) Substantially similar to the system of regulation provided under the laws of this state.

(ii) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials.

(e) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the director with reasonably reciprocal recognition and cooperation.

(4) A commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgement of the group-wide supervisor must be made in consideration of the factors under subsection (3), and must be made in cooperation with and subject to the acknowledgement of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(5) Notwithstanding any other provision of law, if another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the director shall acknowledge that regulatory official as the group-wide supervisor. However, the director shall make a determination or acknowledgement as to the appropriate group-wide supervisor for the internationally active insurance group under subsection (3) in the event of a material change in the internationally active insurance group that results in either of the following:

(a) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities.

(b) This state being the place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group.

(6) Pursuant to section 1351, the director may collect from an insurer registered under section 1324 all information necessary to determine whether the director may act as the group-wide supervisor of an internationally active insurance group or if the director may acknowledge another regulatory official to act as the group-wide supervisor. Before issuing a determination that an internationally active insurance group is subject to group-wide supervision by the director, the director shall notify the insurer registered under section 1324 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group has at least 30 days to provide the director with additional information pertinent to the pending determination. The director shall publish on its website the identity of internationally active insurance groups that the director has determined are subject to group-wide supervision by the director.

(7) If the director is the group-wide supervisor for the internationally active insurance group, the director may engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the internationally active insurance group to ensure both of the following:

(i) That the material financial condition and liquidity risk to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management.

(ii) That reasonable and effective mitigation measures are in place.

(b) Request, from any member of the internationally active insurance group subject to the director's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding any of the following:

(i) Governance, risk assessment, and management.

(ii) Capital adequacy.

(iii) Material intercompany transactions.

(c) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance.

(d) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information, subject to the confidentiality provisions of section 1355, through supervisory colleges as provided in section 1357 or otherwise.

(e) Enter into agreements with or obtain documentation from any insurer registered under section 1324, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the director's role as group-wide supervisor, including provisions for resolving disputes with the other regulatory officials. The agreements or documentation described in this subdivision must not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state.

(f) Other group-wide supervision activities, consistent with the authorities and purposes provided in this subsection, as considered necessary by the director.

(8) If the director acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the director may reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor if both of the following apply:


(a) The director's cooperation is in compliance with the laws of this state.

(b) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the director's activities as a group-wide supervisor for other internationally active insurance groups where applicable. If recognition and cooperation described in this subdivision is not reasonably reciprocal, the director may refuse recognition and cooperation.

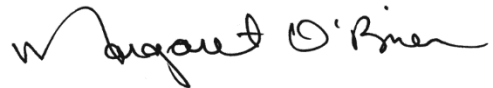
(9) The director may enter into agreements with or obtain documentation from any insurer registered under section 1324, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(10) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the director's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved \_\_\_\_\_

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Governor