

HOUSE BILL NO. 5243

November 13, 2019, Introduced by Reps. Paquette, Rendon and Wittenberg and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 1001 and 1027 (MCL 500.1001 and 500.1027), section 1001 as amended by 2016 PA 276 and section 1027 as added by 2008 PA 342, and by adding section 1028; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1001. As used in this chapter:
- 2 (a) "Audited financial report" means the report required in
- 3 section 1005 and furnished ~~pursuant to~~ **under** section 1007.



1 (b) "Audit committee" means a committee or equivalent body
2 established by the board of directors of an entity to oversee the
3 accounting and financial reporting processes, **the internal audit**
4 **function of an insurer or group of insurers, if applicable**, and
5 **external** audits of the financial statements of an insurer or group
6 of insurers. The audit committee of an entity that controls a group
7 of insurers may be the audit committee for 1 or more of these
8 controlled insurers solely for the purposes of compliance with this
9 chapter at the election of the controlling person as permitted in
10 section ~~1027(6)~~.-**1027(7)**. If an audit committee is not designated
11 by an insurer, the insurer's entire board of directors will
12 constitute the audit committee.

13 (c) "Group of insurers" means those licensed insurers included
14 in the reporting requirements of chapter 13, or a set of insurers
15 as identified by management, for the purpose of assessing the
16 effectiveness of internal control over financial reporting.

17 (d) "Indemnification agreement" means an agreement of
18 indemnity or a release from liability as to which the intent or
19 effect is to shift or limit in any manner the potential liability
20 of the person or firm for failure to adhere to applicable auditing
21 or professional standards, whether or not resulting in part from
22 knowing of other misrepresentations made by the insurer or its
23 representatives.

24 (e) "Independent board member" has the same meaning as
25 described in section ~~1027(4)~~.-**1027(5)**.

26 (f) "Independent public accountant" means an independent
27 certified public accountant or accounting firm in good standing
28 with the American Institute of Certified Public Accountants and in
29 good standing in all states in which the accountant or accounting



1 firm is licensed to practice. For Canadian and British companies,
2 "independent public accountant" means a Canadian-chartered or
3 British-chartered accountant.

4 (g) "Insurer" means that term as defined in section 106 and
5 includes a nonprofit dental care corporation operating under 1963
6 PA 125, MCL 550.351 to 550.373.

7 (h) **"Internal audit function" means a person or persons that**
8 **provide independent, objective, and reasonable assurance designed**
9 **to add value and improve an organization's operations and**
10 **accomplish its objectives by bringing a systematic, disciplined**
11 **approach to evaluate and improve the effectiveness of risk**
12 **management, control, and governance processes.**

13 (i) ~~(h)~~—"Internal control over financial reporting" means a
14 process effected by an entity's board of directors, management, and
15 other personnel designed to provide reasonable assurance regarding
16 the reliability of the financial statements filed with the
17 director, and includes the following:

18 (i) Policies and procedures pertaining to the maintenance of
19 records that, in reasonable detail, accurately and fairly reflect
20 the transactions and dispositions of assets.

21 (ii) Policies and procedures providing reasonable assurance
22 that transactions are recorded as necessary to permit preparation
23 of the financial statements filed with the director and that
24 receipts and expenditures are being made only in accordance with
25 authorizations of management and directors.

26 (iii) Policies and procedures providing reasonable assurance
27 regarding prevention or timely detection of unauthorized
28 acquisition, use, or disposition of assets that could have a
29 material effect on the financial statements filed with the



1 director.

2 (j) ~~(i)~~—"SEC" means the United States Securities and Exchange
3 Commission.

4 (k) ~~(j)~~—"Section 404" means section 404 of the Sarbanes-Oxley
5 act of 2002, 15 USC 7262, and the SEC's rules and regulations
6 promulgated under that section.

7 (l) ~~(k)~~—"Section 404 report" means management's report on
8 "internal control over financial reporting" as defined by the SEC
9 and the related attestation report of the independent certified
10 public accountant.

11 (m) ~~(l)~~—"SOX compliant entity" means an entity that either is
12 required to be compliant with, or voluntarily is compliant with,
13 all of the following provisions of the Sarbanes-Oxley act of 2002
14 and the regulations promulgated under that act:

15 (i) The preapproval requirements of section 201, section 10A(i)
16 of the securities exchange act of 1934, 15 USC 78j-1.

17 (ii) The audit committee independence requirements of section
18 301, section 10A(m) (3) of the securities exchange act of 1934, 15
19 USC 78j-1.

20 (iii) The internal control over financial reporting requirements
21 of section 404, 15 USC 7262, as prescribed by item 308 of SEC
22 regulation S-K, 17 CFR 229.308.

23 Sec. 1027. (1) This section applies to a domestic insurer that
24 is not a SOX compliant entity. A domestic insurer that is a direct
25 or indirect subsidiary of a SOX compliant entity is considered to
26 be a SOX compliant entity for purposes of this section.

27 (2) The audit committee ~~shall be~~ **is** directly responsible for
28 the appointment, compensation, and oversight of the work of any
29 accountant, including resolution of disagreements between



1 management and the accountant regarding financial reporting, for
 2 the purpose of preparing or issuing the audited financial report or
 3 related work ~~pursuant to~~ **under** this chapter. Each accountant shall
 4 report directly to the audit committee.

5 **(3) The audit committee of an insurer or group of insurers is**
 6 **responsible for overseeing the insurer's internal audit function**
 7 **and granting the person and persons performing the function**
 8 **suitable authority and resources to fulfill their responsibilities**
 9 **if required under section 1028.**

10 **(4)** ~~(3)~~ Each member of the audit committee ~~shall~~ **must** be a
 11 member of the board of directors of the insurer or a member of the
 12 board of directors of an entity elected ~~pursuant to~~ **under**
 13 subsection ~~(6)~~ **(7)**.

14 **(5)** ~~(4)~~ To be considered independent for purposes of this
 15 section, a member of the audit committee ~~shall~~ **must** not, other than
 16 in his or her capacity as a member of the audit committee, the
 17 board of directors, or any other board committee, accept any
 18 consulting, advisory, or other compensatory fee from the entity
 19 audited or be an affiliated person of the entity or subsidiary
 20 audited, unless the individual serves on the board to meet another
 21 statutory requirement related to the composition of the board.
 22 However, ~~in no case can the independent audit committee member~~ **must**
 23 **not** be an officer or employee of the insurer or 1 of its
 24 affiliates.

25 **(6)** ~~(5)~~ If a member of the audit committee ceases to be
 26 independent for reasons outside the member's reasonable control,
 27 that person, with notice by the responsible entity to the state,
 28 may remain an audit committee member of the responsible entity
 29 until the earlier of the next annual meeting of the responsible



1 entity or 1 year from the occurrence of the event that caused the
2 member to be no longer independent.

3 (7) ~~(6)~~—To exercise the election of the controlling person to
4 designate the audit committee for purposes of this section, the
5 ultimate controlling person shall provide written notice to the
6 ~~commissioner~~. **director**. Notification ~~shall~~ **must** be made timely
7 ~~prior to~~ **before** the issuance of the statutory audit report and
8 include a description of the basis for the election. The election
9 can be changed through notice to the ~~commissioner~~ **director** by the
10 insurer, which ~~shall~~ **must** include a description of the basis for
11 the change. The election ~~shall~~ **must** remain in effect until
12 rescinded.

13 (8) ~~(7)~~—The audit committee shall require the accountant that
14 performs for an insurer any audit required by this chapter to
15 timely report to the audit committee in accordance with the
16 requirements of SAS 61, communication with audit committees, or a
17 substantially similar replacement publication as required by the
18 ~~commissioner~~, **director**, including all of the following:

19 (a) All significant accounting policies and material permitted
20 practices.

21 (b) All material alternative treatments of financial
22 information within statutory accounting principles that have been
23 discussed with management officials of the insurer, ramifications
24 of the use of the alternative disclosures and treatments, and the
25 treatment preferred by the accountant.

26 (c) Other material written communications between the
27 accountant and the management of the insurer, such as any
28 management letter or schedule of unadjusted differences.

29 (9) ~~(8)~~—If an insurer is a member of an insurance holding



1 company system, the reports required by subsection ~~(7)~~ **(8)** may be
 2 provided to the audit committee on an aggregate basis for insurers
 3 in the holding company system, provided that any substantial
 4 differences among insurers in the system are identified to the
 5 audit committee.

6 **(10)** ~~(9)~~ All insurers are encouraged to structure their audit
 7 committees with at least a supermajority of independent committee
 8 members. An insurer with \$300,000,000.01 or less of direct written
 9 and assumed premiums in the prior calendar year is not required to
 10 have independent audit committee members. An insurer with over
 11 ~~\$300,000,000.00~~ **\$300,000,000.01** but **less than** \$500,000,000.00 ~~or~~
 12 ~~less of~~ direct written and assumed premiums in the prior calendar
 13 year ~~shall~~ **must** have 50% or more of its audit committee members be
 14 independent. An insurer with over \$500,000,000.00 of direct written
 15 and assumed premiums in the prior calendar year ~~shall~~ **must** have 75%
 16 or more of its audit committee members be independent. ~~As used in~~
 17 ~~this section, "direct written and assumed premiums" is the combined~~
 18 ~~total of direct premiums and assumed premiums from nonaffiliates~~
 19 ~~for the reporting entities.~~

20 **(11)** ~~(10)~~ The ~~commissioner~~ **director** may require an entity's
 21 board to enact improvements to the independence of the audit
 22 committee membership if the insurer is in a risk-based capital
 23 action level event, meets 1 or more of the standards listed in
 24 chapter 4 of an insurer considered to be in hazardous financial
 25 condition, or otherwise exhibits signs of a troubled insurer.

26 **(12)** ~~(11)~~ An insurer with direct written and assumed premium,
 27 excluding premiums reinsured with the ~~federal crop insurance~~
 28 ~~corporation~~ **Federal Crop Insurance Corporation** and ~~federal flood~~
 29 ~~program~~, **National Flood Insurance Program**, of less than



1 \$500,000,000.00 may apply to the ~~commissioner~~**director** for a waiver
 2 from this section based ~~upon~~**on** hardship. The insurer shall file,
 3 with its annual statement filing, the approval for relief from this
 4 section granted by the commissioner with the states that it is
 5 licensed in or doing business in and with the ~~national association~~
 6 ~~of insurance commissioners.~~**National Association of Insurance**
 7 **Commissioners.** If the nondomestic state accepts electronic filing
 8 with the ~~national association of insurance commissioners,~~**National**
 9 **Association of Insurance Commissioners,** the insurer shall file the
 10 approval in an electronic format acceptable to the ~~national~~
 11 ~~association of insurance commissioners.~~**National Association of**
 12 **Insurance Commissioners.**

13 (13) ~~(12)~~This section takes effect January 1, 2010. An
 14 insurer or group of insurers that is not required to have
 15 independent audit committee members or only 50% independent audit
 16 committee members because the total written and assumed premium is
 17 below the required threshold in subsection ~~(9)~~**(10)** and
 18 subsequently becomes subject to 1 of the independence requirements
 19 due to changes in premium, whether through business combination or
 20 not, ~~shall have~~**has** 1 year after the year the threshold is exceeded
 21 to comply with the independence requirements of subsection
 22 ~~(9)~~**(10)**.

23 (14) As used in this section, "direct written and assumed
 24 premiums" is the combined total of direct premiums and assumed
 25 premiums from nonaffiliates for the reporting entities.

26 Sec. 1028. (1) An insurer is exempt from the requirements of
 27 this section if the insurer has annual direct written and
 28 unaffiliated assumed premium, including international direct and
 29 assumed premium but excluding premium reinsured with the Federal



1 Crop Insurance Corporation and National Flood Insurance Program
2 less than \$500,000,000.00 and if the insurer is a member of a group
3 of insurers that has annual direct written and unaffiliated assumed
4 premium including international direct and assumed, but excluding
5 premiums reinsured with the Federal Crop Insurance Program and
6 Federal Flood Program less than \$1,000,000,000.00.

7 (2) An insurer or group of insurers not exempt under
8 subsection (1) shall establish an internal audit function providing
9 independent, objective, and reasonable assurance to the audit
10 committee and management regarding the insurer's governance, risk
11 management, and internal controls. This assurance must be provided
12 by performing general and specific audits, reviews and tests, and
13 by employing other techniques considered necessary to protect
14 assets, evaluate control effectiveness and efficiency, and evaluate
15 compliance with policies and regulations.

16 (3) To ensure that internal auditors remain objective, the
17 internal audit function must be organizationally independent.
18 Specifically, the internal audit function must not defer ultimate
19 judgment on audit matters to others, and must appoint an individual
20 to head the internal audit function who will have direct and
21 unrestricted access to the board of directors. Organizational
22 independence does not preclude dual-reporting relationships.

23 (4) The head of internal audit function shall report to the
24 audit committee regularly, but no less than annually, on the
25 periodic audit plan, factors that may adversely impact the internal
26 audit function's independence or effectiveness, material findings
27 from completed audits, and the appropriateness of corrective
28 actions implemented by management as a result of audit findings.

29 (5) If an insurer is a member of an insurance holding company



1 system or included in a group of insurers, the insurer may satisfy
2 the internal audit function requirements set forth in this section
3 at the ultimate controlling parent level, an intermediate holding
4 company level, or the individual legal entity level.

5 (6) An insurer that meets the premium thresholds under this
6 section must have an internal audit function and must have the
7 function in place by no later than January 1, 2021. If an insurer
8 or group of insurers that is exempt no longer qualifies for the
9 exemption, it has 1 year after the year the threshold is exceeded
10 to comply with the requirement.

11 Enacting section 1. Section 221 of the insurance code of 1956,
12 1956 PA 218, MCL 500.221, is repealed.

