

SENATE BILL NO. 5

January 15, 2019, Introduced by Senator LUCIDO and referred to the Committee on Insurance and Banking.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending the title and sections 3330 and 4501 (MCL 500.3330 and 500.4501), the title as amended by 2002 PA 304, section 3330 as amended by 2012 PA 204, and section 4501 as amended by 2012 PA 39, and by adding chapter 63.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to revise, consolidate, and classify the laws relating
3 to the insurance and surety business; to regulate the incorporation

1 or formation of domestic insurance and surety companies and
2 associations and the admission of foreign and alien companies and
3 associations; to provide their rights, powers, and immunities and
4 to prescribe the conditions on which companies and associations
5 organized, existing, or authorized under this act may exercise
6 their powers; to provide the rights, powers, and immunities and to
7 prescribe the conditions on which other persons, firms,
8 corporations, associations, risk retention groups, and purchasing
9 groups engaged in an insurance or surety business may exercise
10 their powers; to provide for the imposition of a privilege fee on
11 domestic insurance companies and associations; ~~and the state~~
12 ~~accident fund;~~ to provide for the imposition of a tax on the
13 business of foreign and alien companies and associations; to
14 provide for the imposition of a tax on risk retention groups and
15 purchasing groups; to provide for the imposition of a tax on the
16 business of surplus line agents; to provide for the imposition of
17 regulatory fees on certain insurers; to provide for assessment fees
18 on certain health maintenance organizations; to modify tort
19 liability arising out of certain accidents; to provide for limited
20 actions with respect to that modified tort liability and to
21 prescribe certain procedures for maintaining those actions; to
22 require security for losses arising out of certain accidents; to
23 provide for the continued availability and affordability of
24 automobile insurance and homeowners insurance in this state and to
25 facilitate the purchase of that insurance by all residents of this
26 state at fair and reasonable rates; to provide for certain
27 reporting with respect to insurance and with respect to certain
28 claims against uninsured or self-insured persons; to prescribe
29 duties for certain state departments and officers with respect to

1 that reporting; to provide for certain assessments; to establish
 2 and continue certain state insurance funds; ~~to modify and clarify~~
 3 ~~the status, rights, powers, duties, and operations of the nonprofit~~
 4 ~~malpractice insurance fund;~~ to provide for the departmental
 5 supervision and regulation of the insurance and surety business
 6 within this state; to provide for regulation ~~over~~**of** worker's
 7 compensation self-insurers; to provide for the conservation,
 8 rehabilitation, or liquidation of unsound or insolvent insurers; to
 9 provide for the protection of policyholders, claimants, and
 10 creditors of unsound or insolvent insurers; to provide for
 11 associations of insurers to protect policyholders and claimants in
 12 the event of insurer insolvencies; to prescribe educational
 13 requirements for insurance agents and solicitors; to provide for
 14 the regulation of multiple employer welfare arrangements; to create
 15 ~~an automobile theft prevention authority~~**1 or more authorities** to
 16 reduce **insurance fraud and** the number of automobile thefts in this
 17 state ~~;~~**and** to prescribe the powers and duties of the ~~automobile~~
 18 ~~theft prevention authority;~~**authorities;** to provide ~~certain~~**for the**
 19 powers and duties ~~upon~~**of** certain officials, departments, and
 20 authorities of this state; to provide for an appropriation; to
 21 repeal acts and parts of acts; and to provide penalties for the
 22 violation of this act.

23 Sec. 3330. (1) The board of governors has the power to direct
 24 the operation of the facility, including, at a minimum, the power
 25 to do all of the following:

26 (a) To sue and be sued in the name of the facility. A judgment
 27 against the facility shall not create any liabilities in the
 28 individual participating members of the facility.

29 (b) To delegate ministerial duties, to hire a manager, to hire

1 legal counsel, and to contract for goods and services from others.

2 (c) To assess participating members on the basis of
3 participation ratios ~~pursuant to section 3303~~ to cover anticipated
4 costs of operation and administration of the facility, to provide
5 for equitable servicing fees, and to share losses, profits, and
6 expenses pursuant to the plan of operation.

7 (d) To impose limitations on cancellation or nonrenewal by
8 participating members of facility-placed business, in addition to
9 the limitations imposed by chapters 21 and 32.

10 (e) To provide for a limited number of participating members
11 to receive equitable distribution of applicants; or to provide for
12 a limited number of participating members to service applicants in
13 a plan of sharing of losses in accordance with section 3320(1)(c)
14 and the plan of operation.

15 (f) To provide for standards of performance of service for the
16 participating members designated under subdivision (e).

17 (g) To adopt a plan of operation and any amendments to the
18 plan, consistent with this chapter, necessary to assure the fair,
19 reasonable, equitable, and nondiscriminatory manner of
20 administering the facility, including compliance with chapter 21,
21 and to provide for any other matters necessary or advisable to
22 implement this chapter, including matters necessary to comply with
23 the requirements of chapter 21.

24 (h) To assess self-insurers and insurers consistent with
25 chapter 31 and the assigned claims plan approved under section
26 3171.

27 (2) The board of governors shall institute or cause to be
28 instituted by the facility or on its behalf an automatic data
29 processing system for recording and compiling data relative to

1 individuals insured through the facility. An automatic data
 2 processing system established under this subsection shall, to the
 3 greatest extent possible, be made compatible with the automatic
 4 data processing system maintained by the secretary of state, to
 5 provide for the identification and review of individuals insured
 6 through the facility.

7 **(3) Before March 1, 2020, the board of governors shall amend**
 8 **the plan of operation to establish appropriate procedures necessary**
 9 **to collect money and carry out the administrative duties and**
 10 **functions of the Michigan automobile insurance fraud authority.**

11 Sec. 4501. As used in this chapter:

12 (a) "Authorized agency" means the department of state police;
 13 a city, village, or township police department; a county sheriff's
 14 department; a United States criminal investigative department or
 15 agency; the prosecuting authority of a city, village, township,
 16 county, or state or of the United States; ~~the office of financial~~
 17 ~~and insurance regulation; department; the Michigan automobile~~
 18 **insurance fraud authority;** or the department of state.

19 (b) "Financial loss" includes, but is not limited to, loss of
 20 earnings, out-of-pocket and other expenses, repair and replacement
 21 costs, investigative costs, and claims payments.

22 (c) "Insurance policy" or "policy" means an insurance policy,
 23 benefit contract of a self-funded plan, health maintenance
 24 organization contract, nonprofit dental care corporation
 25 certificate, or health care corporation certificate.

26 (d) "Insurer" means a property-casualty insurer, life insurer,
 27 third party administrator, self-funded plan, health insurer, health
 28 maintenance organization, nonprofit dental care corporation, health
 29 care corporation, reinsurer, or any other entity regulated by the

1 insurance laws of this state and providing any form of insurance.

2 **(e) "Michigan automobile insurance fraud authority" means the**
 3 **Michigan automobile insurance fraud authority created under**
 4 **section 6302.**

5 **(f) ~~(e)~~**"Organization" means an organization or internal
 6 department of an insurer established to detect and prevent
 7 insurance fraud.

8 **(g) ~~(f)~~**"Person" includes an individual, insurer, company,
 9 association, organization, Lloyds, society, reciprocal or inter-
 10 insurance exchange, partnership, syndicate, business trust,
 11 corporation, and any other legal entity.

12 **(h) ~~(g)~~**"Practitioner" means a licensee of this state
 13 authorized to practice medicine and surgery, psychology,
 14 chiropractic, or law, any other licensee of ~~the~~**this** state, or an
 15 unlicensed health care provider whose services are compensated,
 16 directly or indirectly, by insurance proceeds, or a licensee
 17 similarly licensed in other states and nations, or the practitioner
 18 of any nonmedical treatment rendered in accordance with a
 19 recognized religious method of healing.

20 **(i) ~~(h)~~**"Runner", "capper", or "steerer" means a person who
 21 receives a pecuniary or other benefit from a practitioner, whether
 22 directly or indirectly, for procuring or attempting to procure a
 23 client, patient, or customer at the direction or request of, or in
 24 cooperation with, a practitioner whose intent is to obtain benefits
 25 under a contract of insurance or to assert a claim against an
 26 insured or an insurer for providing services to the client,
 27 patient, or customer. Runner, capper, or steerer does not include a
 28 practitioner who procures clients, patients, or customers through
 29 the use of public media.

1 (j) ~~(i)~~—"Statement" includes, but is not limited to, any
2 notice statement, proof of loss, bill of lading, receipt for
3 payment, invoice, account, estimate of property damages, bill for
4 services, claim form, diagnosis, prescription, hospital or doctor
5 record, X-rays, test result, or other evidence of loss, injury, or
6 expense.

7 CHAPTER 63

8 MICHIGAN AUTOMOBILE INSURANCE FRAUD AUTHORITY

9 Sec. 6301. As used in this chapter:

10 (a) "Authority" means the Michigan automobile insurance fraud
11 authority created in section 6302.

12 (b) "Automobile insurance fraud" means a fraudulent insurance
13 act as described in section 4503 or addressed under section
14 208c(3)(f) or 227(4) of the Michigan vehicle code, 1949 PA 300, MCL
15 257.208c and 257.227, that is committed in connection with
16 automobile insurance, including an application for automobile
17 insurance.

18 (c) "Board" means the board of directors of the authority.

19 (d) "Car years" means net direct private passenger and
20 commercial nonfleet vehicle years of insurance providing the
21 security required by section 3101(1) written in this state for the
22 second previous calendar year as reported to the statistical agent
23 of each insurer.

24 (e) "Facility" means the Michigan automobile insurance
25 placement facility created under chapter 33.

26 Sec. 6302. (1) The Michigan automobile insurance fraud
27 authority is created within the facility. The facility shall
28 provide staff for the authority and shall carry out the
29 administrative duties and functions as directed by the board.

1 (2) The authority is not a state agency, and the money of the
2 authority is not state money. However, the authority shall comply
3 with the freedom of information act, 1976 PA 442, MCL 15.231 to
4 15.246, as if the authority were a public body. A record or portion
5 of a record, material, data, or other information received,
6 prepared, used, or retained by the authority in connection with the
7 investment of assets or of an insurer that relates to financial or
8 proprietary information and is considered by the person or insurer
9 providing the authority with the record, material, data, or
10 information as confidential and acknowledged by the authority as
11 confidential is not subject to disclosure by the authority. As used
12 in this subsection:

13 (a) "Financial or proprietary information" means information
14 that has not been publicly disseminated or that is unavailable from
15 other sources, the release of which might cause the person
16 providing the information to the authority significant competitive
17 harm. Financial or proprietary information includes, but is not
18 limited to, financial performance data and projections, financial
19 statements, and product and market data.

20 (b) "Public body" means that term as defined in section 2 of
21 the freedom of information act, 1976 PA 442, MCL 15.232.

22 (3) With the discretion to approve or disapprove programs to
23 be supported, the authority shall do both of the following:

24 (a) Provide financial support to state or local law
25 enforcement agencies for programs designed to reduce the incidence
26 of automobile insurance fraud.

27 (b) Provide financial support to state regulatory agencies or
28 state or local prosecutorial agencies for programs designed to
29 reduce the incidence of automobile insurance fraud.

1 (4) The authority may provide financial support to law
2 enforcement, prosecutorial, insurance, education, or training
3 associations for programs designed to reduce the incidence of
4 automobile insurance fraud.

5 (5) The purposes, powers, and duties of the authority are
6 vested in and shall be exercised by a board of directors. The board
7 of directors consists of 16 members as follows:

8 (a) Eight members who represent automobile insurers in this
9 state, including the following:

10 (i) At least 2 members who represent insurer groups with
11 350,000 or more car years.

12 (ii) At least 2 members who represent insurer groups with fewer
13 than 350,000 but 100,000 or more car years.

14 (iii) At least 1 member who represents insurer groups with fewer
15 than 100,000 car years.

16 (b) The director or his or her designee.

17 (c) The attorney general or his or her designee.

18 (d) The secretary of state or his or her designee.

19 (e) The director of the department of state police or his or
20 her designee.

21 (f) Two members who represent other law enforcement agencies
22 in this state.

23 (g) One member who represents prosecuting attorneys in this
24 state.

25 (h) One member who represents the general public.

26 (6) The members of the board representing insurers shall be
27 elected by authorized insurers that provide automobile insurance in
28 this state from a list of nominees proposed by the board of
29 governors of the facility. In preparing the list of nominees for

1 the members, the board of governors of the facility shall solicit
2 nominations from authorized insurers that provide automobile
3 insurance in this state.

4 (7) The governor shall appoint the members of the board
5 representing law enforcement agencies other than the department of
6 state police. In appointing the members, the governor shall solicit
7 input from various law enforcement associations in this state.

8 (8) The governor shall appoint the member of the board
9 representing prosecuting attorneys. In appointing the member, the
10 governor shall solicit input from the Prosecuting Attorneys
11 Association of Michigan.

12 (9) The governor shall appoint the member of the board
13 representing the general public. The governor shall appoint an
14 individual who is a resident of this state and is not employed by
15 or under contract with a state or local unit of government or an
16 insurer.

17 (10) Except as otherwise provided in this subsection, a member
18 of the board shall serve for a term of 4 years or until his or her
19 successor is elected, designated, or appointed, whichever occurs
20 later. Of the members first elected or appointed under this
21 section, 2 members representing insurers and 1 member representing
22 law enforcement agencies shall serve for a term of 2 years, 3
23 members representing insurers, the member representing prosecuting
24 attorneys, and the member representing the general public shall
25 serve for a term of 3 years, and 3 members representing insurers
26 and 1 member representing law enforcement agencies shall serve for
27 a term of 4 years.

28 (11) The board is dissolved on January 1, 2025.

29 Sec. 6303. (1) A member of the board shall serve without

1 compensation, except that the board shall reimburse a member in a
2 reasonable amount for necessary travel and expenses.

3 (2) A majority of the members of the board constitute a quorum
4 for the transaction of business at a meeting or the exercise of a
5 power or function of the authority, notwithstanding the existence
6 of 1 or more vacancies. Notwithstanding any other provision of law
7 to the contrary, action may be taken by the authority at a meeting
8 on a vote of the majority of its members present in person or
9 through the use of amplified telephonic equipment, if authorized by
10 the bylaws or plan of operation of the board. The authority shall
11 meet at the call of the chair or as may be provided in the bylaws
12 of the authority. Meetings of the authority may be held anywhere in
13 this state.

14 (3) The board shall adopt a plan of operation by a majority
15 vote of the board. Vacancies on the board shall be filled in
16 accordance with the plan of operation.

17 (4) The board shall conduct its business at meetings that are
18 held in this state, open to the public, and held in a place that is
19 available to the general public. However, the board may establish
20 reasonable rules to minimize disruption of a meeting of the board.
21 At least 10 days but not more than 60 days before a meeting, the
22 board shall provide public notice of the meeting at the board's
23 principal office and on a publicly accessible internet website. The
24 board shall include in the public notice of its meeting the address
25 where minutes of the board may be inspected by the public. The
26 board may meet in a closed session for any of the following
27 purposes:

28 (a) To consider the hiring, dismissal, suspension,
29 disciplining, or evaluation of officers or employees of the

1 authority.

2 (b) To consult with its attorney.

3 (c) To comply with state or federal law, rules, or regulations
4 regarding privacy or confidentiality.

5 (5) The board shall display information concerning the
6 authority's operations and activities, including, but not limited
7 to, the annual financial report required under section 6310, on a
8 publicly accessible internet website.

9 (6) The board shall keep minutes of each board meeting. The
10 board shall make the minutes open to public inspection and
11 available at the address designated on the public notice of its
12 meetings. The board shall make copies of the minutes available to
13 the public at the reasonable estimated cost for printing and
14 copying. The board shall include all of the following in the
15 minutes:

16 (a) The date, time, and place of the meeting.

17 (b) The names of board members who are present and board
18 members who are absent.

19 (c) Board decisions made during any portion of the meeting
20 that was open to the public.

21 (d) All roll call votes taken at the meeting.

22 Sec. 6304. On January 1, 2025, the authority is dissolved.

23 Sec. 6305. The board has the powers necessary to carry out its
24 duties under this act, including, but not limited to, the power to
25 do the following:

26 (a) Sue and be sued in the name of the authority.

27 (b) Solicit and accept gifts, grants, loans, and other aid
28 from any person, the federal government, this state, a local unit
29 of government, or an agency of the federal government, this state,

1 or a local unit of government.

2 (c) Make grants and investments.

3 (d) Procure insurance against any loss in connection with its
4 property, assets, or activities.

5 (e) Invest at its discretion any money held in reserve or
6 sinking funds or any money not required for immediate use or
7 disbursement and to select and use depositories for its money.

8 (f) Contract for goods and services and engage personnel as
9 necessary.

10 (g) Indemnify and procure insurance indemnifying any member of
11 the board for personal loss or accountability resulting from the
12 member's action or inaction as a member of the board.

13 (h) Perform other acts not specifically enumerated in this
14 section that are necessary or proper to accomplish the purposes of
15 the authority and that are not inconsistent with this section or
16 the plan of operation.

17 Sec. 6307. (1) An insurer or self-insurer engaged in writing
18 insurance coverages that provide the security required by section
19 3101(1) in this state may pay to the facility, for deposit into the
20 account of the authority, money to be used by the authority to
21 carry out its duties under this chapter.

22 (2) The facility shall segregate all money received under the
23 vehicle insurance verification act and subsection (1), and all
24 other money received by the authority for the purpose, from other
25 money of the facility, if applicable. The facility shall only
26 expend the money received under subsection (1) as directed by the
27 board.

28 Sec. 6308. (1) An insurer authorized to transact automobile
29 insurance in this state, as a condition of its authority to

1 transact insurance in this state, shall report automobile insurance
2 fraud data to the authority using the format and procedures adopted
3 by the board.

4 (2) The department of state police shall cooperate with the
5 authority and shall provide available motor vehicle fraud and theft
6 statistics to the authority on request.

7 (3) The board shall develop performance metrics that are
8 consistent, controllable, measurable, and attainable. The board
9 shall use the metrics each year to evaluate new applications
10 submitted for funding consideration and to renew funding for
11 existing programs.

12 Sec. 6310. (1) Beginning January 1 of the year after the
13 effective date of the amendatory act that added this section, the
14 authority shall prepare and publish an annual financial report, and
15 beginning July 1 of the year after the effective date of the
16 amendatory act that added this section, the authority shall prepare
17 and publish an annual report to the legislature on the authority's
18 efforts to prevent automobile insurance fraud and cost savings that
19 have resulted from those efforts.

20 (2) The annual report to the legislature required under
21 subsection (1) must detail the automobile insurance fraud occurring
22 in this state for the previous year, assess the impact of the fraud
23 on rates charged for automobile insurance, summarize prevention
24 programs, and outline allocations made by the authority. The
25 members of the board, insurers, and the director shall cooperate in
26 developing the report as requested by the authority and shall make
27 available to the authority records and statistics concerning
28 automobile insurance fraud, including the number of instances of
29 suspected and confirmed insurance fraud, number of prosecutions and

1 convictions involving automobile insurance fraud, and automobile
2 insurance fraud recidivism. The authority shall evaluate the impact
3 automobile insurance fraud has on the citizens of this state and
4 the costs incurred by the citizens through insurance, police
5 enforcement, prosecution, and incarceration because of automobile
6 insurance fraud. The authority shall submit the report to the
7 legislature required by this section to the senate and house of
8 representatives standing committees with primary jurisdiction over
9 insurance issues and the director.

10 Enacting section 1. This amendatory act takes effect 90 days
11 after the date it is enacted into law.

12 Enacting section 2. This amendatory act does not take effect
13 unless Senate Bill No. 7

14 of the 100th Legislature is enacted into law.