

Act No. 17
Public Acts of 2020
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January 27, 2020
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EFFECTIVE DATE: January 27, 2020

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

Introduced by Reps. Paquette, Rendon and Wittenberg

ENROLLED HOUSE BILL No. 5243

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 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.

The People of the State of Michigan enact:

Sec. 1001. As used in this chapter:

- (a) “Audited financial report” means the report required in section 1005 and furnished under section 1007.
- (b) “Audit committee” means a committee or equivalent body established by the board of directors of an entity

to oversee the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers, if applicable, and the external audits of the financial statements of an insurer or group of insurers. The audit committee of an entity that controls a group of insurers may be the audit committee for 1 or more of these controlled insurers solely for the purposes of compliance with this chapter at the election of the controlling person as permitted in section 1027(7). If an audit committee is not designated by an insurer, the insurer's entire board of directors will constitute the audit committee.

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

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

(e) "Independent board member" has the same meaning as described in section 1027(5).

(f) "Independent public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in good standing in all states in which the accountant or accounting firm is licensed to practice. For Canadian and British companies, "independent public accountant" means a Canadian-chartered or British-chartered accountant.

(g) "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.

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

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

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

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

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

(j) "SEC" means the United States Securities and Exchange Commission.

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

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

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

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

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

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

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

(2) The audit committee is directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work under this chapter. Each accountant shall report directly to the audit committee.

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

(4) Each member of the audit committee must be a member of the board of directors of the insurer or a member of the board of directors of an entity elected under subsection (7).

(5) To be considered independent for purposes of this section, a member of the audit committee must not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity audited or be an affiliated person of the entity or subsidiary audited, unless the individual serves on the board to meet another statutory requirement related to the composition of the board. However, the independent audit committee member must not be an officer or employee of the insurer or 1 of its affiliates.

(6) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or 1 year from the occurrence of the event that caused the member to be no longer independent.

(7) To exercise the election of the controlling person to designate the audit committee for purposes of this section, the ultimate controlling person shall provide written notice to the director. Notification must be made timely before the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the director by the insurer, which must include a description of the basis for the change. The election must remain in effect until rescinded.

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

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

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

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

(9) If an insurer is a member of an insurance holding company system, the reports required by subsection (8) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(10) All insurers are encouraged to structure their audit committees with at least a supermajority of independent committee members. An insurer with \$300,000,000.01 or less of direct written and assumed premiums in the prior calendar year is not required to have independent audit committee members. An insurer with over \$300,000,000.01 but less than \$500,000,000.00 of direct written and assumed premiums in the prior calendar year must have 50% or more of its audit committee members be independent. An insurer with over \$500,000,000.00 of direct written and assumed premiums in the prior calendar year must have 75% or more of its audit committee members be independent.

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

(12) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than \$500,000,000.00 may apply to the director for a waiver from this section based on hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section granted by the commissioner with the states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

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

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

Sec. 1028. (1) An insurer is exempt from the requirements of this section if the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program less

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

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

(3) General and specific audits performed under this section are not considered an insurance compliance self-evaluative audit under section 221. Documents prepared or produced as a result of or in connection with audits performed under this section must be disclosed to the director on written request. Except as otherwise provided in this subsection, the director shall withhold from public inspection all information and documents submitted to the department under this section and these items are confidential, are not subject to subpoena, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must not be divulged to any person. However, the director may divulge the information and documents described in this subsection to a relevant state or federal agency, or to the National Association of Insurance Commissioners, if the director receives assurances that the information and documents will be kept confidential. The director shall not use the information and documents submitted under this section to form the sole basis for an examination under section 222.

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

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

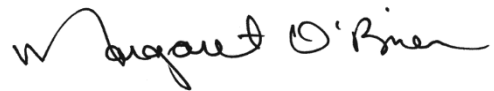
(6) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor