

Act No. 342  
Public Acts of 2008  
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**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

Introduced by Rep. Virgil Smith

# **ENROLLED HOUSE BILL No. 5722**

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, 1005, 1007, 1010, 1015, 1017, and 1125 (MCL 500.1001, 500.1005, 500.1007, 500.1010, 500.1015, 500.1017, and 500.1125), sections 1001, 1005, 1007, 1010, 1015, and 1017 as added by 1992 PA 182 and section 1125 as amended by 2000 PA 283, and by adding sections 1027, 1029, 1031, and 1033.

Sec. 1001. As used in this chapter:

(a) “Audited financial report” means the report required in section 1005 and furnished pursuant to 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 and 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(6). If an audit committee is not designated by an insurer, the insurer’s entire board of directors shall 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 where 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(4).

(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 they are licensed to practice. For Canadian and British companies, “independent public accountant” means a Canadian-chartered or British-chartered accountant.

(g) “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 commissioner, 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 commissioner 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 commissioner.

(h) “SEC” means the United States securities and exchange commission.

(i) “Section 404” means section 404 of the Sarbanes-Oxley act of 2002 and the SEC’s rules and regulations promulgated thereunder.

(j) “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.

(k) “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:

(i) The preapproval requirements of section 201, section 10A(i) of the securities exchange act of 1934.

(ii) The audit committee independence requirements of section 301, section 10A(m)(3) of the securities exchange act of 1934.

(iii) The internal control over financial reporting requirements of section 404, item 308 of SEC regulation S-K.

Sec. 1005. (1) Each insurer authorized to do business in this state shall have an annual audit by an independent public accountant and shall file an audited financial report with the commissioner on or before June 1 for the immediately preceding calendar year. With 90 days’ advance notice to the insurer, the commissioner may require an insurer to file an audited financial report earlier than June 1.

(2) Extensions of the June 1 filing date under subsection (1) may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent public accountant of the reasons for requesting the extension and upon a determination by the commissioner of good cause for an extension. The extension request shall be submitted in writing not less than 10 days prior to the due date and in sufficient detail to permit the commissioner to make an informed decision on the requested extension. An extension granted under this subsection shall include a 30-day extension to the filing of management’s report of internal control over financial reporting.

(3) Each insurer required to file an annual audited financial report under this chapter shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be the insurer's audit committee for purposes of this chapter at the election of the controlling person.

Sec. 1007. (1) The annual audited financial report shall report the insurer's financial condition as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with accounting practices prescribed, or otherwise permitted, by the commissioner and shall include all of the following:

(a) The report of an independent public accountant.

(b) A balance sheet reporting admitted assets, liabilities, capital, and surplus.

(c) A statement of operations.

(d) A statement of cash flows.

(e) A statement of changes in capital and surplus.

(f) Notes to financial statements. These notes shall be those required by the commissioner's annual statement instructions and accounting practices prescribed by the commissioner. The notes shall include a reconciliation of differences, if any, between the audited financial statements and the annual statement filed pursuant to section 438 with a written description of the nature of these differences.

(2) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with the commissioner, may be rounded to the nearest thousand dollars, may combine insignificant amounts, and, except for the first year the insurer is required to file an audited financial report, shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31.

(3) The independent public accountant shall conduct the examination in accordance with generally accepted auditing standards. Consideration shall be given, as the independent public accountant considers necessary, to the procedures illustrated in the "Financial Conditions Examiners Handbook" prepared by the national association of insurance commissioners.

Sec. 1010. (1) The commissioner shall not recognize a person or firm as an independent public accountant unless that person or firm meets both of the following:

(a) Is in good standing with the American institute of certified public accountants and in good standing in all states in which the independent public accountant is licensed to practice, or, for a Canadian or British company, unless that person or firm is a chartered accountant.

(b) Has not either directly or indirectly entered into an indemnification agreement, whether an agreement of indemnity or release from liability, with respect to the insurer's audit.

(2) Except as otherwise provided, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the code of professional ethics of the American institute of certified public accountants, its rules and regulations, and this state's board of accountancy's code of ethics and rules of professional conduct.

(3) A qualified independent accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, if a delinquency proceeding is commenced against the insurer under chapter 81, the mediation or arbitration provision shall operate at the option of the statutory successor.

(4) An individual independent public accountant or a lead partner having primary responsibility for an annual audit or other person responsible for rendering a report by an independent public accounting firm retained to conduct an annual audit under this chapter shall not act in that capacity for the same insurer for more than 5 consecutive years. Following such a 5-year period of service, the individual independent public accountant or partner or other responsible person for the accounting firm shall not conduct an annual audit under this chapter for the same insurer or its insurance subsidiaries or affiliates for a period of 5 years. An insurer may apply for relief from the commissioner from this rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if relief should be granted:

(a) Number of partners, expertise of the partners, or the number of insurance clients in the independent public accounting firm.

(b) The insurer's premium volume.

(c) Number of jurisdictions in which the insurer transacts business.

(5) An approval for relief granted under subsection (4) shall be filed by the insurer with its annual statement filing 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.

(6) The commissioner shall not recognize as a qualified independent public accountant, or accept an annual audited financial report, prepared in whole or in part by an individual who has done any of the following:

(a) Been convicted of fraud, bribery, a violation of chapter 96 of title 18 of the United States Code, 18 USC 1961 to 1968, or any dishonest conduct or practices under federal or state law.

(b) Been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter.

(c) Has failed to detect or disclose material information in 1 or more previous reports filed under this chapter.

(7) The commissioner shall not recognize as a qualified independent public accountant, or accept an annual audited financial report prepared in whole or in part by, an individual who provides to an insurer, contemporaneously with the audit, any of the following nonaudit services:

(a) Bookkeeping or other services related to the accounting records or financial statements of the insurer.

(b) Financial information systems design and implementation.

(c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.

(d) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountants may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statements only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if all of the following conditions have been met:

(i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions.

(ii) The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility.

(iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves.

(e) Internal audit outsourcing services.

(f) Management functions or human resources.

(g) Broker or dealer, investment adviser, or investment banking services.

(h) Legal services or expert services unrelated to the audit.

(i) Any other services that the commissioner determines, by order or regulation, are impermissible.

(8) To be a qualified independent public accountant, the accountant shall not function in the role of management, shall not audit his or her own work, and shall not serve in an advocacy role for the insurer.

(9) The commissioner may hold a public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to determine whether a certified public accountant is qualified. After considering the evidence presented, the commissioner may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this chapter and may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

(10) Insurers having direct written and assumed premiums of less than \$100,000,000.00 in any calendar year may request an exemption from subsection (7). An insurer requesting an exemption shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt. The commissioner shall grant the exemption if after review of the statement the commissioner finds that compliance with subsection (7) would constitute a financial or organizational hardship upon the insurer.

(11) A qualified independent public accountant who performs an audit under this chapter may engage in other nonaudit services, including tax services, that are not described in subsection (7) and that do not conflict with subsection (8), only if the activity is approved in advance by the audit committee as provided in subsection (12).

(12) All auditing services and nonaudit services provided to an insurer by a qualified independent public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services in either of the following cases:

(a) If the insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(b) If the aggregate amount of all such nonaudit services provided to the insurer constitutes not more than 5% of the total amount of fees paid by the insurer to its qualified independent public accountant during the fiscal year in which the nonaudit services are provided, the services were not recognized by the insurer at the time of the engagement to be nonaudit services, and the services are promptly brought to the attention of the audit committee and approved prior

to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(13) The audit committee may delegate to 1 or more designated members of the audit committee the authority to grant the preapprovals required by subsection (12). The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(14) The commissioner shall not recognize an independent public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent public accountant and participated in the audit of that insurer during the 1-year period preceding the date that the most current statutory opinion is due. This subsection only applies to partners and senior managers involved in the audit. An insurer may request relief from this subsection by filing a request with the commissioner 30 days prior to the end of the calendar year for the audit in a manner prescribed by the commissioner showing the unusual circumstances that support the need for relief from this subsection. An approval for relief granted by the commissioner under this subsection shall be filed by the insurer with its annual statement filing 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.

Sec. 1015. (1) An insurer required to furnish the annual audited financial report shall require the independent public accountant to report in writing within 5 business days to the board of directors or its audit committee any determination by that independent public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the requirements of section 408 or 410 as of that date. The insurer shall furnish a copy of this report to the commissioner within 5 business days of receipt of the report and shall provide the independent public accountant making the report with evidence of the report being furnished to the commissioner. If the independent public accountant fails to receive the evidence within the required 5-business day period, the independent public accountant shall furnish a copy of its report to the commissioner within the next 5 business days.

(2) An independent public accountant is not liable to any person for a statement or report made in connection with this section if the statement or report is made in good faith in compliance with subsection (1).

(3) If after the date of the audited financial report filed pursuant to this chapter the accountant becomes aware of facts that might have affected his or her report, the accountant shall take action as prescribed by the professional standards of the American institute of certified public accountants.

Sec. 1017. (1) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in the insurer's internal controls over financial reporting noted during the audit. This communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weaknesses, as of the December 31 immediately preceding, in the insurer's internal control over financial reporting noted by the accountant during the course of his or her audit of the financial statements. The communication shall also state if no unremediated material weaknesses were noted.

(2) The insurer shall provide to the commissioner a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions taken or proposed are not described in the accountant's communication.

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 shall be 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 pursuant to this chapter. Each accountant shall report directly to the audit committee.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (6).

(4) To be considered independent for purposes of this section, a member of the audit committee shall 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, in no case can the independent audit committee member be an officer or employee of the insurer or 1 of its affiliates.

(5) 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.

(6) 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 commissioner. Notification shall be made timely prior to 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 commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect until rescinded.

(7) 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 commissioner, 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.

(8) If an insurer is a member of an insurance holding company system, the reports required by subsection (7) 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.

(9) 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 \$300,000,000.00 but \$500,000,000.00 or less of direct written and assumed premiums in the prior calendar year shall 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 shall have 75% or more of its audit committee members be independent. 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.

(10) The commissioner 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.

(11) An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than \$500,000,000.00 may apply to the commissioner for a waiver from this section based upon 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.

(12) 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 (9) and subsequently becomes subject to 1 of the independence requirements due to changes in premium, whether through business combination or not, shall have 1 year after the year the threshold is exceeded to comply with the independence requirements of subsection (9).

Sec. 1029. (1) A director or officer of an insurer shall not directly or indirectly do either of the following:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this chapter.

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this chapter.

(2) A director or officer of an insurer, or any other person acting under the direction thereof, shall not directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit under this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading. Actions that, if successful, could result in rendering the insurer's financial statements materially misleading include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant to do any of the following:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted under the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards.

(b) Not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards.

(c) Not to withdraw an issued report.

(d) Not to communicate matters to an insurer's audit committee.

Sec. 1031. (1) Every insurer required to file an audited financial report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of \$500,000,000.00 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, which shall be as of the immediately preceding December 31. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under section 1017.

(2) Notwithstanding the premium threshold in subsection (1), the commissioner may require an insurer to file a report of internal control over financial reporting if the insurer is in a risk-based capital level event or 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.

(3) An insurer or a group of insurers that is directly subject to section 404, part of a holding company system whose parent is directly subject to section 404, not directly subject to section 404 but is a SOX compliant entity, or a member of a holding company system whose parent is not directly subject to section 404 but is a SOX compliant entity may file its or its parent's section 404 report and an addendum in satisfaction of the requirements of this section provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements as required in section 1007 were included in the scope of the section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements as required in section 1007 excluded from the section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the section 404 report, the insurer or group of insurers may either file a report as specified in subsection (1), or the section 404 report and a report as specified in subsection (1) for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the section 404 report.

(4) The report of internal control over financial reporting shall include all of the following:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting.

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting.

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded.

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of the immediately preceding December 31. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is 1 or more unremediated material weaknesses in its internal control over financial reporting.

(f) A statement regarding the inherent limitations of internal control systems.

(g) Signatures of the chief executive officer and the chief financial officer or his or her equivalent.

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4), are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities. Management has discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

(6) The office of financial and insurance regulation shall keep confidential the report on internal control over financial reporting, required by subsection (1), and any documentation provided in support thereof during the course of a financial condition examination.

(7) This section takes effect beginning with the reporting period that ends December 31, 2010. An insurer or group of insurers that is not required to file a report because the total written premium is below the required threshold and subsequently becomes subject to the reporting requirement, whether through business combination or not, shall have 2 years after the year the threshold is exceeded to comply with this section's reporting requirements.

Sec. 1033. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any or all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. An exemption granted under this section shall be filed by the insurer 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. Within 10 days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 1125. (1) Neither a reinsurance agreement nor any amendment to that agreement shall be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner unless the agreement, amendment, or a binding letter of intent has been duly executed by the appropriate party no later than the filing date of the financial statement.

(2) A letter of intent, a reinsurance agreement, or an amendment to a reinsurance agreement shall be executed within a reasonable period of time in order for credit to be granted for the reinsurance ceded. As used in this subsection, "reasonable period of time" means that period of time as provided by the national association of insurance commissioners accounting practices and procedures manual and as approved by the commissioner.

(3) Except for facultative certificates duly executed by a property and casualty reinsurer or its duly appointed agent, a reinsurance agreement shall contain both of the following:

(a) That the agreement constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement.

(b) That any change or modification to the agreement is null and void unless made by amendment to the agreement and signed by both parties.

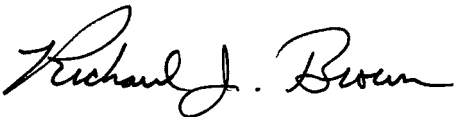
(4) A ceding insurer shall not be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded, unless the reinsurance contract provides, in substance, that if the ceding insurer becomes insolvent, the reinsurance shall be payable pursuant to the terms of the reinsurance contract by the assuming insurer on the basis of reported claims allowed by the liquidation court, except as provided in subsection (6), without diminution because of the insolvency of the ceding insurer. The payments shall be made directly to the ceding insurer or its domiciliary liquidator unless the reinsurance contract requires or an endorsement signed by the reinsurer to the policies reinsured requires the reinsurer to make payment to the payees under the policies reinsured if the ceding insurer becomes insolvent.

(5) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding.

(6) If a life and health insurance guaranty association or its designated successor life or health insurer has assumed policy obligations as direct obligations of the insolvent ceding insurer and has succeeded to the rights of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability shall continue under the contract of reinsurance and shall be payable pursuant to the direction of the guaranty association or its designated successor. As a condition to succeeding to the insolvent insurer's rights under the contract, the guaranty association or successor life or health insurer shall be responsible for premiums payable under the reinsurance contract for periods after the date of liquidation.



This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

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Governor