

Act No. 15
Public Acts of 2020
Approved by the Governor
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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Reps. Rendon, Paquette and Wittenberg

ENROLLED HOUSE BILL No. 5241

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” by amending section 836b (MCL 500.836b), as amended by 2016 PA 558.

The People of the State of Michigan enact:

Sec. 836b. (1) All of the following apply to the valuation manual:

(a) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(i) The NAIC has adopted the valuation manual by a vote of at least 42 members, or 3/4 of the members voting, whichever is greater.

(ii) The standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75% of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident, and health annual statements; health annual statements; or fraternal annual statements.

(iii) The standard valuation law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: the 50 states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(b) Unless a change in the valuation manual specifies a later effective date, a change to the valuation manual is effective on January 1 after the date the NAIC adopts the change to the valuation manual by a vote representing both of the following:

(i) At least 3/4 of the members of the NAIC, but not less than a majority of the total membership.

(ii) Members of the NAIC representing jurisdictions that amount to greater than 75% of the direct premiums written as reported in the following annual statements most recently available before the vote in subparagraph (i): life, accident, and health annual statements; health annual statements; or fraternal annual statements.

(c) The valuation manual must specify all of the following:

(i) Minimum valuation standards for and definitions of the policies or contracts subject to section 830(2). The minimum valuation standards are all of the following:

(A) The director's reserve valuation method for life insurance contracts, other than annuity contracts, subject to section 830(2).

(B) The director's annuity reserve valuation method for annuity contracts subject to section 830(2).

(C) Minimum reserves for all other policies or contracts subject to section 830(2).

(ii) The policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation under subsection (2) and the minimum valuation standards consistent with those requirements.

(iii) For policies and contracts subject to a principle-based valuation under subsection (2), all of the following apply:

(A) Requirements for the format of reports to the director under subsection (3)(c) and that must include information necessary to determine if the valuation is appropriate and in compliance with this section.

(B) Assumptions must be prescribed for risks over which the company does not have significant control or influence.

(C) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures.

(iv) For policies that are not subject to a principle-based valuation under subsections (2), (3), and (4), the minimum valuation standard is 1 of the following:

(A) The standard is consistent with the minimum standard of valuation before the operative date of the valuation manual.

(B) The standard develops reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(v) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls.

(vi) The data and form of the data required under subsection (5), to whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(d) If there is not a specific valuation requirement or if the director determines that a specific valuation requirement in the valuation manual does not comply with this section, the company shall, with respect to the requirement, comply with minimum valuation standards prescribed by the director by rule.

(e) The director may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the

company, or to review and opine on a company's compliance with any requirement of this section. The director may rely on the opinion, regarding this section, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this subdivision, "engage" includes employment and contracting.

(f) The director may require a company to change any assumption or method that the director considers necessary to comply with the requirements of the valuation manual or this section, and the company shall adjust the reserves as required by the director.

(2) A company shall establish reserves using a principle-based valuation that meets all of the following conditions for policies or contracts as specified in the valuation manual:

(a) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(b) Incorporate assumptions, risk analysis methods, financial models, and management techniques that are consistent with, but not necessarily identical to, those used within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(c) Incorporate assumptions that are derived in 1 of the following manners:

(i) The assumption is prescribed in the valuation manual.

(ii) For assumptions that are not prescribed in the valuation manual, the assumptions must do the following, as applicable:

(A) Use the company's available experience, to the extent it is relevant and statistically credible.

(B) To the extent that company data are not available, relevant, or statistically credible, use other relevant and statistically credible experience.

(d) Provide margins for uncertainty, including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.

(3) A company that uses principle-based valuation for 1 or more policies or contracts subject to this section as specified in the valuation manual shall do all of the following:

(a) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(b) Provide to the director and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The internal controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on the controls in place at the end of the preceding calendar year.

(c) Develop, and file with the director on request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(4) A principle-based valuation may include a prescribed formulaic reserve component.

(5) A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(6) Except as otherwise provided in this section, confidential information is confidential and privileged, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in a private civil action. However, the director may use the confidential information in the furtherance of any regulatory or legal action brought as a part of the director's official duties.

(7) The director or any person who received confidential information while acting under the authority of the director shall not testify in a private civil action concerning confidential information.

(8) The director may do all of the following:

(a) Except as otherwise provided in this subdivision, share confidential information with other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries. The director may also share confidential information described in subsection (14)(c)(i) and (iv) only with the actuarial board for counseling and discipline or its successor on request for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials. The director shall not share confidential information unless the recipient agrees in writing to maintain the confidentiality and privileged status of the confidential information and has verified in writing the legal authority to maintain confidentiality.

(b) Subject to this subdivision, receive documents, materials, data, or information from regulatory or law enforcement officials of other foreign or domestic jurisdictions, the actuarial board for counseling and discipline or its successor, and the NAIC and its affiliates and subsidiaries. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(9) The director may enter into written agreements governing sharing and use of information provided under this section.

(10) The disclosure or sharing of confidential information to the director under this section is not a waiver of an applicable privilege or claim of confidentiality.

(11) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this section applies in any proceeding in, and in any court of, this state.

(12) As used in subsections (6) to (10), “regulatory agency”, “law enforcement agency”, and “NAIC” include, but are not limited to, their employees, agents, consultants, and contractors.

(13) Notwithstanding anything in this section to the contrary, any confidential information described in subsection (14)(c)(i) and (iv) is subject to all of the following:

(a) The confidential information is subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under section 830a or principle-based valuation report developed under subsection (3)(c) by reason of an action required by section 830a or subsection (3)(c) or by rules promulgated under this section.

(b) The director may release the confidential information with the written consent of the company.

(c) If any portion of a memorandum in support of an opinion submitted under section 830a or a principle-based valuation report developed under subsection (3)(c) is cited by the company in its marketing, is cited before a governmental agency other than a state insurance department, or is released by the company to the news media, the memorandum or report is not confidential.

(14) As used in this section:

(a) “Accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(b) “Company” means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least 1 policy in force or on claim or that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

(c) “Confidential information” means all of the following:

(i) A memorandum in support of an opinion submitted under section 830a and any other documents, materials, and other information, including, but not limited to, all working papers, and copies of working papers, created, produced, or obtained by or disclosed to the director or any other person in connection with the memorandum.

(ii) All documents, materials, and other information, including, but not limited to, all working papers, and copies of working papers, created, produced, or obtained by or disclosed to the director or any other person in the course of an examination made under subsection (1)(e) if an examination report or other material prepared in connection with an examination made under section 222 is not held as private and confidential information under section 222, an examination report or other material prepared in connection with an examination made under subsection (1)(e) is not “confidential information” to the same extent as if the examination report or other material had been prepared under section 222.

(iii) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under subsection (3)(b) evaluating the effectiveness of the company’s internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies of working papers, created, produced, or obtained by or disclosed to the director or any other person in connection with such reports, documents, materials, and other information.

(iv) Any principle-based valuation report developed under subsection (3)(c) and any other documents, materials, and other information, including, but not limited to, all working papers, and copies of working papers, created, produced, or obtained by or disclosed to the director or any other person in connection with the report.

(v) Any documents, materials, data, and other information submitted by a company under subsection (5), collectively, experience data, and any other documents, materials, data, and other information, including, but not

limited to, all working papers, and copies of working papers, created or produced in connection with the experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the director, together with any experience data, the experience materials and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies of working papers, created, produced, or obtained by or disclosed to the director or any other person in connection with the experience materials.

(d) "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(e) "Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(f) "NAIC" means the National Association of Insurance Commissioners.

(g) "Policyholder behavior" means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section, including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(h) "Principle-based valuation" means a reserve valuation that uses 1 or more methods or 1 or more assumptions determined by the insurer and is required to comply with this section as specified in the valuation manual.

(i) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

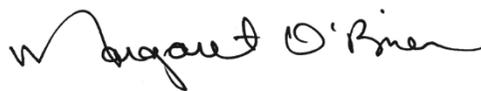
(j) "Tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(k) "Valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this section.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor