

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1027 Applicability of section to domestic insurer not SOX compliant entity; duties of audit committee; member of audit committee as independent; election of controlling person; report by accountant; reports provided on aggregate basis; structure of audit committee; waiver from section based on hardship; effective date of section; "direct written and assumed premiums" defined.

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.

History: Add. 2008, Act 342, Eff. Jan. 1, 2010;—Am. 2020, Act 17, Imd. Eff. Jan. 27, 2020.

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