

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

CHAPTER 10
ANNUAL AUDITED FINANCIAL REPORTS

500.1001 Definitions.

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.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008;—Am. 2016, Act 276, Imd. Eff. July 1, 2016;—Am. 2020, Act 17, Imd. Eff. Jan. 27, 2020.

Popular name: Act 218

500.1003 Nonapplicability of chapter.

Sec. 1003. (1) This chapter does not apply to any of the following:

(a) Insurers having direct premiums written in this state of less than \$1,000,000.00 in any year and having less than 1,000 policyholders in this state at the end of any year unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out the responsibilities of this act.

(b) Domestic insurers transacting insurance only in this state that have direct premiums written of less than \$10,000,000.00 in any year, write or assume reinsurance for only property-based coverage, and are not part of an insurance holding company system whose members have total direct written premiums of more than \$10,000,000.00 in any year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out the responsibilities of this act.

(c) Insurers filing audited financial reports in another state, pursuant to the other state's requirement of audited financial reports that have been found by the commissioner to be substantially similar to the requirements of this chapter, if a copy of the audited financial report and the evaluation of accounting procedures and systems of internal control report that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in sections 1005 and 1017 or, if a Canadian insurer, a copy of the independent public accountants' reports that are filed with the Canadian Dominion department of insurance, and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in section 1015.

(2) This chapter does not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under this act.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1005 Insurer; annual audit; filing date; extensions; designation of audit committee.

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.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1007 Annual audited financial report; contents; form; conduct of examination by independent public accountant.

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.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1009 Insurer required to file annual audited report; registration of insurer's independent public accountant; letter required; dismissal or resignation of independent public accountant; notice; report of disagreement; responsive letter.

Sec. 1009. (1) Each insurer required by this chapter to file an annual audited financial report shall register with the commissioner in writing, within 60 days after becoming subject to this requirement, the name and address of the independent public accountant or accounting firm retained to conduct the annual audit under this chapter. Insurers not retaining an independent public accountant on the effective date of this chapter shall register the name and address of their retained independent public accountant not less than 6 months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the insurer's independent public accountant and shall file a copy with the commissioner stating that the independent public accountant is aware of the insurance code's provisions and the rules and regulations of the state of domicile's insurance department that relate to accounting and financial matters and affirming that he or she will express his or her opinion on the financial statements as to whether they conform to the accounting practices prescribed or otherwise permitted by that department, specifying the exceptions as he or she believes appropriate.

(3) If the independent public accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the commissioner within 5 business days of this event. The insurer shall also furnish the commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding the event there were any disagreements with the former independent public accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former independent public accountant, would have caused the former independent public accountant to refer to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former independent public accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level between personnel of the insurer responsible for presentation of its financial statements and personnel of the independent public accounting firm responsible for rendering its report. The insurer shall also request in writing the former independent public accountant to furnish a letter addressed to the insurer stating whether the independent public accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree. The insurer shall furnish this responsive letter from the former independent public accountant to the commissioner together with its own.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Compiler's note: Act 143 of 1993, which amended this act, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

For transfer of the Department of Insurance and Office of the Commissioner on Insurance from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

500.1010 Recognition of person or firm as independent public accountant; mediation or arbitration of disputes; limitation on period of service; relief from rotation requirement; restrictions; hearing; ruling by commissioner; exemption from subsection (7); nonaudit services; preapproval; waiver; independent public accountant not recognized as qualified; condition; relief from subsection (14).

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.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1011 Audited consolidated or combined financial statements; application for filing; work sheet.

Sec. 1011. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of affiliates that uses a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. If approval is given, a columnar consolidating or combining work sheet shall be filed with the report, as follows:

(a) Amounts shown on the consolidated or combined audited financial report shall be shown on the work sheet.

(b) Amounts for each insurer subject to this section shall be stated separately.

(c) Noninsurance operations may be shown on the work sheet on a combined or individual basis.

(d) Explanations of consolidating and eliminating entries shall be included.

(e) Any differences between the amounts shown in the individual insurer columns of the work sheet and comparable amounts shown on the annual statements of the insurers shall be reconciled.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.1015 Independent public accountant; reporting determination that insurer materially misstated financial condition or does not meet requirements of MCL 500.408 or MCL 500.410; liability; action to be taken after date of audited financial report.

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.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1017 Independent public accountant; communicating unremediated material weaknesses; description.

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.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1019 Independent public accountant; filing letter with annual audited financial report;

contents.

Sec. 1019. The independent public accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating all of the following:

(a) That the independent public accountant is independent of the insurer and conforms to the standards of his or her profession.

(b) The general background and experience and the experience in insurer audits of the staff assigned to the annual audited financial report and whether each is an independent public accountant. Nothing within this chapter shall be construed as prohibiting the independent public accountant from using the staff he or she considers appropriate if the use is consistent with the standards prescribed by generally accepted auditing standards.

(c) That the independent public accountant understands the annual audited financial report, and his or her opinion on the report, will be filed in compliance with this chapter, and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of the insurer.

(d) That the independent public accountant consents to the requirements of section 1021 and that the independent public accountant consents and agrees to make available for review by the commissioner, his or her designee, or his or her appointed agent, the work papers described in section 1021.

(e) A representation that the independent public accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American institute of certified public accountants.

(f) A representation that the independent public accountant is in compliance with the requirements of section 1010.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1021 Work papers; availability; retention; review as investigation; use.

Sec. 1021. (1) Work papers are the records kept by the independent public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to his or her examination of the insurer's financial statements. Work papers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent public accountant in the course of his or her examination of the insurer's financial statements and that support his or her opinion.

(2) Each insurer required to file an audited financial report pursuant to this chapter shall require the independent public accountant to make available for review by the commissioner the work papers prepared in the conduct of his or her examination and any communications between the independent public accountant and the insurer related to the audit at the commissioner's offices or at any other reasonable place designated by the commissioner. The insurer shall require that the independent public accountant retain the audit work papers and communications for a period of not less than 5 years after the period reported on.

(3) In a review by the commissioner under subsection (2), it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the commissioner. A review by the commissioner under subsection (2) shall be considered an investigation and all working papers and communications obtained during the course of the investigation shall be confidential.

(4) In the examination or other investigation or determination of the financial condition of an insurer pursuant to this act, the commissioner shall utilize the audit work papers and other documents prepared by the independent public accountant and shall avoid duplication of the work of the independent public accountant unless the commissioner in the reasonable exercise of his or her discretion finds that additional examination is necessary in order to determine whether an insurer is safe, reliable, and entitled to public confidence.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1023 Compliance with chapter; exemption; filing reports on other than calendar year basis; compliance by domestic insurers; schedule; compliance by foreign insurers.

Sec. 1023. (1) Upon an insurer's written application, the commissioner may grant an exemption from compliance with 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. 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 in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Upon an insurer's written application, the commissioner, for a specified period or periods, may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis. Within 10 days from a denial of such a written request, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with Act No. 306 of the Public Acts of 1969.

(3) Domestic insurers retaining a certified public accountant on the effective date of this chapter who qualifies as independent shall comply with this chapter for the year ending December 31, 1992 and each year thereafter unless the commissioner permits otherwise.

(4) Domestic insurers not retaining a certified public accountant on the effective date of this chapter who qualifies as independent shall meet the following schedule for compliance unless the commissioner permits otherwise:

(a) As of December 31, 1992, file with the commissioner all of the following:

(i) Report of independent public accountant.

(ii) Audited balance sheet.

(iii) Notes to audited balance sheet.

(b) For the year ending December 31, 1993 and each year thereafter, file with the commissioner all reports required by this chapter.

(5) Foreign insurers shall comply with this chapter for the year ending December 31, 1993 and each year thereafter, unless the commissioner permits otherwise.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

500.1025 Canadian and British insurers; annual audited financial report; contents of independent public accountant's letter.

Sec. 1025. (1) For Canadian and British insurers, the annual audited financial report is the annual statement of total business, on the form filed by those companies with their domiciliary supervision authority, and duly audited by an independent chartered accountant.

(2) For insurers listed in subsection (1), the independent public accountant's letter required in section 1009 shall state that the independent public accountant is aware of the requirements relating to the annual audited statement filed with the commissioner pursuant to section 1005 and shall affirm that the opinion expressed is in conformity with those requirements.

History: Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992.

Popular name: Act 218

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.

Popular name: Act 218

500.1028 Internal audit function; exemption; confidentiality; report to audit committee.

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.

History: Add. 2020, Act 17, Imd. Eff. Jan. 27, 2020.

Popular name: Act 218

500.1029 Director or officer of insurer; prohibited conduct.

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.

History: Add. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1031 Report of insurer's or group of insurers' internal control over financial reporting; requirements.

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.

History: Add. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218

500.1033 Exemption from any or all provisions of chapter.

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.

History: Add. 2008, Act 342, Imd. Eff. Dec. 23, 2008.

Popular name: Act 218