

HOUSE BILL No. 5722

February 13, 2008, Introduced by Rep. Virgil Smith and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 1001, 1007, 1010, 1015, and 1125 (MCL 500.1001, 500.1007, 500.1010, 500.1015, and 500.1125), sections 1001, 1007, 1010, and 1015 as added by 1992 PA 182 and section 1125 as amended by 2000 PA 283.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1001. As used in this chapter:

2 (a) "Audited financial report" means the report required in
3 section 1005 and furnished pursuant to section 1007.

4 **(B) "INDEMNIFICATION" MEANS AN AGREEMENT OF INDEMNITY OR A**
5 **RELEASE FROM LIABILITY WHERE THE INTENT OR EFFECT IS TO SHIFT OR**
6 **LIMIT IN ANY MANNER THE POTENTIAL LIABILITY OF THE PERSON OR FIRM**
7 **FOR FAILURE TO ADHERE TO APPLICABLE AUDITING OR PROFESSIONAL**
8 **STANDARDS, WHETHER OR NOT RESULTING IN PART FROM KNOWING OF OTHER**

1 **MISREPRESENTATIONS MADE BY THE INSURER OR ITS REPRESENTATIVES.**

2 (C) ~~(b)~~—"Independent public accountant" means an independent
3 certified public accountant or accounting firm in good standing
4 with the American institute of certified public accountants and in
5 good standing in all states in which they are licensed to practice.
6 For Canadian and British companies, "independent public accountant"
7 means a Canadian-chartered or British-chartered accountant.

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

15 (a) The report of an independent public accountant.

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

18 (c) A statement of gain or loss from operations.

19 (d) A statement of cash flows.

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

21 (f) Notes to financial statements. These notes shall be those
22 required by the commissioner's annual statement instructions and
23 ~~any other notes required by generally accepted accounting~~
24 ~~principles and shall include both of the following:~~

25 ~~—— (i) A~~ **ACCOUNTING PRACTICES PRESCRIBED. THE NOTES SHALL INCLUDE**
26 **A** reconciliation of differences, if any, between the audited
27 financial statements and the annual statement filed pursuant to

1 section 438 with a written description of the nature of these
2 differences.

3 ~~(ii) A summary of ownership and relationships of the insurer~~
4 ~~and all affiliated companies, including a disclosure of all~~
5 ~~significant intercompany transactions and balances.~~

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

15 (3) **THE INDEPENDENT PUBLIC ACCOUNTANT SHALL CONDUCT THE**
16 **EXAMINATION IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING**
17 **STANDARDS. CONSIDERATION SHALL BE GIVEN, AS THE INDEPENDENT PUBLIC**
18 **ACCOUNTANT CONSIDERS NECESSARY, TO THE PROCEDURES ILLUSTRATED IN**
19 **THE "FINANCIAL CONDITIONS EXAMINERS HANDBOOK" PREPARED BY THE**
20 **NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.**

21 Sec. 1010. (1) The commissioner shall not recognize a person
22 or firm as an independent public accountant unless that person or
23 firm ~~is~~ **MEETS BOTH OF THE FOLLOWING:**

24 (A) **IS** in good standing with the American institute of
25 certified public accountants and in good standing in all states in
26 which the independent public accountant is licensed to practice,
27 or, for a Canadian or British company, unless that person or firm

1 is a chartered accountant.

2 (B) HAS NOT EITHER DIRECTLY OR INDIRECTLY ENTERED INTO AN
3 INDEMNIFICATION AGREEMENT, WHETHER AN AGREEMENT OF INDEMNITY OR
4 RELEASE FROM LIABILITY, WITH RESPECT TO THE INSURER'S AUDIT.

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

12 (3) AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT MAY ENTER INTO
13 AN AGREEMENT WITH AN INSURER TO HAVE DISPUTES RELATING TO AN AUDIT
14 RESOLVED BY MEDIATION OR ARBITRATION. HOWEVER, IF A DELINQUENCY
15 PROCEEDING IS COMMENCED AGAINST THE INSURER UNDER CHAPTER 81, THE
16 MEDIATION OR ARBITRATION PROVISION SHALL OPERATE AT THE OPTION OF
17 THE STATUTORY SUCCESSOR.

18 (4) ~~(3)~~—An individual independent public accountant or a
19 partner or other person responsible for rendering a report by an
20 independent public accounting firm retained to conduct an annual
21 audit under this chapter shall not act in that capacity for the
22 same insurer for more than 7 consecutive years. Following such a 7-
23 year period of service, the individual independent public
24 accountant or partner or other responsible person for the
25 accounting firm shall not conduct an annual audit under this
26 chapter for the same insurer or its insurance subsidiaries or
27 affiliates for a period of 2 years. An insurer may apply for relief

1 from the commissioner from this rotation requirement on the basis
2 of unusual circumstances. The commissioner may consider the
3 following factors in determining if relief should be granted:

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

7 (b) The insurer's premium volume.

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

10 (5) ~~(4)~~—The commissioner shall not recognize as a qualified
11 independent public accountant, or accept an annual audited
12 financial report, prepared in whole or in part by an individual who
13 has done any of the following:

14 (a) Been convicted of fraud, bribery, a violation of chapter
15 96 of title 18 of the United States Code, 18 ~~U.S.C.~~ **USC** 1961 to
16 1968, or any dishonest conduct or practices under federal or state
17 law.

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

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

23 (6) ~~(5)~~—The commissioner may hold a public hearing pursuant to
24 the administrative procedures act of 1969, ~~Act No. 306 of the~~
25 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
26 ~~Michigan Compiled Laws—1969 PA 306, MCL 24.201 TO 24.328,~~ to
27 determine whether a certified public accountant is qualified. After

1 considering the evidence presented, the commissioner may rule that
2 the accountant is not qualified for purposes of expressing his or
3 her opinion on the financial statements in the annual audited
4 financial report made pursuant to this chapter and may require the
5 insurer to replace the accountant with another whose relationship
6 with the insurer is qualified within the meaning of this chapter.

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

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

27 **(3) IF AFTER THE DATE OF THE AUDITED FINANCIAL REPORT FILED**

1 PURSUANT TO THIS CHAPTER THE ACCOUNTANT BECOMES AWARE OF FACTS THAT
2 MIGHT HAVE AFFECTED HIS OR HER REPORT, THE ACCOUNTANT SHALL TAKE
3 ACTION AS PRESCRIBED BY THE PROFESSIONAL STANDARDS OF THE AMERICAN
4 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.

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

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

18 (3) Except for facultative certificates duly executed by a
19 property and casualty reinsurer or its duly appointed agent, a
20 reinsurance agreement shall contain ~~in substance a provision that~~
21 **BOTH OF THE FOLLOWING:**

22 (A) **THAT THE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT**
23 **BETWEEN THE PARTIES WITH RESPECT TO THE BUSINESS BEING REINSURED**
24 **THEREUNDER AND THAT THERE ARE NO UNDERSTANDINGS BETWEEN THE PARTIES**
25 **OTHER THAN AS EXPRESSED IN THE AGREEMENT.**

26 (B) **THAT** any change or modification to the agreement is null
27 and void unless made by amendment to the agreement and signed by

1 both parties.

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

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

21 (6) If a life and health insurance guaranty association or its
22 designated successor life or health insurer has assumed policy
23 obligations as direct obligations of the insolvent ceding insurer
24 and has succeeded to the rights of the insolvent insurer under the
25 contract of reinsurance, then the reinsurer's liability shall
26 continue under the contract of reinsurance and shall be payable
27 pursuant to the direction of the guaranty association or its

1 designated successor. As a condition to succeeding to the insolvent
2 insurer's rights under the contract, the guaranty association or
3 successor life or health insurer shall be responsible for premiums
4 payable under the reinsurance contract for periods after the date
5 of liquidation.