

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

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.

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