

INTERNATIONALLY ACTIVE INSURANCE GROUPS

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House Bill 5242 (H-1) as reported from committee

Sponsor: Rep. Robert Wittenberg

Committee: Insurance

Complete to 12-4-2019

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 16 of 2020)

SUMMARY:

House Bill 5242 would amend Chapter 13 (Holding Companies) of the Insurance Code to allow the director of the Department of Insurance and Financial Services (DIFS) either to act as the *group-wide supervisor* for an *internationally active insurance group* (IAIG) or to acknowledge a regulatory official from another jurisdiction as the group-wide supervisor for the IAIG. The bill would adopt revisions made by the National Association of Insurance Commissioners (NAIC) to its holding company model act in December 2014 to address issues related to group supervision of IAIGs.¹ The adoption of these revisions is an NAIC accreditation requirement effective January 1, 2020.²

Group-wide supervisor would mean the regulatory official authorized to conduct and coordinate group-wide supervision activities whom the director determines has sufficient contacts with the IAIG.

Internationally active insurance group would mean an insurance holding company system that meets all of the following:

- It includes an insurer that is registered under section 1324 of the Insurance Code (“registered insurer”) as a member of an insurance holding company that is authorized to do business in Michigan.
- It has premiums written in at least three countries.
- At least 10% of its total gross written premiums are gross premiums written outside the United States.
- It has total assets of at least \$50.0 billion, or total gross written premiums of at least \$10.0 billion, based on a three-year rolling average.

Under the bill, the director could act as the group-wide supervisor for an IAIG conducting substantial active insurance operations concentrated in this state. The director could also acknowledge another regulatory official as the group-wide supervisor if the IAIG did not have substantial insurance operations in the United States or in Michigan or if the director determined the other official to be the appropriate group-wide supervisor. An insurance holding company that did not otherwise qualify as an IAIG could request the director to make a determination or acknowledgment as to a group-wide supervisor under the bill.

¹ See https://www.naic.org/documents/cmte_legislative_liaison_brief_holding_co.pdf

² See https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf

See also <https://content.naic.org/sites/default/files/inline-files/FRSA%20Pamphlet%208-2019.pdf>

The director would have to acknowledge another regulatory official acting as the group-wide supervisor of an IAIG as the IAIG's group-wide supervisor. However, if a material change in the IAIG led its insurers in this state to have the largest share of the group's assets, liabilities, or written premiums, or if Michigan became the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the IAIG, the director would have to make a determination as to the appropriate group-wide supervisor.

Making a Determination

In determining the appropriate group-wide supervisor for an IAIG, the director would have to consider all of the following factors:

- The place of domicile of the insurers in the IAIG with the largest share of the group's assets, liabilities, or written premiums.
- The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the IAIG.
- The location of the IAIG's executive offices or largest operational offices.
- Whether another regulatory official is acting or seeking to act as the group-wide supervisor under a regulatory system that, as determined by the director, either is substantially similar to Michigan's or is sufficient to provide group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials.
- Whether another regulatory official acting or seeking to act as the group-wide supervisor gives the director reasonably reciprocal recognition and cooperation.

The director could collect from a registered insurer all information necessary to make this determination.

The director would have to determine the group-wide supervisor in cooperation with other state, federal, and international regulatory agencies, and the acknowledgment of another official as group-wide supervisor would have to be made in consultation with the IAIG and in cooperation with, and subject to the acknowledgment of, other regulatory officials involved with supervision of members of the IAIG.

Director as Group-wide Supervisor

Before determining an IAIG to be subject to group-wide supervision by the director, the director would have to notify the registered insurer and the ultimate controlling person in the IAIG. The IAIG would have 30 days to provide the director with additional information relevant to the determination. The director would have to publish on the internet the identity of IAIGs subject to the director's group-wide supervision.

The director could do any of the following as the group-wide supervisor for an IAIG:

- Assess the *enterprise risks* within the IAIG to ensure that the material financial condition and liquidity risk to insurer members of the IAIG have been identified and that reasonable and effective mitigation measures are in place.
- Request from members of the IAIG information relevant to assessing enterprise risk, including information regarding governance, risk assessment, management, capital adequacy, and material intercompany transactions.

- Coordinate the development and implementation of reasonable measures to ensure that the IAIG can timely recognize and mitigate enterprise risks to its insurer members.
- Communicate and share information, subject to confidentiality requirements, with other state, federal, and international regulatory agencies for members of the IAIG.
- Enter into agreements with or obtain documentation from a registered insurer, a member of the IAIG, and other state, federal, and international regulatory agencies, to provide the basis for or clarify the director's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. (These agreements or documents would not count as evidence that a person in an insurance holding company not domiciled or incorporated in this state is either doing business in this state or otherwise subject to this state's jurisdiction.)
- Perform other group-wide supervision activities the director considers necessary.

Enterprise risk means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system, including anything that would cause the insurer to be hazardous to policyholders, creditors, and the public.

Other Regulatory Officials

If the director acknowledged another regulatory official from a jurisdiction that is not accredited by the NAIC to be the group-wide supervisor, the director could reasonably cooperate with that official's group-wide supervision as long as both of the following conditions applied:

- The director's cooperation complies with Michigan law.
- The other regulatory official also recognizes and cooperates with the director's activities as group-wide supervisor for other IAIGs, as applicable. (The director could refuse recognition and cooperation to an official that does not reasonably extend reciprocal recognition and cooperation.)

The director could enter into agreements with or obtain documentation from a registered insurer, a member of the IAIG, and other state, federal, and international regulatory agencies, to provide the basis for or clarify a regulatory official's role as group-wide supervisor.

Expenses

A registered insurer subject to the bill would have to pay the reasonable expenses of the director in administering the bill, including travel expenses and the engagement of attorneys, actuaries, and other professionals.

MCL 500.1301 and proposed MCL 500.1359

FISCAL IMPACT:

House Bill 5242 would be unlikely to have an appreciable net fiscal impact on the Department of Insurance and Financial Services (DIFS). The bill would expand the responsibilities of the DIFS Director related to group-wide supervision of internationally active insurance groups. However, the bill would allow the DIFS Director to recover costs for the required administration from registered insurers subject to the bill, likely resulting in a neutral net fiscal impact.

POSITIONS:

Representatives of the Department of Insurance and Financial Services testified in support of the bill. (12-3-19)

The following entities indicated support for the bill:

- Life Insurance Association of Michigan (12-3-19)
- John Hancock (12-4-19)
- American Council of Life Insurers (12-4-19)
- Insurance Alliance of Michigan (12-4-19)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.