SENATE BILL NO. 5

January 15, 2019, Introduced by Senator LUCIDO and referred to the Committee on Insurance and Banking.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956,"
by amending the title and sections 3330 and 4501 (MCL 500.3330 and 500.4501), the title as amended by 2002 PA 304, section 3330 as amended by 2012 PA 204, and section 4501 as amended by 2012 PA 39, and by adding chapter 63.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation
or formation of domestic insurance and surety companies and
associations and the admission of foreign and alien companies and
associations; to provide their rights, powers, and immunities and
to prescribe the conditions on which companies and associations
organized, existing, or authorized under this act may exercise
their powers; to provide the rights, powers, and immunities and to
prescribe the conditions on which other persons, firms,
corporations, associations, risk retention groups, and purchasing
groups engaged in an insurance or surety business may exercise
their powers; to provide for the imposition of a privilege fee on
domestic insurance companies and associations; and the state
accident fund; to provide for the imposition of a tax on the
business of foreign and alien companies and associations; to
provide for the imposition of a tax on risk retention groups and
purchasing groups; to provide for the imposition of a tax on the
business of surplus line agents; to provide for the imposition of
regulatory fees on certain insurers; to provide for assessment fees
on certain health maintenance organizations; to modify tort
liability arising out of certain accidents; to provide for limited
actions with respect to that modified tort liability and to
prescribe certain procedures for maintaining those actions; to
require security for losses arising out of certain accidents; to
provide for the continued availability and affordability of
automobile insurance and homeowners insurance in this state and to
facilitate the purchase of that insurance by all residents of this
state at fair and reasonable rates; to provide for certain
reporting with respect to insurance and with respect to certain
claims against uninsured or self-insured persons; to prescribe
duties for certain state departments and officers with respect to
that reporting; to provide for certain assessments; to establish
and continue certain state insurance funds; to modify and clarify
the status, rights, powers, duties, and operations of the nonprofit
malpractice insurance fund; to provide for the departmental
supervision and regulation of the insurance and surety business
within this state; to provide for regulation over of worker's
compensation self-insurers; to provide for the conservation,
rehabilitation, or liquidation of unsound or insolvent insurers; to
provide for the protection of policyholders, claimants, and
creditors of unsound or insolvent insurers; to provide for
associations of insurers to protect policyholders and claimants in
the event of insurer insolvencies; to prescribe educational
requirements for insurance agents and solicitors; to provide for
the regulation of multiple employer welfare arrangements; to create
an automobile theft prevention authority—one or more authorities to
reduce insurance fraud and the number of automobile thefts in this
state; and to prescribe the powers and duties of the automobile
theft prevention authority—authorities; to provide certain for the
powers and duties upon of certain officials, departments, and
authorities of this state; to provide for an appropriation; to
repeal acts and parts of acts; and to provide penalties for the
violation of this act.

Sec. 3330. (1) The board of governors has the power to direct
the operation of the facility, including, at a minimum, the power
to do all of the following:

(a) To sue and be sued in the name of the facility. A judgment
against the facility shall not create any liabilities in the
individual participating members of the facility.

(b) To delegate ministerial duties, to hire a manager, to hire
legal counsel, and to contract for goods and services from others.

(c) To assess participating members on the basis of
participation ratios pursuant to section 3303 to cover anticipated
costs of operation and administration of the facility, to provide
for equitable servicing fees, and to share losses, profits, and
expenses pursuant to the plan of operation.

(d) To impose limitations on cancellation or nonrenewal by
participating members of facility-placed business, in addition to
the limitations imposed by chapters 21 and 32.

(e) To provide for a limited number of participating members
to receive equitable distribution of applicants; or to provide for
a limited number of participating members to service applicants in
a plan of sharing of losses in accordance with section 3320(1)(c)
and the plan of operation.

(f) To provide for standards of performance of service for the
participating members designated under subdivision (e).

(g) To adopt a plan of operation and any amendments to the
plan, consistent with this chapter, necessary to assure the fair,
reasonable, equitable, and nondiscriminatory manner of
administering the facility, including compliance with chapter 21,
and to provide for any other matters necessary or advisable to
implement this chapter, including matters necessary to comply with
the requirements of chapter 21.

(h) To assess self-insurers and insurers consistent with
chapter 31 and the assigned claims plan approved under section
3171.

(2) The board of governors shall institute or cause to be
instituted by the facility or on its behalf an automatic data
processing system for recording and compiling data relative to
individuals insured through the facility. An automatic data
processing system established under this subsection shall, to the
greatest extent possible, be made compatible with the automatic
data processing system maintained by the secretary of state, to
provide for the identification and review of individuals insured
through the facility.

(3) Before March 1, 2020, the board of governors shall amend
the plan of operation to establish appropriate procedures necessary
to collect money and carry out the administrative duties and
functions of the Michigan automobile insurance fraud authority.

Sec. 4501. As used in this chapter:
(a) "Authorized agency" means the department of state police;
a city, village, or township police department; a county sheriff's
department; a United States criminal investigative department or
agency; the prosecuting authority of a city, village, township,
county, or state or of the United States; the office of financial
and insurance regulation; department; the Michigan automobile
insurance fraud authority; or the department of state.
(b) "Financial loss" includes, but is not limited to, loss of
earnings, out-of-pocket and other expenses, repair and replacement
costs, investigative costs, and claims payments.
(c) "Insurance policy" or "policy" means an insurance policy,
benefit contract of a self-funded plan, health maintenance
organization contract, nonprofit dental care corporation
certificate, or health care corporation certificate.
(d) "Insurer" means a property-casualty insurer, life insurer,
third party administrator, self-funded plan, health insurer, health
maintenance organization, nonprofit dental care corporation, health
care corporation, reinsurer, or any other entity regulated by the
insurance laws of this state and providing any form of insurance.

(e) "Michigan automobile insurance fraud authority" means the Michigan automobile insurance fraud authority created under section 6302.

(f) "Organization" means an organization or internal department of an insurer established to detect and prevent insurance fraud.

(g) "Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity.

(h) "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law, any other licensee of the this state, or an unlicensed health care provider whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations, or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

(i) "Runner", "capper", or "steerer" means a person who receives a pecuniary or other benefit from a practitioner, whether directly or indirectly, for procuring or attempting to procure a client, patient, or customer at the direction or request of, or in cooperation with, a practitioner whose intent is to obtain benefits under a contract of insurance or to assert a claim against an insured or an insurer for providing services to the client, patient, or customer. Runner, capper, or steerer does not include a practitioner who procures clients, patients, or customers through the use of public media.
(j) "Statement" includes, but is not limited to, any notice statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, claim form, diagnosis, prescription, hospital or doctor record, X-rays, test result, or other evidence of loss, injury, or expense.

CHAPTER 63
MICHIGAN AUTOMOBILE INSURANCE FRAUD AUTHORITY

Sec. 6301. As used in this chapter:

(a) "Authority" means the Michigan automobile insurance fraud authority created in section 6302.

(b) "Automobile insurance fraud" means a fraudulent insurance act as described in section 4503 or addressed under section 208c(3)(f) or 227(4) of the Michigan vehicle code, 1949 PA 300, MCL 257.208c and 257.227, that is committed in connection with automobile insurance, including an application for automobile insurance.

(c) "Board" means the board of directors of the authority.

(d) "Car years" means net direct private passenger and commercial nonfleet vehicle years of insurance providing the security required by section 3101(1) written in this state for the second previous calendar year as reported to the statistical agent of each insurer.

(e) "Facility" means the Michigan automobile insurance placement facility created under chapter 33.

Sec. 6302. (1) The Michigan automobile insurance fraud authority is created within the facility. The facility shall provide staff for the authority and shall carry out the administrative duties and functions as directed by the board.
(2) The authority is not a state agency, and the money of the
authority is not state money. However, the authority shall comply
with the freedom of information act, 1976 PA 442, MCL 15.231 to
15.246, as if the authority were a public body. A record or portion
of a record, material, data, or other information received,
prepared, used, or retained by the authority in connection with the
investment of assets or of an insurer that relates to financial or
proprietary information and is considered by the person or insurer
providing the authority with the record, material, data, or
information as confidential and acknowledged by the authority as
confidential is not subject to disclosure by the authority. As used
in this subsection:

(a) "Financial or proprietary information" means information
that has not been publicly disseminated or that is unavailable from
other sources, the release of which might cause the person
providing the information to the authority significant competitive
harm. Financial or proprietary information includes, but is not
limited to, financial performance data and projections, financial
statements, and product and market data.

(b) "Public body" means that term as defined in section 2 of
the freedom of information act, 1976 PA 442, MCL 15.232.

(3) With the discretion to approve or disapprove programs to
be supported, the authority shall do both of the following:

(a) Provide financial support to state or local law
enforcement agencies for programs designed to reduce the incidence
of automobile insurance fraud.

(b) Provide financial support to state regulatory agencies or
state or local prosecutorial agencies for programs designed to
reduce the incidence of automobile insurance fraud.
(4) The authority may provide financial support to law enforcement, prosecutorial, insurance, education, or training associations for programs designed to reduce the incidence of automobile insurance fraud.

(5) The purposes, powers, and duties of the authority are vested in and shall be exercised by a board of directors. The board of directors consists of 16 members as follows:

(a) Eight members who represent automobile insurers in this state, including the following:

(i) At least 2 members who represent insurer groups with 350,000 or more car years.

(ii) At least 2 members who represent insurer groups with fewer than 350,000 but 100,000 or more car years.

(iii) At least 1 member who represents insurer groups with fewer than 100,000 car years.

(b) The director or his or her designee.

(c) The attorney general or his or her designee.

(d) The secretary of state or his or her designee.

(e) The director of the department of state police or his or her designee.

(f) Two members who represent other law enforcement agencies in this state.

(g) One member who represents prosecuting attorneys in this state.

(h) One member who represents the general public.

(6) The members of the board representing insurers shall be elected by authorized insurers that provide automobile insurance in this state from a list of nominees proposed by the board of governors of the facility. In preparing the list of nominees for
the members, the board of governors of the facility shall solicit
nominations from authorized insurers that provide automobile
insurance in this state.

(7) The governor shall appoint the members of the board
representing law enforcement agencies other than the department of
state police. In appointing the members, the governor shall solicit
input from various law enforcement associations in this state.

(8) The governor shall appoint the member of the board
representing prosecuting attorneys. In appointing the member, the
governor shall solicit input from the Prosecuting Attorneys
Association of Michigan.

(9) The governor shall appoint the member of the board
representing the general public. The governor shall appoint an
individual who is a resident of this state and is not employed by
or under contract with a state or local unit of government or an
insurer.

(10) Except as otherwise provided in this subsection, a member
of the board shall serve for a term of 4 years or until his or her
successor is elected, designated, or appointed, whichever occurs
later. Of the members first elected or appointed under this
section, 2 members representing insurers and 1 member representing
law enforcement agencies shall serve for a term of 2 years, 3
members representing insurers, the member representing prosecuting
attorneys, and the member representing the general public shall
serve for a term of 3 years, and 3 members representing insurers
and 1 member representing law enforcement agencies shall serve for
a term of 4 years.

(11) The board is dissolved on January 1, 2025.

Sec. 6303. (1) A member of the board shall serve without
compensation, except that the board shall reimburse a member in a reasonable amount for necessary travel and expenses.

(2) A majority of the members of the board constitute a quorum for the transaction of business at a meeting or the exercise of a power or function of the authority, notwithstanding the existence of 1 or more vacancies. Notwithstanding any other provision of law to the contrary, action may be taken by the authority at a meeting on a vote of the majority of its members present in person or through the use of amplified telephonic equipment, if authorized by the bylaws or plan of operation of the board. The authority shall meet at the call of the chair or as may be provided in the bylaws of the authority. Meetings of the authority may be held anywhere in this state.

(3) The board shall adopt a plan of operation by a majority vote of the board. Vacancies on the board shall be filled in accordance with the plan of operation.

(4) The board shall conduct its business at meetings that are held in this state, open to the public, and held in a place that is available to the general public. However, the board may establish reasonable rules to minimize disruption of a meeting of the board. At least 10 days but not more than 60 days before a meeting, the board shall provide public notice of the meeting at the board's principal office and on a publicly accessible internet website. The board shall include in the public notice of its meeting the address where minutes of the board may be inspected by the public. The board may meet in a closed session for any of the following purposes:

(a) To consider the hiring, dismissal, suspension, disciplining, or evaluation of officers or employees of the
authority.

(b) To consult with its attorney.

(c) To comply with state or federal law, rules, or regulations regarding privacy or confidentiality.

(5) The board shall display information concerning the authority's operations and activities, including, but not limited to, the annual financial report required under section 6310, on a publicly accessible internet website.

(6) The board shall keep minutes of each board meeting. The board shall make the minutes open to public inspection and available at the address designated on the public notice of its meetings. The board shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying. The board shall include all of the following in the minutes:

(a) The date, time, and place of the meeting.

(b) The names of board members who are present and board members who are absent.

(c) Board decisions made during any portion of the meeting that was open to the public.

(d) All roll call votes taken at the meeting.

Sec. 6304. On January 1, 2025, the authority is dissolved.

Sec. 6305. The board has the powers necessary to carry out its duties under this act, including, but not limited to, the power to do the following:

(a) Sue and be sued in the name of the authority.

(b) Solicit and accept gifts, grants, loans, and other aid from any person, the federal government, this state, a local unit of government, or an agency of the federal government, this state,
or a local unit of government.

(c) Make grants and investments.

(d) Procure insurance against any loss in connection with its property, assets, or activities.

(e) Invest at its discretion any money held in reserve or sinking funds or any money not required for immediate use or disbursement and to select and use depositories for its money.

(f) Contract for goods and services and engage personnel as necessary.

(g) Indemnify and procure insurance indemnifying any member of the board for personal loss or accountability resulting from the member's action or inaction as a member of the board.

(h) Perform other acts not specifically enumerated in this section that are necessary or proper to accomplish the purposes of the authority and that are not inconsistent with this section or the plan of operation.

Sec. 6307. (1) An insurer or self-insurer engaged in writing insurance coverages that provide the security required by section 3101(1) in this state may pay to the facility, for deposit into the account of the authority, money to be used by the authority to carry out its duties under this chapter.

(2) The facility shall segregate all money received under the vehicle insurance verification act and subsection (1), and all other money received by the authority for the purpose, from other money of the facility, if applicable. The facility shall only expend the money received under subsection (1) as directed by the board.

Sec. 6308. (1) An insurer authorized to transact automobile insurance in this state, as a condition of its authority to
transact insurance in this state, shall report automobile insurance fraud data to the authority using the format and procedures adopted by the board.

(2) The department of state police shall cooperate with the authority and shall provide available motor vehicle fraud and theft statistics to the authority on request.

(3) The board shall develop performance metrics that are consistent, controllable, measurable, and attainable. The board shall use the metrics each year to evaluate new applications submitted for funding consideration and to renew funding for existing programs.

Sec. 6310. (1) Beginning January 1 of the year after the effective date of the amendatory act that added this section, the authority shall prepare and publish an annual financial report, and beginning July 1 of the year after the effective date of the amendatory act that added this section, the authority shall prepare and publish an annual report to the legislature on the authority's efforts to prevent automobile insurance fraud and cost savings that have resulted from those efforts.

(2) The annual report to the legislature required under subsection (1) must detail the automobile insurance fraud occurring in this state for the previous year, assess the impact of the fraud on rates charged for automobile insurance, summarize prevention programs, and outline allocations made by the authority. The members of the board, insurers, and the director shall cooperate in developing the report as requested by the authority and shall make available to the authority records and statistics concerning automobile insurance fraud, including the number of instances of suspected and confirmed insurance fraud, number of prosecutions and
convictions involving automobile insurance fraud, and automobile insurance fraud recidivism. The authority shall evaluate the impact automobile insurance fraud has on the citizens of this state and the costs incurred by the citizens through insurance, police enforcement, prosecution, and incarceration because of automobile insurance fraud. The authority shall submit the report to the legislature required by this section to the senate and house of representatives standing committees with primary jurisdiction over insurance issues and the director.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 7

of the 100th Legislature is enacted into law.