

SUBSTITUTE FOR  
HOUSE BILL NO. 5722

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 1001, 1005, 1007, 1010, 1015, 1017, and 1125  
(MCL 500.1001, 500.1005, 500.1007, 500.1010, 500.1015, 500.1017,  
and 500.1125), sections 1001, 1005, 1007, 1010, 1015, and 1017 as  
added by 1992 PA 182 and section 1125 as amended by 2000 PA 283,  
and by adding sections 1027, 1029, 1031, and 1033.

**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) "AUDIT COMMITTEE" MEANS A COMMITTEE OR EQUIVALENT BODY  
5 ESTABLISHED BY THE BOARD OF DIRECTORS OF AN ENTITY TO OVERSEE THE

1 ACCOUNTING AND FINANCIAL REPORTING PROCESSES AND AUDITS OF THE  
2 FINANCIAL STATEMENTS OF AN INSURER OR GROUP OF INSURERS. THE AUDIT  
3 COMMITTEE OF AN ENTITY THAT CONTROLS A GROUP OF INSURERS MAY BE THE  
4 AUDIT COMMITTEE FOR 1 OR MORE OF THESE CONTROLLED INSURERS SOLELY  
5 FOR THE PURPOSES OF COMPLIANCE WITH THIS CHAPTER AT THE ELECTION OF  
6 THE CONTROLLING PERSON AS PERMITTED IN SECTION 1027(6). IF AN AUDIT  
7 COMMITTEE IS NOT DESIGNATED BY AN INSURER, THE INSURER'S ENTIRE  
8 BOARD OF DIRECTORS SHALL CONSTITUTE THE AUDIT COMMITTEE.

9 (C) "GROUP OF INSURERS" MEANS THOSE LICENSED INSURERS INCLUDED  
10 IN THE REPORTING REQUIREMENTS OF CHAPTER 13, OR A SET OF INSURERS  
11 AS IDENTIFIED BY MANAGEMENT, FOR THE PURPOSE OF ASSESSING THE  
12 EFFECTIVENESS OF INTERNAL CONTROL OVER FINANCIAL REPORTING.

13 (D) "INDEMNIFICATION AGREEMENT" MEANS AN AGREEMENT OF  
14 INDEMNITY OR A RELEASE FROM LIABILITY WHERE THE INTENT OR EFFECT IS  
15 TO SHIFT OR LIMIT IN ANY MANNER THE POTENTIAL LIABILITY OF THE  
16 PERSON OR FIRM FOR FAILURE TO ADHERE TO APPLICABLE AUDITING OR  
17 PROFESSIONAL STANDARDS, WHETHER OR NOT RESULTING IN PART FROM  
18 KNOWING OF OTHER MISREPRESENTATIONS MADE BY THE INSURER OR ITS  
19 REPRESENTATIVES.

20 (E) "INDEPENDENT BOARD MEMBER" HAS THE SAME MEANING AS  
21 DESCRIBED IN SECTION 1027(4).

22 (F) ~~(b)~~ "Independent public accountant" means an independent  
23 certified public accountant or accounting firm in good standing  
24 with the American institute of certified public accountants and in  
25 good standing in all states in which they are licensed to practice.  
26 For Canadian and British companies, "independent public accountant"  
27 means a Canadian-chartered or British-chartered accountant.

1 (G) "INTERNAL CONTROL OVER FINANCIAL REPORTING" MEANS A  
2 PROCESS EFFECTED BY AN ENTITY'S BOARD OF DIRECTORS, MANAGEMENT, AND  
3 OTHER PERSONNEL DESIGNED TO PROVIDE REASONABLE ASSURANCE REGARDING  
4 THE RELIABILITY OF THE FINANCIAL STATEMENTS FILED WITH THE  
5 COMMISSIONER, AND INCLUDES THE FOLLOWING:

6 (i) POLICIES AND PROCEDURES PERTAINING TO THE MAINTENANCE OF  
7 RECORDS THAT, IN REASONABLE DETAIL, ACCURATELY AND FAIRLY REFLECT  
8 THE TRANSACTIONS AND DISPOSITIONS OF ASSETS.

9 (ii) POLICIES AND PROCEDURES PROVIDING REASONABLE ASSURANCE  
10 THAT TRANSACTIONS ARE RECORDED AS NECESSARY TO PERMIT PREPARATION  
11 OF THE FINANCIAL STATEMENTS FILED WITH THE COMMISSIONER AND THAT  
12 RECEIPTS AND EXPENDITURES ARE BEING MADE ONLY IN ACCORDANCE WITH  
13 AUTHORIZATIONS OF MANAGEMENT AND DIRECTORS.

14 (iii) POLICIES AND PROCEDURES PROVIDING REASONABLE ASSURANCE  
15 REGARDING PREVENTION OR TIMELY DETECTION OF UNAUTHORIZED  
16 ACQUISITION, USE, OR DISPOSITION OF ASSETS THAT COULD HAVE A  
17 MATERIAL EFFECT ON THE FINANCIAL STATEMENTS FILED WITH THE  
18 COMMISSIONER.

19 (H) "SEC" MEANS THE UNITED STATES SECURITIES AND EXCHANGE  
20 COMMISSION.

21 (I) "SECTION 404" MEANS SECTION 404 OF THE SARBANES-OXLEY ACT  
22 OF 2002 AND THE SEC'S RULES AND REGULATIONS PROMULGATED THEREUNDER.

23 (J) "SECTION 404 REPORT" MEANS MANAGEMENT'S REPORT ON  
24 "INTERNAL CONTROL OVER FINANCIAL REPORTING" AS DEFINED BY THE SEC  
25 AND THE RELATED ATTESTATION REPORT OF THE INDEPENDENT CERTIFIED  
26 PUBLIC ACCOUNTANT.

27 (K) "SOX COMPLIANT ENTITY" MEANS AN ENTITY THAT EITHER IS

1 REQUIRED TO BE COMPLIANT WITH, OR VOLUNTARILY IS COMPLIANT WITH,  
2 ALL OF THE FOLLOWING PROVISIONS OF THE SARBANES-OXLEY ACT OF 2002:

3 (i) THE PREAPPROVAL REQUIREMENTS OF SECTION 201, SECTION 10A(I)  
4 OF THE SECURITIES EXCHANGE ACT OF 1934.

5 (ii) THE AUDIT COMMITTEE INDEPENDENCE REQUIREMENTS OF SECTION  
6 301, SECTION 10A(M) (3) OF THE SECURITIES EXCHANGE ACT OF 1934.

7 (iii) THE INTERNAL CONTROL OVER FINANCIAL REPORTING REQUIREMENTS  
8 OF SECTION 404, ITEM 308 OF SEC REGULATION S-K.

9 Sec. 1005. (1) Each insurer authorized to do business in this  
10 state shall have an annual audit by an independent public  
11 accountant and shall file an audited financial report with the  
12 commissioner on or before June 1 for the immediately preceding  
13 calendar year. With 90 days' advance notice to the insurer, the  
14 commissioner may require an insurer to file an audited financial  
15 report earlier than June 1.

16 (2) Extensions of the June 1 filing date under subsection (1)  
17 may be granted by the commissioner for 30-day periods upon a  
18 showing by the insurer and its independent public accountant of the  
19 reasons for requesting the extension and upon a determination by  
20 the commissioner of good cause for an extension. The extension  
21 request shall be submitted in writing not less than 10 days prior  
22 to the due date and in sufficient detail to permit the commissioner  
23 to make an informed decision on the requested extension. **AN**  
24 **EXTENSION GRANTED UNDER THIS SUBSECTION SHALL INCLUDE A 30-DAY**  
25 **EXTENSION TO THE FILING OF MANAGEMENT'S REPORT OF INTERNAL CONTROL**  
26 **OVER FINANCIAL REPORTING.**

27 (3) EACH INSURER REQUIRED TO FILE AN ANNUAL AUDITED FINANCIAL

1 REPORT UNDER THIS CHAPTER SHALL DESIGNATE A GROUP OF INDIVIDUALS AS  
2 CONSTITUTING ITS AUDIT COMMITTEE. THE AUDIT COMMITTEE OF AN ENTITY  
3 THAT CONTROLS AN INSURER MAY BE THE INSURER'S AUDIT COMMITTEE FOR  
4 PURPOSES OF THIS CHAPTER AT THE ELECTION OF THE CONTROLLING PERSON.

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

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

13 (b) A balance sheet reporting admitted assets, liabilities,  
14 capital, and surplus.

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

16 (d) A statement of cash flows.

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

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

22 ~~—— (i) A ACCOUNTING PRACTICES PRESCRIBED BY THE COMMISSIONER. THE~~  
23 ~~NOTES SHALL INCLUDE A~~ reconciliation of differences, if any,  
24 between the audited financial statements and the annual statement  
25 filed pursuant to section 438 with a written description of the  
26 nature of these differences.

27 ~~—— (ii) A summary of ownership and relationships of the insurer~~

~~and all affiliated companies, including a disclosure of all significant intercompany transactions and balances.~~

(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.**

Sec. 1010. (1) The commissioner shall not recognize a person or firm as an independent public accountant unless that person or firm ~~is~~ **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**

**1 RELEASE FROM LIABILITY, WITH RESPECT TO THE INSURER'S AUDIT.**

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

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

15 (4) ~~(3)~~—An individual independent public accountant or a **LEAD**  
16 **partner HAVING PRIMARY RESPONSIBILITY FOR AN ANNUAL AUDIT** or other  
17 person responsible for rendering a report by an independent public  
18 accounting firm retained to conduct an annual audit under this  
19 chapter shall not act in that capacity for the same insurer for  
20 more than ~~7~~**5** consecutive years. Following such a ~~7-year~~**5-YEAR**  
21 period of service, the individual independent public accountant or  
22 partner or other responsible person for the accounting firm shall  
23 not conduct an annual audit under this chapter for the same insurer  
24 or its insurance subsidiaries or affiliates for a period of ~~2~~**5**  
25 years. An insurer may apply for relief from the commissioner from  
26 this rotation requirement on the basis of unusual circumstances.  
27 **THIS APPLICATION SHALL BE MADE AT LEAST 30 DAYS BEFORE THE END OF**

1 **THE CALENDAR YEAR.** The commissioner may consider the following  
2 factors in determining if relief should be granted:

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

6 (b) The insurer's premium volume.

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

9 (5) AN APPROVAL FOR RELIEF GRANTED UNDER SUBSECTION (4) SHALL  
10 BE FILED BY THE INSURER WITH ITS ANNUAL STATEMENT FILING WITH THE  
11 STATES THAT IT IS LICENSED IN OR DOING BUSINESS IN AND WITH THE  
12 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. IF THE NONDOMESTIC  
13 STATE ACCEPTS ELECTRONIC FILING WITH THE NATIONAL ASSOCIATION OF  
14 INSURANCE COMMISSIONERS, THE INSURER SHALL FILE THE APPROVAL IN AN  
15 ELECTRONIC FORMAT ACCEPTABLE TO THE NATIONAL ASSOCIATION OF  
16 INSURANCE COMMISSIONERS.

17 (6) ~~(4)~~—The commissioner shall not recognize as a qualified  
18 independent public accountant, or accept an annual audited  
19 financial report, prepared in whole or in part by an individual who  
20 has done any of the following:

21 (a) Been convicted of fraud, bribery, a violation of chapter  
22 96 of title 18 of the United States Code, 18 ~~U.S.C.~~ **USC** 1961 to  
23 1968, or any dishonest conduct or practices under federal or state  
24 law.

25 (b) Been found to have violated the insurance laws of this  
26 state with respect to any previous reports submitted under this  
27 chapter.



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

3 (7) THE COMMISSIONER SHALL NOT RECOGNIZE AS A QUALIFIED  
4 INDEPENDENT PUBLIC ACCOUNTANT, OR ACCEPT AN ANNUAL AUDITED  
5 FINANCIAL REPORT PREPARED IN WHOLE OR IN PART BY, AN INDIVIDUAL WHO  
6 PROVIDES TO AN INSURER, CONTEMPORANEOUSLY WITH THE AUDIT, ANY OF  
7 THE FOLLOWING NONAUDIT SERVICES:

8 (A) BOOKKEEPING OR OTHER SERVICES RELATED TO THE ACCOUNTING  
9 RECORDS OR FINANCIAL STATEMENTS OF THE INSURER.

10 (B) FINANCIAL INFORMATION SYSTEMS DESIGN AND IMPLEMENTATION.

11 (C) APPRAISAL OR VALUATION SERVICES, FAIRNESS OPINIONS, OR  
12 CONTRIBUTION-IN-KIND REPORTS.

13 (D) ACTUARIALLY ORIENTED ADVISORY SERVICES INVOLVING THE  
14 DETERMINATION OF AMOUNTS RECORDED IN THE FINANCIAL STATEMENTS. THE  
15 ACCOUNTANTS MAY ASSIST AN INSURER IN UNDERSTANDING THE METHODS,  
16 ASSUMPTIONS, AND INPUTS USED IN THE DETERMINATION OF AMOUNTS  
17 RECORDED IN THE FINANCIAL STATEMENTS ONLY IF IT IS REASONABLE TO  
18 CONCLUDE THAT THE SERVICES PROVIDED WILL NOT BE SUBJECT TO AUDIT  
19 PROCEDURES DURING AN AUDIT OF THE INSURER'S FINANCIAL STATEMENTS.  
20 AN ACCOUNTANT'S ACTUARY MAY ALSO ISSUE AN ACTUARIAL OPINION OR  
21 CERTIFICATION ON AN INSURER'S RESERVES IF ALL OF THE FOLLOWING  
22 CONDITIONS HAVE BEEN MET:

23 (i) NEITHER THE ACCOUNTANT NOR THE ACCOUNTANT'S ACTUARY HAS  
24 PERFORMED ANY MANAGEMENT FUNCTIONS OR MADE ANY MANAGEMENT  
25 DECISIONS.

26 (ii) THE INSURER HAS COMPETENT PERSONNEL OR ENGAGES A THIRD  
27 PARTY ACTUARY TO ESTIMATE THE RESERVES FOR WHICH MANAGEMENT TAKES

1 RESPONSIBILITY.

2 (iii) THE ACCOUNTANT'S ACTUARY TESTS THE REASONABLENESS OF THE  
3 RESERVES AFTER THE INSURER'S MANAGEMENT HAS DETERMINED THE AMOUNT  
4 OF THE RESERVES.

5 (E) INTERNAL AUDIT OUTSOURCING SERVICES.

6 (F) MANAGEMENT FUNCTIONS OR HUMAN RESOURCES.

7 (G) BROKER OR DEALER, INVESTMENT ADVISER, OR INVESTMENT  
8 BANKING SERVICES.

9 (H) LEGAL SERVICES OR EXPERT SERVICES UNRELATED TO THE AUDIT.

10 (I) ANY OTHER SERVICES THAT THE COMMISSIONER DETERMINES, BY  
11 ORDER OR REGULATION, ARE IMPERMISSIBLE.

12 (8) TO BE A QUALIFIED INDEPENDENT PUBLIC ACCOUNTANT, THE  
13 ACCOUNTANT SHALL NOT FUNCTION IN THE ROLE OF MANAGEMENT, SHALL NOT  
14 AUDIT HIS OR HER OWN WORK, AND SHALL NOT SERVE IN AN ADVOCACY ROLE  
15 FOR THE INSURER.

16 (9) ~~(5)~~ The commissioner may hold a public hearing pursuant to  
17 the administrative procedures act of 1969, ~~Act No. 306 of the~~  
18 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~  
19 ~~Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328, to~~  
20 determine whether a certified public accountant is qualified. After  
21 considering the evidence presented, the commissioner may rule that  
22 the accountant is not qualified for purposes of expressing his or  
23 her opinion on the financial statements in the annual audited  
24 financial report made pursuant to this chapter and may require the  
25 insurer to replace the accountant with another whose relationship  
26 with the insurer is qualified within the meaning of this chapter.

27 (10) INSURERS HAVING DIRECT WRITTEN AND ASSUMED PREMIUMS OF

1 LESS THAN \$100,000,000.00 IN ANY CALENDAR YEAR MAY REQUEST AN  
2 EXEMPTION FROM SUBSECTION (7). AN INSURER REQUESTING AN EXEMPTION  
3 SHALL FILE WITH THE COMMISSIONER A WRITTEN STATEMENT DISCUSSING THE  
4 REASONS WHY THE INSURER SHOULD BE EXEMPT. THE COMMISSIONER SHALL  
5 GRANT THE EXEMPTION IF AFTER REVIEW OF THE STATEMENT THE  
6 COMMISSIONER FINDS THAT COMPLIANCE WITH SUBSECTION (7) WOULD  
7 CONSTITUTE A FINANCIAL OR ORGANIZATIONAL HARDSHIP UPON THE INSURER.

8 (11) A QUALIFIED INDEPENDENT PUBLIC ACCOUNTANT WHO PERFORMS AN  
9 AUDIT UNDER THIS CHAPTER MAY ENGAGE IN OTHER NONAUDIT SERVICES,  
10 INCLUDING TAX SERVICES, THAT ARE NOT DESCRIBED IN SUBSECTION (7)  
11 AND THAT DO NOT CONFLICT WITH SUBSECTION (8), ONLY IF THE ACTIVITY  
12 IS APPROVED IN ADVANCE BY THE AUDIT COMMITTEE AS PROVIDED IN  
13 SUBSECTION (12).

14 (12) ALL AUDITING SERVICES AND NONAUDIT SERVICES PROVIDED TO  
15 AN INSURER BY A QUALIFIED INDEPENDENT PUBLIC ACCOUNTANT OF THE  
16 INSURER SHALL BE PREAPPROVED BY THE AUDIT COMMITTEE. THE  
17 PREAPPROVAL REQUIREMENT IS WAIVED WITH RESPECT TO NONAUDIT SERVICES  
18 IN EITHER OF THE FOLLOWING CASES:

19 (A) IF THE INSURER IS A SOX COMPLIANT ENTITY OR A DIRECT OR  
20 INDIRECT WHOLLY-OWNED SUBSIDIARY OF A SOX COMPLIANT ENTITY.

21 (B) IF THE AGGREGATE AMOUNT OF ALL SUCH NONAUDIT SERVICES  
22 PROVIDED TO THE INSURER CONSTITUTES NOT MORE THAN 5% OF THE TOTAL  
23 AMOUNT OF FEES PAID BY THE INSURER TO ITS QUALIFIED INDEPENDENT  
24 PUBLIC ACCOUNTANT DURING THE FISCAL YEAR IN WHICH THE NONAUDIT  
25 SERVICES ARE PROVIDED, THE SERVICES WERE NOT RECOGNIZED BY THE  
26 INSURER AT THE TIME OF THE ENGAGEMENT TO BE NONAUDIT SERVICES, AND  
27 THE SERVICES ARE PROMPTLY BROUGHT TO THE ATTENTION OF THE AUDIT

1 COMMITTEE AND APPROVED PRIOR TO THE COMPLETION OF THE AUDIT BY THE  
2 AUDIT COMMITTEE OR BY 1 OR MORE MEMBERS OF THE AUDIT COMMITTEE WHO  
3 ARE THE MEMBERS OF THE BOARD OF DIRECTORS TO WHOM AUTHORITY TO  
4 GRANT SUCH APPROVALS HAS BEEN DELEGATED BY THE AUDIT COMMITTEE.

5 (13) THE AUDIT COMMITTEE MAY DELEGATE TO 1 OR MORE DESIGNATED  
6 MEMBERS OF THE AUDIT COMMITTEE THE AUTHORITY TO GRANT THE  
7 PREAPPROVALS REQUIRED BY SUBSECTION (12). THE DECISIONS OF ANY  
8 MEMBER TO WHOM THIS AUTHORITY IS DELEGATED SHALL BE PRESENTED TO  
9 THE FULL AUDIT COMMITTEE AT EACH OF ITS SCHEDULED MEETINGS.

10 (14) THE COMMISSIONER SHALL NOT RECOGNIZE AN INDEPENDENT  
11 PUBLIC ACCOUNTANT AS QUALIFIED FOR A PARTICULAR INSURER IF A MEMBER  
12 OF THE BOARD, PRESIDENT, CHIEF EXECUTIVE OFFICER, CONTROLLER, CHIEF  
13 FINANCIAL OFFICER, CHIEF ACCOUNTING OFFICER, OR ANY PERSON SERVING  
14 IN AN EQUIVALENT POSITION FOR THAT INSURER WAS EMPLOYED BY THE  
15 INDEPENDENT PUBLIC ACCOUNTANT AND PARTICIPATED IN THE AUDIT OF THAT  
16 INSURER DURING THE 1-YEAR PERIOD PRECEDING THE DATE THAT THE MOST  
17 CURRENT STATUTORY OPINION IS DUE. THIS SUBSECTION ONLY APPLIES TO  
18 PARTNERS AND SENIOR MANAGERS INVOLVED IN THE AUDIT. AN INSURER MAY  
19 REQUEST RELIEF FROM THIS SUBSECTION BY FILING A REQUEST WITH THE  
20 COMMISSIONER 30 DAYS PRIOR TO THE END OF THE CALENDAR YEAR FOR THE  
21 AUDIT IN A MANNER PRESCRIBED BY THE COMMISSIONER SHOWING THE  
22 UNUSUAL CIRCUMSTANCES THAT SUPPORT THE NEED FOR RELIEF FROM THIS  
23 SUBSECTION. AN APPROVAL FOR RELIEF GRANTED BY THE COMMISSIONER  
24 UNDER THIS SUBSECTION SHALL BE FILED BY THE INSURER WITH ITS ANNUAL  
25 STATEMENT FILING WITH THE STATES THAT IT IS LICENSED IN OR DOING  
26 BUSINESS IN AND WITH THE NATIONAL ASSOCIATION OF INSURANCE  
27 COMMISSIONERS. IF THE NONDOMESTIC STATE ACCEPTS ELECTRONIC FILING

1 WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, THE  
2 INSURER SHALL FILE THE APPROVAL IN AN ELECTRONIC FORMAT ACCEPTABLE  
3 TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

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

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

24 (3) IF AFTER THE DATE OF THE AUDITED FINANCIAL REPORT FILED  
25 PURSUANT TO THIS CHAPTER THE ACCOUNTANT BECOMES AWARE OF FACTS THAT  
26 MIGHT HAVE AFFECTED HIS OR HER REPORT, THE ACCOUNTANT SHALL TAKE  
27 ACTION AS PRESCRIBED BY THE PROFESSIONAL STANDARDS OF THE AMERICAN

1 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.

2 Sec. 1017. (1) The independent public accountant shall  
3 communicate ~~significant deficiencies~~ **IN WRITING TO THE COMMISSIONER**  
4 **ANY UNREMIEDIATED MATERIAL WEAKNESSES** in the insurer's internal  
5 ~~control structure, known as reportable conditions, noted during a~~  
6 ~~financial statement audit to the appropriate parties within an~~  
7 ~~insurer. If the independent public accountant does not identify~~  
8 ~~significant deficiencies in the insurer's internal control~~  
9 ~~structure, a report shall not be issued.~~ **CONTROLS OVER FINANCIAL**  
10 **REPORTING NOTED DURING THE AUDIT. THIS COMMUNICATION SHALL BE**  
11 **PREPARED BY THE ACCOUNTANT WITHIN 60 DAYS AFTER THE FILING OF THE**  
12 **ANNUAL AUDITED FINANCIAL REPORT AND SHALL CONTAIN A DESCRIPTION OF**  
13 **ANY UNREMIEDIATED MATERIAL WEAKNESSES, AS OF THE DECEMBER 31**  
14 **IMMEDIATELY PRECEDING, IN THE INSURER'S INTERNAL CONTROL OVER**  
15 **FINANCIAL REPORTING NOTED BY THE ACCOUNTANT DURING THE COURSE OF**  
16 **HIS OR HER AUDIT OF THE FINANCIAL STATEMENTS. THE COMMUNICATION**  
17 **SHALL ALSO STATE IF NO UNREMIEDIATED MATERIAL WEAKNESSES WERE NOTED.**

18 ~~—— (2) In addition to the annual audited financial statements,~~  
19 ~~each insurer shall furnish the commissioner with the written report~~  
20 ~~prepared by the independent public accountant describing~~  
21 ~~significant deficiencies in the insurer's internal control~~  
22 ~~structure noted by the independent public accountant during the~~  
23 ~~audit. If significant deficiencies are noted, the written report~~  
24 ~~shall be filed by the insurer with the commissioner within 60 days~~  
25 ~~after the filing of the annual audited financial statements. The~~  
26 ~~insurer shall provide a description of remedial actions taken or~~  
27 ~~proposed to correct significant deficiencies, if such actions are~~

1 ~~not described in the independent public accountant's report.~~

2 (2) THE INSURER SHALL PROVIDE TO THE COMMISSIONER A  
3 DESCRIPTION OF REMEDIAL ACTIONS TAKEN OR PROPOSED TO CORRECT  
4 UNREMEDIED MATERIAL WEAKNESSES, IF THE ACTIONS TAKEN OR PROPOSED  
5 ARE NOT DESCRIBED IN THE ACCOUNTANT'S COMMUNICATION.

6 SEC. 1027. (1) THIS SECTION APPLIES TO A DOMESTIC INSURER THAT  
7 IS NOT A SOX COMPLIANT ENTITY. A DOMESTIC INSURER THAT IS A DIRECT  
8 OR INDIRECT SUBSIDIARY OF A SOX COMPLIANT ENTITY IS CONSIDERED TO  
9 BE A SOX COMPLIANT ENTITY FOR PURPOSES OF THIS SECTION.

10 (2) THE AUDIT COMMITTEE SHALL BE DIRECTLY RESPONSIBLE FOR THE  
11 APPOINTMENT, COMPENSATION, AND OVERSIGHT OF THE WORK OF ANY  
12 ACCOUNTANT, INCLUDING RESOLUTION OF DISAGREEMENTS BETWEEN  
13 MANAGEMENT AND THE ACCOUNTANT REGARDING FINANCIAL REPORTING, FOR  
14 THE PURPOSE OF PREPARING OR ISSUING THE AUDITED FINANCIAL REPORT OR  
15 RELATED WORK PURSUANT TO THIS CHAPTER. EACH ACCOUNTANT SHALL REPORT  
16 DIRECTLY TO THE AUDIT COMMITTEE.

17 (3) EACH MEMBER OF THE AUDIT COMMITTEE SHALL BE A MEMBER OF  
18 THE BOARD OF DIRECTORS OF THE INSURER OR A MEMBER OF THE BOARD OF  
19 DIRECTORS OF AN ENTITY ELECTED PURSUANT TO SUBSECTION (6).

20 (4) TO BE CONSIDERED INDEPENDENT FOR PURPOSES OF THIS SECTION,  
21 A MEMBER OF THE AUDIT COMMITTEE SHALL NOT, OTHER THAN IN HIS OR HER  
22 CAPACITY AS A MEMBER OF THE AUDIT COMMITTEE, THE BOARD OF  
23 DIRECTORS, OR ANY OTHER BOARD COMMITTEE, ACCEPT ANY CONSULTING,  
24 ADVISORY, OR OTHER COMPENSATORY FEE FROM THE ENTITY AUDITED OR BE  
25 AN AFFILIATED PERSON OF THE ENTITY OR SUBSIDIARY AUDITED, UNLESS  
26 THE INDIVIDUAL SERVES ON THE BOARD TO MEET ANOTHER STATUTORY  
27 REQUIREMENT RELATED TO THE COMPOSITION OF THE BOARD. HOWEVER, IN NO

1 CASE CAN THE INDEPENDENT AUDIT COMMITTEE MEMBER BE AN OFFICER OR  
2 EMPLOYEE OF THE INSURER OR 1 OF ITS AFFILIATES.

3 (5) IF A MEMBER OF THE AUDIT COMMITTEE CEASES TO BE  
4 INDEPENDENT FOR REASONS OUTSIDE THE MEMBER'S REASONABLE CONTROL,  
5 THAT PERSON, WITH NOTICE BY THE RESPONSIBLE ENTITY TO THE STATE,  
6 MAY REMAIN AN AUDIT COMMITTEE MEMBER OF THE RESPONSIBLE ENTITY  
7 UNTIL THE EARLIER OF THE NEXT ANNUAL MEETING OF THE RESPONSIBLE  
8 ENTITY OR 1 YEAR FROM THE OCCURRENCE OF THE EVENT THAT CAUSED THE  
9 MEMBER TO BE NO LONGER INDEPENDENT.

10 (6) TO EXERCISE THE ELECTION OF THE CONTROLLING PERSON TO  
11 DESIGNATE THE AUDIT COMMITTEE FOR PURPOSES OF THIS SECTION, THE  
12 ULTIMATE CONTROLLING PERSON SHALL PROVIDE WRITTEN NOTICE TO THE  
13 COMMISSIONER. NOTIFICATION SHALL BE MADE TIMELY PRIOR TO THE  
14 ISSUANCE OF THE STATUTORY AUDIT REPORT AND INCLUDE A DESCRIPTION OF  
15 THE BASIS FOR THE ELECTION. THE ELECTION CAN BE CHANGED THROUGH  
16 NOTICE TO THE COMMISSIONER BY THE INSURER, WHICH SHALL INCLUDE A  
17 DESCRIPTION OF THE BASIS FOR THE CHANGE. THE ELECTION SHALL REMAIN  
18 IN EFFECT UNTIL RESCINDED.

19 (7) THE AUDIT COMMITTEE SHALL REQUIRE THE ACCOUNTANT THAT  
20 PERFORMS FOR AN INSURER ANY AUDIT REQUIRED BY THIS CHAPTER TO  
21 TIMELY REPORT TO THE AUDIT COMMITTEE IN ACCORDANCE WITH THE  
22 REQUIREMENTS OF SAS 61, COMMUNICATION WITH AUDIT COMMITTEES, OR A  
23 SUBSTANTIALLY SIMILAR REPLACEMENT PUBLICATION AS REQUIRED BY THE  
24 COMMISSIONER, INCLUDING ALL OF THE FOLLOWING:

25 (A) ALL SIGNIFICANT ACCOUNTING POLICIES AND MATERIAL PERMITTED  
26 PRACTICES.

27 (B) ALL MATERIAL ALTERNATIVE TREATMENTS OF FINANCIAL



1 INFORMATION WITHIN STATUTORY ACCOUNTING PRINCIPLES THAT HAVE BEEN  
2 DISCUSSED WITH MANAGEMENT OFFICIALS OF THE INSURER, RAMIFICATIONS  
3 OF THE USE OF THE ALTERNATIVE DISCLOSURES AND TREATMENTS, AND THE  
4 TREATMENT PREFERRED BY THE ACCOUNTANT.

5 (C) OTHER MATERIAL WRITTEN COMMUNICATIONS BETWEEN THE  
6 ACCOUNTANT AND THE MANAGEMENT OF THE INSURER, SUCH AS ANY  
7 MANAGEMENT LETTER OR SCHEDULE OF UNADJUSTED DIFFERENCES.

8 (8) IF AN INSURER IS A MEMBER OF AN INSURANCE HOLDING COMPANY  
9 SYSTEM, THE REPORTS REQUIRED BY SUBSECTION (7) MAY BE PROVIDED TO  
10 THE AUDIT COMMITTEE ON AN AGGREGATE BASIS FOR INSURERS IN THE  
11 HOLDING COMPANY SYSTEM, PROVIDED THAT ANY SUBSTANTIAL DIFFERENCES  
12 AMONG INSURERS IN THE SYSTEM ARE IDENTIFIED TO THE AUDIT COMMITTEE.

13 (9) ALL INSURERS ARE ENCOURAGED TO STRUCTURE THEIR AUDIT  
14 COMMITTEES WITH AT LEAST A SUPERMAJORITY OF INDEPENDENT COMMITTEE  
15 MEMBERS. AN INSURER WITH \$300,000,000.01 OR LESS OF DIRECT WRITTEN  
16 AND ASSUMED PREMIUMS IN THE PRIOR CALENDAR YEAR IS NOT REQUIRED TO  
17 HAVE INDEPENDENT AUDIT COMMITTEE MEMBERS. AN INSURER WITH OVER  
18 \$300,000,000.00 BUT \$500,000,000.00 OR LESS OF DIRECT WRITTEN AND  
19 ASSUMED PREMIUMS IN THE PRIOR CALENDAR YEAR SHALL HAVE 50% OR MORE  
20 OF ITS AUDIT COMMITTEE MEMBERS BE INDEPENDENT. AN INSURER WITH OVER  
21 \$500,000,000.00 OF DIRECT WRITTEN AND ASSUMED PREMIUMS IN THE PRIOR  
22 CALENDAR YEAR SHALL HAVE 75% OR MORE OF ITS AUDIT COMMITTEE MEMBERS  
23 BE INDEPENDENT. AS USED IN THIS SECTION, "DIRECT WRITTEN AND  
24 ASSUMED PREMIUMS" IS THE COMBINED TOTAL OF DIRECT PREMIUMS AND  
25 ASSUMED PREMIUMS FROM NONAFFILIATES FOR THE REPORTING ENTITIES.

26 (10) THE COMMISSIONER MAY REQUIRE AN ENTITY'S BOARD TO ENACT  
27 IMPROVEMENTS TO THE INDEPENDENCE OF THE AUDIT COMMITTEE MEMBERSHIP

1 IF THE INSURER IS IN A RISK-BASED CAPITAL ACTION LEVEL EVENT, MEETS  
2 1 OR MORE OF THE STANDARDS LISTED IN CHAPTER 4 OF AN INSURER  
3 CONSIDERED TO BE IN HAZARDOUS FINANCIAL CONDITION, OR OTHERWISE  
4 EXHIBITS SIGNS OF A TROUBLED INSURER.

5 (11) AN INSURER WITH DIRECT WRITTEN AND ASSUMED PREMIUM,  
6 EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE  
7 CORPORATION AND FEDERAL FLOOD PROGRAM, OF LESS THAN \$500,000,000.00  
8 MAY APPLY TO THE COMMISSIONER FOR A WAIVER FROM THIS SECTION BASED  
9 UPON HARDSHIP. THE INSURER SHALL FILE, WITH ITS ANNUAL STATEMENT  
10 FILING, THE APPROVAL FOR RELIEF FROM THIS SECTION GRANTED BY THE  
11 COMMISSIONER WITH THE STATES THAT IT IS LICENSED IN OR DOING  
12 BUSINESS IN AND WITH THE NATIONAL ASSOCIATION OF INSURANCE  
13 COMMISSIONERS. IF THE NONDOMESTIC STATE ACCEPTS ELECTRONIC FILING  
14 WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, THE  
15 INSURER SHALL FILE THE APPROVAL IN AN ELECTRONIC FORMAT ACCEPTABLE  
16 TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

17 (12) THIS SECTION TAKES EFFECT JANUARY 1, 2010. AN INSURER OR  
18 GROUP OF INSURERS THAT IS NOT REQUIRED TO HAVE INDEPENDENT AUDIT  
19 COMMITTEE MEMBERS OR ONLY 50% INDEPENDENT AUDIT COMMITTEE MEMBERS  
20 BECAUSE THE TOTAL WRITTEN AND ASSUMED PREMIUM IS BELOW THE REQUIRED  
21 THRESHOLD IN SUBSECTION (9) AND SUBSEQUENTLY BECOMES SUBJECT TO 1  
22 OF THE INDEPENDENCE REQUIREMENTS DUE TO CHANGES IN PREMIUM, WHETHER  
23 THROUGH BUSINESS COMBINATION OR NOT, SHALL HAVE 1 YEAR AFTER THE  
24 YEAR THE THRESHOLD IS EXCEEDED TO COMPLY WITH THE INDEPENDENCE  
25 REQUIREMENTS OF SUBSECTION (9).

26 SEC. 1029. (1) A DIRECTOR OR OFFICER OF AN INSURER SHALL NOT  
27 DIRECTLY OR INDIRECTLY DO EITHER OF THE FOLLOWING:

1 (A) MAKE OR CAUSE TO BE MADE A MATERIALLY FALSE OR MISLEADING  
2 STATEMENT TO AN ACCOUNTANT IN CONNECTION WITH ANY AUDIT, REVIEW, OR  
3 COMMUNICATION REQUIRED UNDER THIS CHAPTER.

4 (B) OMIT TO STATE, OR CAUSE ANOTHER PERSON TO OMIT TO STATE,  
5 ANY MATERIAL FACT NECESSARY IN ORDER TO MAKE STATEMENTS MADE, IN  
6 LIGHT OF THE CIRCUMSTANCES UNDER WHICH THE STATEMENTS WERE MADE,  
7 NOT MISLEADING TO AN ACCOUNTANT IN CONNECTION WITH ANY AUDIT,  
8 REVIEW, OR COMMUNICATION REQUIRED UNDER THIS CHAPTER.

9 (2) A DIRECTOR OR OFFICER OF AN INSURER, OR ANY OTHER PERSON  
10 ACTING UNDER THE DIRECTION THEREOF, SHALL NOT DIRECTLY OR  
11 INDIRECTLY TAKE ANY ACTION TO COERCE, MANIPULATE, MISLEAD, OR  
12 FRAUDULENTLY INFLUENCE ANY ACCOUNTANT ENGAGED IN THE PERFORMANCE OF  
13 AN AUDIT UNDER THIS CHAPTER IF THAT PERSON KNEW OR SHOULD HAVE  
14 KNOWN THAT THE ACTION, IF SUCCESSFUL, COULD RESULT IN RENDERING THE  
15 INSURER'S FINANCIAL STATEMENTS MATERIALLY MISLEADING. ACTIONS THAT,  
16 IF SUCCESSFUL, COULD RESULT IN RENDERING THE INSURER'S FINANCIAL  
17 STATEMENTS MATERIALLY MISLEADING INCLUDE, BUT ARE NOT LIMITED TO,  
18 ACTIONS TAKEN AT ANY TIME WITH RESPECT TO THE PROFESSIONAL  
19 ENGAGEMENT PERIOD TO COERCE, MANIPULATE, MISLEAD, OR FRAUDULENTLY  
20 INFLUENCE AN ACCOUNTANT TO DO ANY OF THE FOLLOWING:

21 (A) TO ISSUE OR REISSUE A REPORT ON AN INSURER'S FINANCIAL  
22 STATEMENTS THAT IS NOT WARRANTED UNDER THE CIRCUMSTANCES DUE TO  
23 MATERIAL VIOLATIONS OF STATUTORY ACCOUNTING PRINCIPLES PRESCRIBED  
24 BY THE COMMISSIONER, GENERALLY ACCEPTED AUDITING STANDARDS, OR  
25 OTHER PROFESSIONAL OR REGULATORY STANDARDS.

26 (B) NOT TO PERFORM AUDIT, REVIEW, OR OTHER PROCEDURES REQUIRED  
27 BY GENERALLY ACCEPTED AUDITING STANDARDS OR OTHER PROFESSIONAL

1 STANDARDS.

2 (C) NOT TO WITHDRAW AN ISSUED REPORT.

3 (D) NOT TO COMMUNICATE MATTERS TO AN INSURER'S AUDIT  
4 COMMITTEE.

5 SEC. 1031. (1) EVERY INSURER REQUIRED TO FILE AN AUDITED  
6 FINANCIAL REPORT PURSUANT TO THIS CHAPTER THAT HAS ANNUAL DIRECT  
7 WRITTEN AND ASSUMED PREMIUMS, EXCLUDING PREMIUMS REINSURED WITH THE  
8 FEDERAL CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM, OF  
9 \$500,000,000.00 OR MORE SHALL PREPARE A REPORT OF THE INSURER'S OR  
10 GROUP OF INSURERS' INTERNAL CONTROL OVER FINANCIAL REPORTING, WHICH  
11 SHALL BE AS OF THE IMMEDIATELY PRECEDING DECEMBER 31. THE REPORT  
12 SHALL BE FILED WITH THE COMMISSIONER ALONG WITH THE COMMUNICATION  
13 OF INTERNAL CONTROL RELATED MATTERS NOTED IN AN AUDIT DESCRIBED  
14 UNDER SECTION 1017.

15 (2) NOTWITHSTANDING THE PREMIUM THRESHOLD IN SUBSECTION (1),  
16 THE COMMISSIONER MAY REQUIRE AN INSURER TO FILE A REPORT OF  
17 INTERNAL CONTROL OVER FINANCIAL REPORTING IF THE INSURER IS IN A  
18 RISK-BASED CAPITAL LEVEL EVENT OR MEETS 1 OR MORE OF THE STANDARDS  
19 LISTED IN CHAPTER 4 OF AN INSURER CONSIDERED TO BE IN HAZARDOUS  
20 FINANCIAL CONDITION, OR OTHERWISE EXHIBITS SIGNS OF A TROUBLED  
21 INSURER.

22 (3) AN INSURER OR A GROUP OF INSURERS THAT IS DIRECTLY SUBJECT  
23 TO SECTION 404, PART OF A HOLDING COMPANY SYSTEM WHOSE PARENT IS  
24 DIRECTLY SUBJECT TO SECTION 404, NOT DIRECTLY SUBJECT TO SECTION  
25 404 BUT IS A SOX COMPLIANT ENTITY, OR A MEMBER OF A HOLDING COMPANY  
26 SYSTEM WHOSE PARENT IS NOT DIRECTLY SUBJECT TO SECTION 404 BUT IS A  
27 SOX COMPLIANT ENTITY MAY FILE ITS OR ITS PARENT'S SECTION 404

1 REPORT AND AN ADDENDUM IN SATISFACTION OF THE REQUIREMENTS OF THIS  
2 SECTION PROVIDED THAT THOSE INTERNAL CONTROLS OF THE INSURER OR  
3 GROUP OF INSURERS HAVING A MATERIAL IMPACT ON THE PREPARATION OF  
4 THE INSURER'S OR GROUP OF INSURERS' AUDITED STATUTORY FINANCIAL  
5 STATEMENTS AS REQUIRED IN SECTION 1007 WERE INCLUDED IN THE SCOPE  
6 OF THE SECTION 404 REPORT. THE ADDENDUM SHALL BE A POSITIVE  
7 STATEMENT BY MANAGEMENT THAT THERE ARE NO MATERIAL PROCESSES WITH  
8 RESPECT TO THE PREPARATION OF THE INSURER'S OR GROUP OF INSURERS'  
9 AUDITED STATUTORY FINANCIAL STATEMENTS AS REQUIRED IN SECTION 1007  
10 EXCLUDED FROM THE SECTION 404 REPORT. IF THERE ARE INTERNAL  
11 CONTROLS OF THE INSURER OR GROUP OF INSURERS THAT HAVE A MATERIAL  
12 IMPACT ON THE PREPARATION OF THE INSURER'S OR GROUP OF INSURERS'  
13 AUDITED STATUTORY FINANCIAL STATEMENTS AND THOSE INTERNAL CONTROLS  
14 WERE NOT INCLUDED IN THE SCOPE OF THE SECTION 404 REPORT, THE  
15 INSURER OR GROUP OF INSURERS MAY EITHER FILE A REPORT AS SPECIFIED  
16 IN SUBSECTION (1), OR THE SECTION 404 REPORT AND A REPORT AS  
17 SPECIFIED IN SUBSECTION (1) FOR THOSE INTERNAL CONTROLS THAT HAVE A  
18 MATERIAL IMPACT ON THE PREPARATION OF THE INSURER'S OR GROUP OF  
19 INSURERS' AUDITED STATUTORY FINANCIAL STATEMENTS NOT COVERED BY THE  
20 SECTION 404 REPORT.

21 (4) THE REPORT OF INTERNAL CONTROL OVER FINANCIAL REPORTING  
22 SHALL INCLUDE ALL OF THE FOLLOWING:

23 (A) A STATEMENT THAT MANAGEMENT IS RESPONSIBLE FOR  
24 ESTABLISHING AND MAINTAINING ADEQUATE INTERNAL CONTROL OVER  
25 FINANCIAL REPORTING.

26 (B) A STATEMENT THAT MANAGEMENT HAS ESTABLISHED INTERNAL  
27 CONTROL OVER FINANCIAL REPORTING AND AN ASSERTION, TO THE BEST OF

1 MANAGEMENT'S KNOWLEDGE AND BELIEF, AFTER DILIGENT INQUIRY, AS TO  
2 WHETHER ITS INTERNAL CONTROL OVER FINANCIAL REPORTING IS EFFECTIVE  
3 TO PROVIDE REASONABLE ASSURANCE REGARDING THE RELIABILITY OF  
4 FINANCIAL STATEMENTS IN ACCORDANCE WITH STATUTORY ACCOUNTING  
5 PRINCIPLES.

6 (C) A STATEMENT THAT BRIEFLY DESCRIBES THE APPROACH OR  
7 PROCESSES BY WHICH MANAGEMENT EVALUATED THE EFFECTIVENESS OF ITS  
8 INTERNAL CONTROL OVER FINANCIAL REPORTING.

9 (D) A STATEMENT THAT BRIEFLY DESCRIBES THE SCOPE OF WORK THAT  
10 IS INCLUDED AND WHETHER ANY INTERNAL CONTROLS WERE EXCLUDED.

11 (E) DISCLOSURE OF ANY UNREMIEDIATED MATERIAL WEAKNESSES IN THE  
12 INTERNAL CONTROL OVER FINANCIAL REPORTING IDENTIFIED BY MANAGEMENT  
13 AS OF THE IMMEDIATELY PRECEDING DECEMBER 31. MANAGEMENT SHALL NOT  
14 CONCLUDE THAT THE INTERNAL CONTROL OVER FINANCIAL REPORTING IS  
15 EFFECTIVE TO PROVIDE REASONABLE ASSURANCE REGARDING THE RELIABILITY  
16 OF FINANCIAL STATEMENTS IN ACCORDANCE WITH STATUTORY ACCOUNTING  
17 PRINCIPLES IF THERE IS 1 OR MORE UNREMIEDIATED MATERIAL WEAKNESSES  
18 IN ITS INTERNAL CONTROL OVER FINANCIAL REPORTING.

19 (F) A STATEMENT REGARDING THE INHERENT LIMITATIONS OF INTERNAL  
20 CONTROL SYSTEMS.

21 (G) SIGNATURES OF THE CHIEF EXECUTIVE OFFICER AND THE CHIEF  
22 FINANCIAL OFFICER OR HIS OR HER EQUIVALENT.

23 (5) MANAGEMENT SHALL DOCUMENT AND MAKE AVAILABLE UPON  
24 FINANCIAL CONDITION EXAMINATION THE BASIS UPON WHICH ITS  
25 ASSERTIONS, REQUIRED IN SUBSECTION (4), ARE MADE. MANAGEMENT MAY  
26 BASE ITS ASSERTIONS, IN PART, UPON ITS REVIEW, MONITORING, AND  
27 TESTING OF INTERNAL CONTROLS UNDERTAKEN IN THE NORMAL COURSE OF ITS

1 ACTIVITIES. MANAGEMENT HAS DISCRETION AS TO THE NATURE OF THE  
2 INTERNAL CONTROL FRAMEWORK USED, AND THE NATURE AND EXTENT OF  
3 DOCUMENTATION, IN ORDER TO MAKE ITS ASSERTION IN A COST-EFFECTIVE  
4 MANNER AND, AS SUCH, MAY INCLUDE ASSEMBLY OF OR REFERENCE TO  
5 EXISTING DOCUMENTATION.

6 (6) THE OFFICE OF FINANCIAL AND INSURANCE REGULATION SHALL  
7 KEEP CONFIDENTIAL THE REPORT ON INTERNAL CONTROL OVER FINANCIAL  
8 REPORTING, REQUIRED BY SUBSECTION (1), AND ANY DOCUMENTATION  
9 PROVIDED IN SUPPORT THEREOF DURING THE COURSE OF A FINANCIAL  
10 CONDITION EXAMINATION.

11 (7) THIS SECTION TAKES EFFECT BEGINNING WITH THE REPORTING  
12 PERIOD THAT ENDS DECEMBER 31, 2010. AN INSURER OR GROUP OF INSURERS  
13 THAT IS NOT REQUIRED TO FILE A REPORT BECAUSE THE TOTAL WRITTEN  
14 PREMIUM IS BELOW THE REQUIRED THRESHOLD AND SUBSEQUENTLY BECOMES  
15 SUBJECT TO THE REPORTING REQUIREMENT, WHETHER THROUGH BUSINESS  
16 COMBINATION OR NOT, SHALL HAVE 2 YEARS AFTER THE YEAR THE THRESHOLD  
17 IS EXCEEDED TO COMPLY WITH THIS SECTION'S REPORTING REQUIREMENTS.

18 SEC. 1033. UPON WRITTEN APPLICATION OF ANY INSURER, THE  
19 COMMISSIONER MAY GRANT AN EXEMPTION FROM COMPLIANCE WITH ANY OR ALL  
20 PROVISIONS OF THIS CHAPTER IF THE COMMISSIONER FINDS, UPON REVIEW  
21 OF THE APPLICATION, THAT COMPLIANCE WITH THIS CHAPTER WOULD  
22 CONSTITUTE A FINANCIAL OR ORGANIZATIONAL HARDSHIP UPON THE INSURER.  
23 AN EXEMPTION MAY BE GRANTED AT ANY TIME AND FROM TIME TO TIME FOR A  
24 SPECIFIED PERIOD OR PERIODS. AN EXEMPTION GRANTED UNDER THIS  
25 SECTION SHALL BE FILED BY THE INSURER WITH THE STATES THAT IT IS  
26 LICENSED IN OR DOING BUSINESS IN AND WITH THE NATIONAL ASSOCIATION  
27 OF INSURANCE COMMISSIONERS. IF THE NONDOMESTIC STATE ACCEPTS

1 ELECTRONIC FILING WITH THE NATIONAL ASSOCIATION OF INSURANCE  
2 COMMISSIONERS, THE INSURER SHALL FILE THE APPROVAL IN AN ELECTRONIC  
3 FORMAT ACCEPTABLE TO THE NATIONAL ASSOCIATION OF INSURANCE  
4 COMMISSIONERS. WITHIN 10 DAYS FROM A DENIAL OF AN INSURER'S WRITTEN  
5 REQUEST FOR AN EXEMPTION FROM THIS CHAPTER, THE INSURER MAY REQUEST  
6 IN WRITING A HEARING ON ITS APPLICATION FOR AN EXEMPTION. THE  
7 HEARING SHALL BE HELD PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT  
8 OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

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

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

22 (3) Except for facultative certificates duly executed by a  
23 property and casualty reinsurer or its duly appointed agent, a  
24 reinsurance agreement shall contain ~~in substance a provision that~~  
25 BOTH OF THE FOLLOWING:

26 (A) THAT THE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT  
27 BETWEEN THE PARTIES WITH RESPECT TO THE BUSINESS BEING REINSURED



1   **THEREUNDER AND THAT THERE ARE NO UNDERSTANDINGS BETWEEN THE PARTIES**  
2   **OTHER THAN AS EXPRESSED IN THE AGREEMENT.**

3       **(B) THAT** any change or modification to the agreement is null  
4   and void unless made by amendment to the agreement and signed by  
5   both parties.

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

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

25       (6) If a life and health insurance guaranty association or its  
26   designated successor life or health insurer has assumed policy  
27   obligations as direct obligations of the insolvent ceding insurer

1 and has succeeded to the rights of the insolvent insurer under the  
2 contract of reinsurance, then the reinsurer's liability shall  
3 continue under the contract of reinsurance and shall be payable  
4 pursuant to the direction of the guaranty association or its  
5 designated successor. As a condition to succeeding to the insolvent  
6 insurer's rights under the contract, the guaranty association or  
7 successor life or health insurer shall be responsible for premiums  
8 payable under the reinsurance contract for periods after the date  
9 of liquidation.