

SENATE 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**
6 **ACCOUNTING AND FINANCIAL REPORTING PROCESSES AND AUDITS OF THE**

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

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

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

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

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

27 (G) "INTERNAL CONTROL OVER FINANCIAL REPORTING" MEANS A

1 PROCESS EFFECTED BY AN ENTITY'S BOARD OF DIRECTORS, MANAGEMENT, AND
2 OTHER PERSONNEL DESIGNED TO PROVIDE REASONABLE ASSURANCE REGARDING
3 THE RELIABILITY OF THE FINANCIAL STATEMENTS FILED WITH THE
4 COMMISSIONER, AND INCLUDES THE FOLLOWING:

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

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

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

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

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

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

26 (K) "SOX COMPLIANT ENTITY" MEANS AN ENTITY THAT EITHER IS
27 REQUIRED TO BE COMPLIANT WITH, OR VOLUNTARILY IS COMPLIANT WITH,

1 ALL OF THE FOLLOWING PROVISIONS OF THE SARBANES-OXLEY ACT OF 2002:

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

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

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

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

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

26 (3) EACH INSURER REQUIRED TO FILE AN ANNUAL AUDITED FINANCIAL
27 REPORT UNDER THIS CHAPTER SHALL DESIGNATE A GROUP OF INDIVIDUALS AS

1 CONSTITUTING ITS AUDIT COMMITTEE. THE AUDIT COMMITTEE OF AN ENTITY
2 THAT CONTROLS AN INSURER MAY BE THE INSURER'S AUDIT COMMITTEE FOR
3 PURPOSES OF THIS CHAPTER AT THE ELECTION OF THE CONTROLLING PERSON.

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

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

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

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

15 (d) A statement of cash flows.

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

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

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

26 ~~—— (ii) A summary of ownership and relationships of the insurer~~
27 ~~and all affiliated companies, including a disclosure of all~~

1 ~~significant intercompany transactions and balances.~~

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

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

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

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

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

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

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

14 **(4) ~~(3)~~**An individual independent public accountant or a **LEAD**
15 **partner HAVING PRIMARY RESPONSIBILITY FOR AN ANNUAL AUDIT** or other
16 person responsible for rendering a report by an independent public
17 accounting firm retained to conduct an annual audit under this
18 chapter shall not act in that capacity for the same insurer for
19 more than ~~7~~**5** consecutive years. Following such a ~~7-year~~**5-YEAR**
20 period of service, the individual independent public accountant or
21 partner or other responsible person for the accounting firm shall
22 not conduct an annual audit under this chapter for the same insurer
23 or its insurance subsidiaries or affiliates for a period of ~~2~~**5**
24 years. An insurer may apply for relief from the commissioner from
25 this rotation requirement on the basis of unusual circumstances.
26 **THIS APPLICATION SHALL BE MADE AT LEAST 30 DAYS BEFORE THE END OF**
27 **THE CALENDAR YEAR.** The commissioner may consider the following

1 factors in determining if relief should be granted:

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

5 (b) The insurer's premium volume.

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

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

16 (6) ~~(4)~~—The commissioner shall not recognize as a qualified
17 independent public accountant, or accept an annual audited
18 financial report, prepared in whole or in part by an individual who
19 has done any of the following:

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

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

27 (c) Has failed to detect or disclose material information in 1

1 or more previous reports filed under this chapter.

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

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

9 (B) FINANCIAL INFORMATION SYSTEMS DESIGN AND IMPLEMENTATION.

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

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

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

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

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

4 (E) INTERNAL AUDIT OUTSOURCING SERVICES.

5 (F) MANAGEMENT FUNCTIONS OR HUMAN RESOURCES.

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

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

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

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

15 (9) ~~(5)~~—The commissioner may hold a public hearing pursuant to
16 the administrative procedures act of 1969, ~~Act No. 306 of the~~
17 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
18 ~~Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328,~~ to
19 determine whether a certified public accountant is qualified. After
20 considering the evidence presented, the commissioner may rule that
21 the accountant is not qualified for purposes of expressing his or
22 her opinion on the financial statements in the annual audited
23 financial report made pursuant to this chapter and may require the
24 insurer to replace the accountant with another whose relationship
25 with the insurer is qualified within the meaning of this chapter.

26 (10) INSURERS HAVING DIRECT WRITTEN AND ASSUMED PREMIUMS OF
27 LESS THAN \$100,000,000.00 IN ANY CALENDAR YEAR MAY REQUEST AN

1 EXEMPTION FROM SUBSECTION (7). AN INSURER REQUESTING AN EXEMPTION
2 SHALL FILE WITH THE COMMISSIONER A WRITTEN STATEMENT DISCUSSING THE
3 REASONS WHY THE INSURER SHOULD BE EXEMPT. THE COMMISSIONER SHALL
4 GRANT THE EXEMPTION IF AFTER REVIEW OF THE STATEMENT THE
5 COMMISSIONER FINDS THAT COMPLIANCE WITH SUBSECTION (7) WOULD
6 CONSTITUTE A FINANCIAL OR ORGANIZATIONAL HARDSHIP UPON THE INSURER.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~proposed to correct significant deficiencies, if such actions are
not described in the independent public accountant's report.~~

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

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

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

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

(4) TO BE CONSIDERED INDEPENDENT FOR PURPOSES OF THIS SECTION,
A MEMBER OF THE AUDIT COMMITTEE SHALL NOT, OTHER THAN IN HIS OR HER
CAPACITY AS A MEMBER OF THE AUDIT COMMITTEE, THE BOARD OF
DIRECTORS, OR ANY OTHER BOARD COMMITTEE, ACCEPT ANY CONSULTING,
ADVISORY, OR OTHER COMPENSATORY FEE FROM THE ENTITY AUDITED OR BE
AN AFFILIATED PERSON OF THE ENTITY OR SUBSIDIARY AUDITED, UNLESS
THE INDIVIDUAL SERVES ON THE BOARD TO MEET ANOTHER STATUTORY

1 REQUIREMENT RELATED TO THE COMPOSITION OF THE BOARD. HOWEVER, IN NO
2 CASE CAN THE INDEPENDENT AUDIT COMMITTEE MEMBER BE AN OFFICER OR
3 EMPLOYEE OF THE INSURER OR 1 OF ITS AFFILIATES.

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

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

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

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

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

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

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

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

27 (10) THE COMMISSIONER MAY REQUIRE AN ENTITY'S BOARD TO ENACT

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

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

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

27 SEC. 1029. (1) A DIRECTOR OR OFFICER OF AN INSURER SHALL NOT

1 DIRECTLY OR INDIRECTLY DO EITHER OF THE FOLLOWING:

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

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

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

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

27 (B) NOT TO PERFORM AUDIT, REVIEW, OR OTHER PROCEDURES REQUIRED

1 BY GENERALLY ACCEPTED AUDITING STANDARDS OR OTHER PROFESSIONAL
2 STANDARDS.

3 (C) NOT TO WITHDRAW AN ISSUED REPORT.

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

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

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

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

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

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

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

27 (B) A STATEMENT THAT MANAGEMENT HAS ESTABLISHED INTERNAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (A) **THAT THE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT**

1 BETWEEN THE PARTIES WITH RESPECT TO THE BUSINESS BEING REINSURED
2 THEREUNDER AND THAT THERE ARE NO UNDERSTANDINGS BETWEEN THE PARTIES
3 OTHER THAN AS EXPRESSED IN THE AGREEMENT.

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

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

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

26 (6) If a life and health insurance guaranty association or its
27 designated successor life or health insurer has assumed policy

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