

By: Senator(s) Clarke

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2419

1 AN ACT TO AMEND SECTION 83-5-102, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITIONS OF TERMS RELATING TO THE FILING OF
3 AUDITED FINANCIAL REPORTS OF INSURERS; TO AMEND SECTION 83-5-104,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE EXEMPTIONS PROVIDED FOR
5 FINANCIAL REPORTING; TO AMEND SECTION 83-5-105, MISSISSIPPI CODE
6 OF 1972, TO PROVIDE FOR THE EXTENSION OF FILING A MANAGEMENT'S
7 REPORT OF INTERNAL CONTROL OVER FINANCIAL REPORTING; TO AMEND
8 SECTION 83-5-107, MISSISSIPPI CODE OF 1972, TO REVISE THE
9 QUALIFICATIONS OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR
10 FILING AUDITED FINANCIAL REPORTS; TO AMEND SECTION 83-5-109,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE INDEPENDENT
12 CERTIFIED PUBLIC ACCOUNTANT SHOULD CONSIDER THE MOST RECENTLY
13 AVAILABLE REPORT IN PLANNING AND PERFORMING THE AUDIT OF THE
14 STATUTORY FINANCIAL STATEMENTS; TO AMEND SECTION 83-5-111,
15 MISSISSIPPI CODE OF 1972, TO REQUIRE AN INSURER TO FURNISH THE
16 COMMISSIONER OF INSURANCE WITH A WRITTEN COMMUNICATION AS TO ANY
17 UNREMIEDIATED MATERIAL WEAKNESSES IN ITS INTERNAL CONTROL OVER
18 FINANCIAL REPORTING NOTED DURING THE AUDIT; TO AMEND SECTION
19 83-5-113, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE ACCOUNTANT
20 RETAIN THE AUDIT WORK PAPERS AND COMMUNICATIONS NO LONGER THAN 7
21 YEARS FROM THE DATE OF THE AUDIT REPORT; TO REQUIRE THE FORMATION
22 OF AUDIT COMMITTEES AND TO PROVIDE FOR THEIR DUTIES AND
23 RESPONSIBILITIES; TO REQUIRE A MANAGEMENT'S REPORT OF INTERNAL
24 CONTROL OVER FINANCIAL REPORTING; TO PROVIDE SEPARATE PROVISIONS
25 RELATING TO FINANCIAL REPORTING BY CANADIAN AND BRITISH INSURERS;
26 AND FOR RELATED PURPOSES.

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

28 **SECTION 1.** Section 83-5-102, Mississippi Code of 1972, is
29 amended as follows:

30 83-5-102. As used in Sections 83-5-102 through 83-5-113, the
31 following terms have the respective meanings herein set forth
32 unless the context shall require otherwise:

33 (a) "Audited financial report" means and includes those
34 items specified in Section 83-5-103.

35 (b) "Accountant" or "independent certified public
36 accountant" means an independent certified public accountant or
37 accounting firm in good standing with the American Institute of



38 Certified Public Accountants and in all states in which they are
39 licensed to practice; for Canadian and British companies, it means
40 a Canadian chartered or British chartered accountant.

41 (c) "Commissioner" means the Commissioner of Insurance.

42 (d) "Department" means the Department of Insurance.

43 (e) "Indemnification" means an agreement of indemnity
44 or a release from liability where the intent or effect is to shift
45 or limit in any manner the potential liability of the person or
46 firm for failure to adhere to applicable auditing or professional
47 standards, whether or not resulting in part from knowing or other
48 misrepresentations made by the insurer or its representatives.

49 (f) "Insurer" means an * * * insurer as defined in
50 Section 83-5-1.

51 (g) "Affiliate" of, or person "affiliated" with, a
52 specific person, is a person that directly, or indirectly through
53 one or more intermediaries, controls, or is controlled by, or is
54 under common control with, the person specified.

55 (h) "Audit committee" means a committee (or equivalent
56 body) established by the board of directors of an entity for the
57 purpose of overseeing the accounting and financial reporting
58 processes of an insurer or group of insurers, and audits of
59 financial statements of the insurer or group of insurers. The
60 audit committee of any entity that controls a group of insurers
61 may be deemed to be the audit committee for one or more of these
62 controlled insurers solely for the purposes of this section at the
63 election of the controlling person. Refer to Section 8(e) of this
64 act for exercising this election. If an audit committee is not
65 designated by the insurer, the insurer's entire board of directors
66 shall constitute the audit committee.

67 (i) "Independent board member" has the same meaning as
68 described in Section 8(c) of this act.

69 (j) "Group of insurers" means those licensed insurers
70 included in the reporting requirements of Sections 83-6-1 through



71 83-6-43, or a set of insurers as identified by management, for the
72 purpose of assessing the effectiveness of internal control over
73 financial reporting.

74 (k) "Internal control over financial reporting" means a
75 process effected by an entity's board of directors, management and
76 other personnel designed to provide reasonable assurance regarding
77 the reliability of the financial statements and includes those
78 policies and procedures that:

79 (i) Pertain to the maintenance of records that, in
80 reasonable detail, accurately and fairly reflect the transactions
81 and dispositions of assets;

82 (ii) Provide reasonable assurance that
83 transactions are recorded as necessary to permit preparation of
84 the financial statements and that receipts and expenditures are
85 being made only in accordance with authorizations of management
86 and directors; and

87 (iii) Provide reasonable assurance regarding
88 prevention or timely detection of unauthorized acquisition, use or
89 disposition of assets that could have a material effect on the
90 financial statements.

91 (l) "RBC" means risk-based capital pursuant to Sections
92 83-5-401 through 83-5-427.

93 (m) "SEC" means the United States Securities and
94 Exchange Commission.

95 (n) "Section 404" means Section 404 of the
96 Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations
97 promulgated thereunder.

98 (o) "Section 404 Report" means management's report on
99 "internal control over financial reporting" as defined by the SEC
100 and the related attestation report of the independent certified
101 public accountant.

102 (p) "SOX Compliant Entity" means an entity that either
103 is required to be compliant with, or voluntarily is compliant



104 with, all of the following provisions of the Sarbanes-Oxley Act of
105 2002: (i) the preapproval requirements of Section 201 (Section
106 10A(i) of the Securities Exchange Act of 1934); (ii) the audit
107 committee independence requirements of Section 301 (Section
108 10A(m) (3) of the Securities Exchange Act of 1934); and (iii) the
109 internal control over financial reporting requirements of Section
110 404 (Item 308 of SEC Regulation S-K).

111 **SECTION 2.** Section 83-5-104, Mississippi Code of 1972, is
112 amended as follows:

113 83-5-104. Every insurer shall be subject to Sections
114 83-5-101 through 83-5-113. Insurers having direct premiums
115 written of less than One Million Dollars (\$1,000,000.00) in any
116 calendar year and less than one thousand (1,000) policyholders or
117 certificate holders of directly written policies nationwide at the
118 end of such calendar year shall be exempt from Sections 83-5-101
119 through 83-5-113 for such year unless the commissioner makes a
120 specific finding that compliance is necessary for the commissioner
121 to carry out statutory responsibilities, except that insurers
122 having assumed premiums pursuant to contracts and/or treaties of
123 reinsurance of One Million Dollars (\$1,000,000.00) or more will
124 not be so exempt.

125 Upon written application of any insurer, the commissioner may
126 grant an exemption from compliance with Sections 83-5-101 through
127 83-5-113 if the commissioner finds, upon review of the
128 application, that compliance with Sections 83-5-101 through
129 83-5-113 would constitute a financial or organizational hardship
130 upon the insurer. An exemption may be granted at any time and
131 from time to time for a specified period or periods. Within ten
132 (10) days from a denial of an insurer's written request for an
133 exemption from Sections 83-5-101 through 83-5-113, such insurer
134 may request in writing a hearing on its application for an
135 exemption. Such hearing shall be held in accordance with the



136 rules and regulations of the Department of Insurance pertaining to
137 administrative hearing procedures.

138 * * *

139 **SECTION 3.** Section 83-5-105, Mississippi Code of 1972, is
140 amended as follows:

141 83-5-105. Extensions of the June 1 filing date may be
142 granted by the commissioner for thirty-day periods upon showing by
143 the insurer and its independent certified public accountant the
144 reasons for requesting such extension and determination by the
145 commissioner of good cause for an extension. The request for
146 extension must be submitted in writing not less than ten (10) days
147 prior to the due date in sufficient detail to permit the
148 commissioner to make an informed decision with respect to the
149 requested extension.

150 If an extension is granted, a similar extension of thirty
151 (30) days is granted to the filing of Management's Report of
152 Internal Control over Financial Reporting.

153 **SECTION 4.** Section 83-5-107, Mississippi Code of 1972, is
154 amended as follows:

155 83-5-107. (1) The commissioner shall not recognize a person
156 or firm as a qualified independent certified public accountant if
157 the person or firm:

158 (a) Is not in good standing with the American Institute
159 of Certified Public Accountants and in all states in which the
160 accountant is licensed to practice, or, for a Canadian or British
161 company, that is not a chartered accountant; or

162 (b) Has either directly or indirectly entered into an
163 agreement of indemnity or release from liability, collectively
164 referred to as indemnification, with respect to the audit of the
165 insurer.

166 (2) Except as otherwise provided herein, the commissioner
167 shall recognize an independent certified public accountant as
168 qualified as long as he or she conforms to the standards of his or



169 her profession, as contained in the Code of Professional Ethics of
170 the American Institute of Certified Public Accountants and rules
171 and regulations and code of ethics and rules of professional
172 conduct of the appropriate state board of public accountancy, or
173 similar code.

174 (3) A qualified independent certified public accountant may
175 enter into an agreement with an insurer to have disputes relating
176 to an audit resolved by mediation or arbitration. However, in the
177 event of a delinquency proceeding commenced against the insurer
178 under Sections 83-23-1 through 83-23-9, the mediation or
179 arbitration provisions shall operate at the option of the
180 statutory successor.

181 (4) The lead or coordinating audit partner having primary
182 responsibility for the audit may not act in that capacity for more
183 than five (5) consecutive years. * * * The person shall be
184 disqualified from acting in that or a similar capacity for the
185 same company or its insurance subsidiaries or affiliates for a
186 period of five (5) consecutive years. An insurer may make
187 application to the commissioner for relief from the above rotation
188 requirement on the basis of unusual circumstances. This
189 application should be made at least thirty (30) days before the
190 end of the calendar year. The commissioner may consider the
191 following factors in determining if the relief should be granted:

192 (a) Number of partners, expertise of the partners or
193 the number of insurance clients in the currently registered firm;

194 (b) Premium volume of the insurer; or

195 (c) Number of jurisdictions in which the insurer
196 transacts business.

197 The insurer shall file, with its annual statement filing, the
198 approval for relief with the states that it is licensed or doing
199 business.

200 (5) The commissioner shall neither recognize as a qualified
201 independent certified public accountant, nor accept an annual



202 audited financial report, prepared in whole or in part by, a
203 natural person who:

204 (a) Has been convicted of fraud, bribery, a violation
205 of the Racketeer Influenced and Corrupt Organizations Act, 18 USCS
206 Sections 1961-1968, or any dishonest conduct or practices under
207 federal or state law;

208 (b) Has been found to have violated the insurance laws
209 of this state with respect to any previous reports submitted under
210 this rule; or

211 (c) Has demonstrated a pattern or practice of failing
212 to detect or disclose material information in previous reports
213 filed under the provisions of Sections 83-5-101 through 83-5-113.

214 (6) The commissioner may hold a hearing to determine whether
215 an independent certified public accountant is qualified and,
216 considering the evidence presented, may rule that the accountant
217 is not qualified for purposes of expressing his opinion on the
218 financial statements in the annual audited financial report made
219 pursuant to Sections 83-5-101 through 83-5-113 and require the
220 insurer to replace the accountant with another whose relationship
221 with the insurer is qualified within the meaning of this section.

222 (7) The commissioner shall not recognize as a qualified
223 independent certified public accountant, nor accept an annual
224 audited financial report, prepared in whole or in part by an
225 accountant who provides to an insurer, contemporaneously with the
226 audit, the following nonaudit services:

227 (a) Bookkeeping or other services related to the
228 accounting records or financial statements of the insurer;

229 (b) Financial information systems design and
230 implementation;

231 (c) Appraisal or valuation services, fairness opinions,
232 or contribution-in-kind reports;

233 (d) Actuarially oriented advisory services involving
234 the determination of amounts recorded in the financial statements.



235 The accountant may assist an insurer in understanding the methods,
236 assumptions and inputs used in the determination of amounts
237 recorded in the financial statement only if it is reasonable to
238 conclude that the services provided will not be subject to audit
239 procedures during an audit of the insurer's financial statements.

240 An accountant's actuary may also issue an actuarial opinion or
241 certification ("opinion") on an insurer's reserves if the
242 following conditions have been met:

243 (i) Neither the accountant nor the accountant's
244 actuary has performed any management functions or made any
245 management decisions;

246 (ii) The insurer has competent personnel (or
247 engages a third-party actuary) to estimate the reserves for which
248 management takes responsibility; and

249 (iii) The accountant's actuary tests the
250 reasonableness of the reserves after the insurer's management has
251 determined the amount of the reserves;

252 (e) Internal audit outsourcing services;

253 (f) Management functions or human resources;

254 (g) Broker or dealer, investment adviser, or investment
255 banking services;

256 (h) Legal services or expert services unrelated to the
257 audit; or

258 (i) Any other services that the commissioner determines
259 are impermissible.

260 In general, the principles of independence with respect to
261 services provided by the qualified independent certified public
262 accountant are largely predicated on three (3) basic principles,
263 violations of which would impair the accountant's independence.
264 The principles are that the accountant cannot function in the role
265 of management, cannot audit his or her own work, and cannot serve
266 in an advocacy role for the insurer.



267 (8) A qualified independent certified public accountant who
268 performs the audit may engage in other nonaudit services,
269 including tax services, that are not described in subsection (7)
270 or that do not conflict with subsection (7), only if the activity
271 is approved in advance by the audit committee, in accordance with
272 subsection (9).

273 (9) All auditing services and nonaudit services provided to
274 an insurer by the qualified independent certified public
275 accountant of the insurer shall be preapproved by the audit
276 committee. The preapproval requirement is waived with respect to
277 nonaudit services if the insurer is a SOX Compliant Entity or a
278 direct or indirect wholly owned subsidiary of a SOX Compliant
279 Entity or:

280 (a) The aggregate amount of all such nonaudit services
281 provided to the insurer constitutes not more than five percent
282 (5%) of the total amount of fees paid by the insurer to its
283 qualified independent certified public accountant during the
284 fiscal year in which the nonaudit services are provided;

285 (b) The services were not recognized by the insurer at
286 the time of the engagement to be nonaudit services; and

287 (c) The services are promptly brought to the attention
288 of the audit committee and approved prior to the completion of the
289 audit by the audit committee or by one or more members of the
290 audit committee who are the members of the board of directors to
291 whom authority to grant such approvals has been delegated by the
292 audit committee.

293 (10) The audit committee may delegate to one or more
294 designated members of the audit committee the authority to grant
295 the preapprovals required by subsection (9). The decisions of any
296 member to whom this authority is delegated shall be presented to
297 the full audit committee at each of its scheduled meetings.

298 (11) The commissioner shall not recognize an independent
299 certified public accountant as qualified for a particular insurer



300 if a member of the board, president, chief executive officer,
301 controller, chief financial officer, chief accounting officer, or
302 any person serving in an equivalent position for that insurer, was
303 employed by the independent certified public accountant and
304 participated in the audit of that insurer during the one-year
305 period preceding the date that the most current statutory opinion
306 is due. This section shall only apply to partners and senior
307 managers involved in the audit. An insurer may make application
308 to the commissioner for relief from the above requirement on the
309 basis of unusual circumstances.

310 The insurer shall file, with its annual statement filing, the
311 approval for relief with the states that it is licensed or doing
312 business.

313 **SECTION 5.** Section 83-5-109, Mississippi Code of 1972, is
314 amended as follows:

315 83-5-109. Financial statements furnished pursuant to Section
316 83-5-103 shall be audited by an independent certified public
317 accountant. The audit of the insurer's financial statements shall
318 be conducted in accordance with generally accepted auditing
319 standards. The independent certified public accountant should
320 obtain an understanding of internal control sufficient to plan the
321 audit. To the extent required by generally accepted auditing
322 standards, for those insurers required to file a Management's
323 Report of Internal Control over Financial Reporting pursuant to
324 Section 10 of this act, the independent certified public
325 accountant should consider (as that term is defined in Statement
326 on Auditing Standards No. 102, "Defining Professional Requirements
327 in Statements on Auditing Standards," or its replacement) the most
328 recently available report in planning and performing the audit of
329 the statutory financial statements. Consideration shall be given
330 to the procedures illustrated in the Financial Condition Examiners
331 Handbook promulgated by the National Association of Insurance



332 Commissioners as the independent certified public accountant deems
333 necessary.

334 **SECTION 6.** Section 83-5-111, Mississippi Code of 1972, is
335 amended as follows:

336 83-5-111. In addition to the annual audited financial
337 report, each insurer shall furnish the commissioner with a written
338 communication as to any unremediated material weaknesses in its
339 internal control over financial reporting noted during the audit.
340 Such communication shall be prepared by the accountant within
341 sixty (60) days after the filing of the annual audited financial
342 report, and shall contain a description of any unremediated
343 material weakness (as the term material weakness is defined by
344 Statement on Auditing Standard No. 115, "Communication of Internal
345 Control Related Matters Identified in an Audit," or its
346 replacement) as of December 31 immediately preceding in the
347 insurer's internal control over financial reporting noted by the
348 accountant during the course of their audit of the financial
349 statements. If no unremediated material weaknesses were noted,
350 the communication should so state * * *.

351 The insurer is required to provide a description of remedial
352 actions taken or proposed to correct unremediated material
353 weaknesses if the actions are not described in the accountant's
354 communication.

355 **SECTION 7.** Section 83-5-113, Mississippi Code of 1972, is
356 amended as follows:

357 83-5-113. Work papers are the records kept by the
358 independent certified public accountant of the procedures
359 followed, the tests performed, the information obtained and the
360 conclusion reached pertinent to his examination of the financial
361 statements of an insurer. Work papers, accordingly, may include
362 audit planning documentation, work programs, analyses, memoranda,
363 letters of confirmation and representation, abstracts of company
364 documents and schedules or commentaries prepared or obtained by



365 the independent certified public accountant in the course of his
366 examination of the financial statements of an insurer and which
367 support his opinion thereof.

368 Every insurer required to file an audited financial report
369 pursuant to Sections 83-5-101 through 83-5-113 shall require the
370 accountant to make available for review by department examiners
371 all work papers prepared in the conduct of his examination and any
372 communications related to the audit between the accountant and the
373 insurer, at the offices of the insurer, at the Department of
374 Insurance or at any other reasonable place designated by the
375 commissioner. The insurer shall require that the accountant
376 retain the audit work papers and communications until the
377 Department of Insurance has filed a report on examination covering
378 the period of the audit, but no longer than seven (7) years from
379 the date of the audit report.

380 In the conduct of the aforementioned periodic review by the
381 department examiners, it shall be agreed that photocopies of
382 pertinent audit work papers may be made and retained by the
383 department. Such reviews by the department examiners shall be
384 considered investigations and all work papers and communications
385 obtained during the course of such investigations shall be
386 afforded the same confidentiality as other examination work papers
387 generated by the department.

388 **SECTION 8. Requirements for audit committees.** Every insurer
389 required to file an annual audited financial report pursuant to
390 this section shall designate a group of individuals as
391 constituting its audit committee. The audit committee of an
392 entity that controls an insurer may be deemed to be the insurer's
393 audit committee for purposes of this section at the election of
394 the controlling person.

395 This section shall not apply to foreign or alien insurers
396 licensed in this state or an insurer that is a SOX Compliant



397 Entity or a direct or indirect wholly owned subsidiary of a SOX
398 Compliant Entity.

399 (a) The audit committee shall be directly responsible
400 for the appointment, compensation and oversight of the work of any
401 accountant (including resolution of disagreements between
402 management and the accountant regarding financial reporting) for
403 the purpose of preparing or issuing the audited financial report
404 or related work pursuant to this section. Each accountant shall
405 report directly to the audit committee.

406 (b) Each member of the audit committee shall be a
407 member of the board of directors of the insurer or a member of the
408 board of directors of an entity elected pursuant to paragraph (e)
409 and Section 83-5-102(h).

410 (c) In order to be considered independent for purposes
411 of this section, a member of the audit committee may not, other
412 than in his or her capacity as a member of the audit committee,
413 the board of directors, or any other board committee, accept any
414 consulting, advisory or other compensatory fee from the entity or
415 be an affiliated person of the entity or any subsidiary thereof.
416 However, if law requires board participation by otherwise
417 nonindependent members, that law shall prevail and such members
418 may participate in the audit committee and be designated as
419 independent for audit committee purposes, unless they are an
420 officer or employee of the insurer or one of its affiliates.

421 (d) If a member of the audit committee ceases to be
422 independent for reasons outside the member's reasonable control,
423 that person, with notice by the responsible entity to the state,
424 may remain an audit committee member of the responsible entity
425 until the earlier of the next annual meeting of the responsible
426 entity or one (1) year from the occurrence of the event that
427 caused the member to be no longer independent.

428 (e) To exercise the election of the controlling person
429 to designate the audit committee for purposes of this section, the



430 ultimate controlling person shall provide written notice to the
431 commissioners of the affected insurers. Notification shall be
432 made timely prior to the issuance of the statutory audit report
433 and include a description of the basis for the election. The
434 election can be changed through notice to the commissioner by the
435 insurer, which shall include a description of the basis for the
436 change. The election shall remain in effect for perpetuity, until
437 rescinded.

438 (f) (i) The audit committee shall require the
439 accountant that performs for an insurer any audit required by this
440 section to timely report to the audit committee in accordance with
441 the requirements of Statement on Auditing Standard No. 114, The
442 Auditor's Communication With Those Charged With Governance or its
443 replacement, including:

444 1. All significant accounting policies and
445 material permitted practices;

446 2. All material alternative treatments of
447 financial information within statutory accounting principles that
448 have been discussed with management officials of the insurer,
449 ramifications of the use of the alternative disclosures and
450 treatments, and the treatment preferred by the accountant; and

451 3. Other material written communications
452 between the accountant and the management of the insurer, such as
453 any management letter or schedule of unadjusted differences.

454 (ii) If an insurer is a member of an insurance
455 holding company system, the reports required by paragraph (f) (i)
456 may be provided to the audit committee on an aggregate basis for
457 insurers in the holding company system, provided that any
458 substantial differences among insurers in the system are
459 identified to the audit committee.

460 (g) The proportion of independent audit committee
461 members shall meet or exceed the following criteria:

462 **Prior Calendar Year Direct Written and Assumed Premiums**



463 \$0 - \$300,000,000	464 Over \$300,000,000 - \$500,000,000	465 Over \$500,000,000
466 No minimum requirements. See also Note A and B.	467 Majority (50% or more) of members shall be independent. See also Note A and B.	468 Supermajority of members (75% or more) shall be independent. See also Note A.

470 **Note A:** The commissioner has authority afforded by state law
471 to require the entity's board to enact improvements to the
472 independence of the audit committee membership if the insurer is
473 in a RBC action level event, meets one or more of the standards of
474 an insurer deemed to be in hazardous financial condition, or
475 otherwise exhibits qualities of a troubled insurer.

476 **Note B:** All insurers with less than Five Hundred Million
477 Dollars (\$500,000,000.00) in prior year direct written and assumed
478 premiums are encouraged to structure their audit committees with
479 at least a supermajority of independent audit committee members.

480 **Note C:** Prior calendar year direct written and assumed
481 premiums shall be the combined total of direct premiums and
482 assumed premiums from nonaffiliates for the reporting entities.

483 (h) An insurer with direct written and assumed premium,
484 excluding premiums reinsured with the Federal Crop Insurance
485 Corporation and Federal Flood Program, less than Five Hundred
486 Million Dollars (\$500,000,000.00) may make application to the
487 commissioner for a waiver from the requirements of this section
488 based upon hardship. The insurer shall file, with its annual
489 statement filing, the approval for relief from the requirements of
490 this section with the states that it is licensed or doing
491 business.

492 (i) An insurer or group of insurers that is not
493 required to have independent audit committee members or only a
494 majority of independent audit committee members (as opposed to a
495 supermajority) because the total written and assumed premium is



496 below the threshold and subsequently becomes subject to one (1) of
497 the independence requirements due to changes in premium shall have
498 one (1) year following the year the threshold is exceeded to
499 comply with the independence requirements. Likewise, an insurer
500 that becomes subject to one (1) of the independence requirements
501 as a result of a business combination shall have one (1) calendar
502 year following the date of acquisition or combination to comply
503 with the independence requirements.

504 **SECTION 9. Conduct of insurer in connection with the**
505 **preparation of required reports and documents.** (1) No director
506 or officer of an insurer shall, directly or indirectly:

507 (a) Make or cause to be made a materially false or
508 misleading statement to an accountant in connection with any
509 audit, review or communication required under this section; or

510 (b) Omit to state, or cause another person to omit to
511 state, any material fact necessary in order to make statements
512 made, in light of the circumstances under which the statements
513 were made, not misleading to an accountant in connection with any
514 audit, review or communication required under this section.

515 (2) No officer or director of an insurer, or any other
516 person acting under the direction thereof, shall directly or
517 indirectly take any action to coerce, manipulate, mislead or
518 fraudulently influence any accountant engaged in the performance
519 of an audit pursuant to this section if that person knew or should
520 have known that the action, if successful, could result in
521 rendering the insurer's financial statements materially
522 misleading.

523 (3) For purposes of subsection (2) of this section, actions
524 that, "if successful, could result in rendering the insurer's
525 financial statements materially misleading" include, but are not
526 limited to, actions taken at any time with respect to the
527 professional engagement period to coerce, manipulate, mislead or
528 fraudulently influence an accountant:



529 (a) To issue or reissue a report on an insurer's
530 financial statements that is not warranted in the circumstances
531 (due to material violations of statutory accounting principles
532 prescribed by the commissioner, generally accepted auditing
533 standards, or other professional or regulatory standards);

534 (b) Not to perform audit, review or other procedures
535 required by generally accepted auditing standards or other
536 professional standards;

537 (c) Not to withdraw an issued report; or

538 (d) Not to communicate matters to an insurer's audit
539 committee.

540 **SECTION 10. Management's report of internal control over**

541 **financial reporting.** (1) Every insurer required to file an
542 audited financial report pursuant to this section that has annual
543 direct written and assumed premiums, excluding premiums reinsured
544 with the Federal Crop Insurance Corporation and Federal Flood
545 Program, of Five Hundred Million Dollars (\$500,000,000.00) or more
546 shall prepare a report of the insurer's or group of insurers'
547 internal control over financial reporting, as these terms are
548 defined in Section 83-5-102. The report shall be filed with the
549 commissioner along with the Communication of Internal Control
550 Related Matters Noted in an Audit described under Section
551 83-5-111. Management's Report of Internal Control over Financial
552 Reporting shall be as of December 31 immediately preceding.
553 Foreign or alien insurers required to file Management's Report of
554 Internal Control over Financial Reporting in another state are
555 exempt from filing the Management's Report of Internal Control
556 over Financial Reporting in this state provided the other state
557 has substantially similar reporting requirements and the
558 Management's Report of Internal Control over Financial Reporting
559 is filed with the commissioner of the other state within the time
560 specified. An insurer or group of insurers that is not required
561 to file Management's Report of Internal Control over Financial



562 Reporting because the total written premium is below the threshold
563 and subsequently becomes subject to the reporting requirements
564 shall have two (2) years following the year the threshold is
565 exceeded to file a report. Likewise, an insurer acquired in a
566 business combination shall have two (2) calendar years following
567 the date of acquisition or combination to comply with the
568 reporting requirements.

569 (2) Notwithstanding the premium threshold in subsection (1),
570 the commissioner may require an insurer to file Management's
571 Report of Internal Control over Financial Reporting if the insurer
572 is in any RBC level event, or meets any one or more of the
573 standards of an insurer deemed to be in hazardous financial
574 condition as defined by regulation.

575 (3) An insurer or a group of insurers that is:

576 (a) Directly subject to Section 404;

577 (b) Part of a holding company system whose parent is
578 directly subject to Section 404;

579 (c) Not directly subject to Section 404 but is a SOX
580 Compliant Entity; or

581 (d) A member of a holding company system whose parent
582 is not directly subject to Section 404 but is a SOX Compliant
583 Entity;

584 may file its or its parent's Section 404 Report and an addendum in
585 satisfaction of the requirements of this section provided that
586 those internal controls of the insurer or group of insurers having
587 a material impact on the preparation of the insurer's or group of
588 insurers' audited statutory financial statements were included in
589 the scope of the Section 404 Report. The addendum shall be a
590 positive statement by management that there are no material
591 processes with respect to the preparation of the insurer's or
592 group of insurers' audited statutory financial statements excluded
593 from the Section 404 Report. If there are internal controls of
594 the insurer or group of insurers that have a material impact on



595 the preparation of the insurer's or group of insurers' audited
596 statutory financial statements and those internal controls were
597 not included in the scope of the Section 404 Report, the insurer
598 or group of insurers may either file (i) a report required
599 pursuant to this section, or (ii) the Section 404 Report and a
600 report required pursuant to this section for those internal
601 controls that have a material impact on the preparation of the
602 insurer's or group of insurers' audited statutory financial
603 statements not covered by the Section 404 Report.

604 (4) Management's Report of Internal Control over Financial
605 Reporting shall include:

606 (a) A statement that management is responsible for
607 establishing and maintaining adequate internal control over
608 financial reporting;

609 (b) A statement that management has established
610 internal control over financial reporting and an assertion, to the
611 best of management's knowledge and belief, after diligent inquiry,
612 as to whether its internal control over financial reporting is
613 effective to provide reasonable assurance regarding the
614 reliability of financial statements in accordance with statutory
615 accounting principles;

616 (c) A statement that briefly describes the approach or
617 processes by which management evaluated the effectiveness of its
618 Internal control over financial reporting;

619 (d) A statement that briefly describes the scope of
620 work that is included and whether any internal controls were
621 excluded;

622 (e) Disclosure of any unremediated material weaknesses
623 in the internal control over financial reporting identified by
624 management as of December 31 immediately preceding. Management is
625 not permitted to conclude that the internal control over financial
626 reporting is effective to provide reasonable assurance regarding
627 the reliability of financial statements in accordance with



628 statutory accounting principles if there is one or more
629 unremediated material weaknesses in its internal control over
630 financial reporting;

631 (f) A statement regarding the inherent limitations of
632 internal control systems; and

633 (g) Signatures of the chief executive officer and the
634 chief financial officer (or equivalent position/title).

635 (5) Management shall document and make available upon
636 financial condition examination the basis upon which its
637 assertions, required in subsection (4) above, are made.

638 Management may base its assertions, in part, upon its review,
639 monitoring and testing of internal controls undertaken in the
640 normal course of its activities.

641 (a) Management shall have discretion as to the nature
642 of the internal control framework used, and the nature and extent
643 of documentation, in order to make its assertion in a
644 cost-effective manner and, as such, may include assembly of or
645 reference to existing documentation.

646 (b) Management's Report on Internal Control over
647 Financial Reporting, required by subsection (1) above, and any
648 documentation provided in support thereof during the course of a
649 financial condition examination, shall be kept confidential by the
650 state insurance department.

651 **SECTION 11. Canadian and British companies.** (1) In the
652 case of Canadian and British insurers, the annual audited
653 financial report shall be defined as the annual statement of total
654 business on the form filed by such companies with their
655 supervision authority duly audited by an independent chartered
656 accountant.

657 (2) For such insurers, the letter required in Section
658 83-5-106 shall state that the accountant is aware of the
659 requirements relating to the annual audited financial report filed
660 with the commissioner pursuant to Section 83-5-101 and shall



661 affirm that the opinion expressed is in conformity with those
662 requirements.

663 **SECTION 12.** If any section or portion of a section of
664 Section 83-5-101 through 83-5-113 or its applicability to any
665 person or circumstance is held invalid by a court, the remainder
666 of this chapter or the applicability of the provision to other
667 persons or circumstances shall not be affected.

668 **SECTION 13.** This act shall take effect and be in force from
669 and after January 1, 2010.

