

By: Representative Robinson

To: Insurance

## HOUSE BILL NO. 948

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  
21 SEVEN YEARS FROM THE DATE OF THE AUDIT REPORT; TO REQUIRE THE  
22 FORMATION 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 and  
31 Sections 8 through 12 of this act, the following terms have the  
32 respective meanings herein set forth unless the context shall  
33 require otherwise:

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

36 (b) "Accountant" or "independent certified public  
37 accountant" means an independent certified public accountant or



38 accounting firm in good standing with the American Institute of  
39 Certified Public Accountants and in all states in which they are  
40 licensed to practice. For Canadian and British companies, the  
41 term "accountant" means a Canadian-chartered or British-chartered  
42 accountant.

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

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

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

51 (f) "Insurer" means an insurer as defined in Section  
52 83-5-1.

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

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

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



71 (j) "Group of insurers" means those licensed insurers  
72 included in the reporting requirements of Sections 83-6-1 through  
73 83-6-43, or a set of insurers as identified by management, for the  
74 purpose of assessing the effectiveness of internal control over  
75 financial reporting.

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

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

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

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

93 (l) "RBC" means risk-based capital under Sections  
94 83-5-401 through 83-5-427.

95 (m) "SEC" means the United States Securities and  
96 Exchange Commission.

97 (n) "Section 404" means Section 404 of the  
98 Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations  
99 promulgated under that section.

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



104           (p) "SOX Compliant Entity" means an entity that either  
105 is required to comply with, or voluntarily complies with, all of  
106 the following provisions of the Sarbanes-Oxley Act of 2002: (i)  
107 the preapproval requirements of Section 201 (Section 10A(i) of the  
108 Securities Exchange Act of 1934); (ii) the audit committee  
109 independence requirements of Section 301 (Section 10A(m) (3) of the  
110 Securities Exchange Act of 1934); and (iii) the internal control  
111 over financial reporting requirements of Section 404 (Item 308 of  
112 SEC Regulation S-K).

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

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

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



137 The hearing shall be held in accordance with the rules and  
138 regulations of the Department of Insurance pertaining to  
139 administrative hearing procedures.

140 \* \* \*

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

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

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

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

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

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

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

168 (2) Except as otherwise provided herein, the commissioner  
169 shall recognize an independent certified public accountant as



170 qualified as long as he or she conforms to the standards of his or  
171 her profession, as contained in the Code of Professional Ethics of  
172 the American Institute of Certified Public Accountants and rules  
173 and regulations and code of ethics and rules of professional  
174 conduct of the appropriate state board of public accountancy, or  
175 similar code.

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

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

- 194 (a) Number of partners, expertise of the partners or  
195 the number of insurance clients in the currently registered firm;  
196 (b) Premium volume of the insurer; or  
197 (c) Number of jurisdictions in which the insurer  
198 transacts business.

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



202 (5) The commissioner shall neither recognize as a qualified  
203 independent certified public accountant, nor accept an annual  
204 audited financial report, prepared in whole or in part by, a  
205 natural person who:

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

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

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

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

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

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

232 (b) Financial information systems design and  
233 implementation;



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

236 (d) Actuarially oriented advisory services involving  
237 the determination of amounts recorded in the financial statements.  
238 The accountant may assist an insurer in understanding the methods,  
239 assumptions and inputs used in the determination of amounts  
240 recorded in the financial statement only if it is reasonable to  
241 conclude that the services provided will not be subject to audit  
242 procedures during an audit of the insurer's financial statements.  
243 An accountant's actuary may also issue an actuarial opinion or  
244 certification ("opinion") on an insurer's reserves if the  
245 following conditions have been met:

246 (i) Neither the accountant nor the accountant's  
247 actuary has performed any management functions or made any  
248 management decisions;

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

252 (iii) The accountant's actuary tests the  
253 reasonableness of the reserves after the insurer's management has  
254 determined the amount of the reserves;

255 (e) Internal audit outsourcing services;

256 (f) Management functions or human resources;

257 (g) Broker or dealer, investment adviser, or investment  
258 banking services;

259 (h) Legal services or expert services unrelated to the  
260 audit; or

261 (i) Any other services that the commissioner determines  
262 are impermissible.

263 In general, the principles of independence with respect to  
264 services provided by the qualified independent certified public  
265 accountant are largely predicated on three (3) basic principles,  
266 violations of which would impair the accountant's independence.



267 The principles are that the accountant cannot function in the role  
268 of management, cannot audit his or her own work, and cannot serve  
269 in an advocacy role for the insurer.

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

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

284 (a) The aggregate amount of all those nonaudit services  
285 provided to the insurer constitutes not more than five percent  
286 (5%) of the total amount of fees paid by the insurer to its  
287 qualified independent certified public accountant during the  
288 fiscal year in which the nonaudit services are provided;

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

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

297 (10) The audit committee may delegate to one or more  
298 designated members of the audit committee the authority to grant  
299 the preapprovals required by subsection (9). The decisions of any



300 member to whom this authority is delegated shall be presented to  
301 the full audit committee at each of its scheduled meetings.

302 (11) The commissioner shall not recognize an independent  
303 certified public accountant as qualified for a particular insurer  
304 if a member of the board, president, chief executive officer,  
305 controller, chief financial officer, chief accounting officer, or  
306 any person serving in an equivalent position for that insurer, was  
307 employed by the independent certified public accountant and  
308 participated in the audit of that insurer during the one-year  
309 period preceding the date that the most current statutory opinion  
310 is due. This section shall only apply to partners and senior  
311 managers involved in the audit. An insurer may make application  
312 to the commissioner for relief from the above requirement on the  
313 basis of unusual circumstances.

314 The insurer shall file, with its annual statement filing, the  
315 approval for relief with the states that it is licensed or doing  
316 business.

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

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



333 the statutory financial statements. Consideration shall be given  
334 to the procedures illustrated in the Financial Condition Examiners  
335 Handbook promulgated by the National Association of Insurance  
336 Commissioners as the independent certified public accountant deems  
337 necessary.

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

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

355 The insurer is required to provide a description of remedial  
356 actions taken or proposed to correct unremediated material  
357 weaknesses if the actions are not described in the accountant's  
358 communication.

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

361 83-5-113. Work papers are the records kept by the  
362 independent certified public accountant of the procedures  
363 followed, the tests performed, the information obtained and the  
364 conclusion reached pertinent to his examination of the financial  
365 statements of an insurer. Work papers, accordingly, may include



366 audit planning documentation, work programs, analyses, memoranda,  
367 letters of confirmation and representation, abstracts of company  
368 documents and schedules or commentaries prepared or obtained by  
369 the independent certified public accountant in the course of his  
370 examination of the financial statements of an insurer and which  
371 support his opinion thereof.

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

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

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



399           This section shall not apply to foreign or alien insurers  
400 licensed in this state or an insurer that is a SOX Compliant  
401 Entity or a direct or indirect wholly owned subsidiary of a SOX  
402 Compliant Entity.

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

410           (b) Each member of the audit committee shall be a  
411 member of the board of directors of the insurer or a member of the  
412 board of directors of an entity elected pursuant to paragraph (e)  
413 and Section 83-5-102(h).

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

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



432 (e) To exercise the election of the controlling person  
433 to designate the audit committee for purposes of this section, the  
434 ultimate controlling person shall provide written notice to the  
435 commissioners of the affected insurers. Notification shall be  
436 made timely prior to the issuance of the statutory audit report  
437 and include a description of the basis for the election. The  
438 election can be changed through notice to the commissioner by the  
439 insurer, which shall include a description of the basis for the  
440 change. The election shall remain in effect for perpetuity, until  
441 rescinded.

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

448 1. All significant accounting policies and  
449 material permitted practices;

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

455 3. Other material written communications  
456 between the accountant and the management of the insurer, such as  
457 any management letter or schedule of unadjusted differences.

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



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

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

467	<b>\$0 - \$300,000,000</b>	<b>Over \$300,000,000 -</b>	<b>Over \$500,000,000</b>
468		<b>\$500,000,000</b>	

469	No minimum	Majority (50% or more)	Supermajority of
470	requirements. See	of members shall be	members (75% or
471	also Note A and B.	independent. See	more) shall be
472		also Note A and B.	independent. See
473			also Note A.

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

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

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

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



496                    (i) An insurer or group of insurers that is not  
497 required to have independent audit committee members or only a  
498 majority of independent audit committee members (as opposed to a  
499 supermajority) because the total written and assumed premium is  
500 below the threshold and subsequently becomes subject to one (1) of  
501 the independence requirements due to changes in premium shall have  
502 one (1) year following the year the threshold is exceeded to  
503 comply with the independence requirements. Likewise, an insurer  
504 that becomes subject to one (1) of the independence requirements  
505 as a result of a business combination shall have one (1) calendar  
506 year following the date of acquisition or combination to comply  
507 with the independence requirements.

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

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

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

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

527                    (3) For purposes of subsection (2) of this section, actions  
528 that, "if successful, could result in rendering the insurer's



529 financial statements materially misleading" include, but are not  
530 limited to, actions taken at any time with respect to the  
531 professional engagement period to coerce, manipulate, mislead or  
532 fraudulently influence an accountant:

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

538 (b) Not to perform audit, review or other procedures  
539 required by generally accepted auditing standards or other  
540 professional standards;

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

542 (d) Not to communicate matters to an insurer's audit  
543 committee.

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

545 **financial reporting.** (1) Every insurer required to file an  
546 audited financial report pursuant to this section that has annual  
547 direct written and assumed premiums, excluding premiums reinsured  
548 with the Federal Crop Insurance Corporation and Federal Flood  
549 Program, of Five Hundred Million Dollars (\$500,000,000.00) or more  
550 shall prepare a report of the insurer's or group of insurers'  
551 internal control over financial reporting, as these terms are  
552 defined in Section 83-5-102. The report shall be filed with the  
553 commissioner along with the Communication of Internal Control  
554 Related Matters Noted in an Audit described under Section  
555 83-5-111. Management's Report of Internal Control over Financial  
556 Reporting shall be as of December 31 immediately preceding.  
557 Foreign or alien insurers required to file Management's Report of  
558 Internal Control over Financial Reporting in another state are  
559 exempt from filing the Management's Report of Internal Control  
560 over Financial Reporting in this state provided the other state  
561 has substantially similar reporting requirements and the



562 Management's Report of Internal Control over Financial Reporting  
563 is filed with the commissioner of the other state within the time  
564 specified. An insurer or group of insurers that is not required  
565 to file Management's Report of Internal Control over Financial  
566 Reporting because the total written premium is below the threshold  
567 and subsequently becomes subject to the reporting requirements  
568 shall have two (2) years following the year the threshold is  
569 exceeded to file a report. Likewise, an insurer acquired in a  
570 business combination shall have two (2) calendar years following  
571 the date of acquisition or combination to comply with the  
572 reporting requirements.

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

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

580 (a) Directly subject to Section 404;

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

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

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

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



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

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

610 (a) A statement that management is responsible for  
611 establishing and maintaining adequate internal control over  
612 financial reporting;

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

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

623 (d) A statement that briefly describes the scope of  
624 work that is included and whether any internal controls were  
625 excluded;

626 (e) Disclosure of any unremediated material weaknesses  
627 in the internal control over financial reporting identified by



628 management as of December 31 immediately preceding. Management is  
629 not permitted to conclude that the internal control over financial  
630 reporting is effective to provide reasonable assurance regarding  
631 the reliability of financial statements in accordance with  
632 statutory accounting principles if there is one or more  
633 unremediated material weaknesses in its internal control over  
634 financial reporting;

635 (f) A statement regarding the inherent limitations of  
636 internal control systems; and

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

639 (5) Management shall document and make available upon  
640 financial condition examination the basis upon which its  
641 assertions, required in subsection (4) of this section, are made.  
642 Management may base its assertions, in part, upon its review,  
643 monitoring and testing of internal controls undertaken in the  
644 normal course of its activities.

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

650 (b) Management's Report on Internal Control over  
651 Financial Reporting, required by subsection (1) of this section,  
652 and any documentation provided in support thereof during the  
653 course of a financial condition examination, shall be kept  
654 confidential by the state insurance department.

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



661 (2) For such insurers, the letter required in Section  
662 83-5-106 shall state that the accountant is aware of the  
663 requirements relating to the annual audited financial report filed  
664 with the commissioner pursuant to Section 83-5-101 and shall  
665 affirm that the opinion expressed is in conformity with those  
666 requirements.

667 **SECTION 12.** If any section or portion of a section of  
668 Sections 83-5-101 through 83-5-113 or Sections 8 through 12 of  
669 this act or its applicability to any person or circumstance is  
670 held invalid by a court, the remainder of this chapter or the  
671 applicability of the provision to other persons or circumstances  
672 shall not be affected.

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

