

FIRST REGULAR SESSION

HOUSE BILL NO. 777

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE YATES.

1975L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, and 375.1057, RSMo, and to enact in lieu thereof seventeen new sections relating to annual financial reporting by certain insurers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, and 375.1057, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1038, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1053, 375.1054, 375.1056, and 375.1057, to read as follows:

375.1025. As used in sections 375.1025 to 375.1062, the following terms shall mean:

(1) ["Audited financial report" means and includes those items specified in section 375.1032;

(2)] "Accountant" [and] **or** "independent certified public accountant", an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant;

(2) **"Affiliate" or "affiliated", a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;**

(3) **"AICPA", the American Institute of Certified Public Accountants;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (4) "Audit committee", a committee (or equivalent body) established by the board
13 of directors of an entity for the purpose of overseeing the accounting and financial
14 reporting processes of an insurer or group of insurers, and audits of financial statements
15 of the insurer or group of insurers. The audit committee of any entity that controls a
16 group of insurers may be deemed to be the audit committee for one or more of such
17 controlled insurers solely for the purposes of sections 375.1025 to 375.1062 at the election
18 of the controlling person. Such election shall be exercised under subsection 5 of section
19 375.1053. If an audit committee is not designated by the insurer, the insurer's entire board
20 of directors shall constitute the audit committee;

21 (5) "Audited financial report", includes those items specified in section 375.1032;

22 (6) "Department", the department of insurance, financial institutions and
23 professional registration;

24 [(3)] (7) "Director", the director of the department of insurance, financial institutions and
25 professional registration;

26 (8) "Group of insurers", those licensed insurers included in the reporting
27 requirements of sections 382.010 to 382.300, RSMo, or a set of insurers as identified by
28 management, for the purpose of assessing the effectiveness of internal control over
29 financial reporting;

30 (9) "Indemnification", an agreement of indemnity or a release from liability where
31 the intent or effect is to shift or limit in any manner the potential liability of the person or
32 firm for failure to adhere to applicable auditing or professional standards, whether or not
33 resulting in part from knowing of other misrepresentations made by the insurer or its
34 representatives;

35 (10) "Independent board member", the same meaning as described in subsection
36 3 of section 375.1053;

37 [(4)] (11) "Insurer", an insurer certified to do business in this state pursuant to section
38 375.161 or 375.831, and to companies authorized to transact business in this state pursuant to
39 chapters 354, 376, 377, 378, 379 and 381, RSMo;

40 (12) "Internal control over financial reporting", a process effected by an entity's
41 board of directors, management and other personnel designed to provide reasonable
42 assurance regarding the reliability of the financial statements, i.e., those items specified in
43 subsections 2 to 7 of section 375.1032 and includes those policies and procedures that:

44 (a) Pertain to the maintenance of records that, in reasonable detail, accurately and
45 fairly reflect the transactions and dispositions of assets;

46 (b) Provide reasonable assurance that transactions are recorded as necessary to
47 permit preparation of financial statements, i.e., those items specified in subsections 2 to 7

48 of section 375.1032, and that receipts and expenditures are being made only in accordance
49 with authorizations of management and directors; and

50 (c) Provide reasonable assurance regarding prevention or timely detection of
51 unauthorized acquisition, use or disposition of assets that could have a material effect on
52 the financial statements, i.e., those items specified in subsections 2 to 7 of section 375.1032;

53 (13) "NAIC", the National Association of Insurance Commissioners;

54 (14) "SEC", the United States Securities and Exchange Commission;

55 (15) "Section 404", Section 404 of the Sarbanes-Oxley Act of 2002, as amended, and
56 the SEC's rules and regulations promulgated thereunder;

57 (16) "Section 404 report", management's report on internal control over financial
58 reporting, as defined by the SEC and the related attestation report of the independent
59 certified public accountant as described in subsection 1 of section 375.1030;

60 (17) "SOX compliant entity", an entity that either is required to be or voluntarily
61 is compliant with all of the following provisions of the Sarbanes-Oxley Act of 2002, as
62 amended:

63 (a) The preapproval requirements of Section 201 (Section 10A(i) of the federal
64 Securities Exchange Act of 1934);

65 (b) The audit committee independence requirements of Section 301 (Section
66 10A(m)(3) of the federal Securities Exchange Act of 1934); and

67 (c) The internal control over financial reporting requirements of Section 404.

375.1028. 1. Sections 375.1025 to 375.1062 shall apply to all insurers as defined by
2 section 375.1025. Insurers having direct premiums written in this state of less than one
3 million dollars in any calendar year and less than one thousand policyholders or
4 certificateholders of direct written policies nationwide at the end of the calendar year shall
5 be exempt from sections 375.1025 to 375.1062, unless the director makes a specific finding
6 that compliance is necessary for the director to carry out statutory responsibilities; except
7 that, insurers having assumed premiums under contracts or treaties of reinsurance of one
8 million dollars or more shall not be so exempt.

9 2. Foreign or alien insurers filing audited financial reports in another state, pursuant to
10 such other state's requirement for **filing of** audited financial reports which [are] **have been** found
11 by the director to be substantially similar to the requirements herein, are exempt from sections
12 [375.1025 to 375.1062] **375.1030 to 375.1050** if:

13 (1) A copy of the audited financial report [and the evaluation of accounting procedures
14 and systems of internal control report which] , **communication of internal control-related**
15 **matters noted in an audit, and the accountant's letter of qualifications that** are filed with
16 such other state are filed with the director in accordance with the filing dates specified in sections

17 375.1030, **375.1047**, and [375.1052] **375.1040**, respectively. Canadian insurers may submit
18 accountant's reports as filed with the [Canadian Dominion Department of Insurance;] **Office of**
19 **the Superintendent of Financial Institutions, Canada; and**

20 (2) A copy of any notification of adverse financial condition report filed with such other
21 state is filed with the director within the time specified in section 375.1045.

22 **3. Foreign or alien insurers required to file management's report of internal control**
23 **over financial reporting in another state are exempt from filing such report in this state,**
24 **provided such other state has substantially similar reporting requirements and such report**
25 **is filed with such other state's chief insurance regulatory official within the time specified.**

26 **4.** Sections 375.1025 to 375.1062 shall not prohibit, preclude or in any way limit the
27 director from ordering [and] , conducting [and] , **or** performing examinations of insurers under
28 any other applicable law.

375.1030. 1. All insurers shall have an annual audit [performed] by an independent
2 certified public accountant and shall file an audited financial report with the director on or before
3 June first [with respect to the calendar] **for the** year ended December thirty-first immediately
4 preceding. The director may require an insurer to file an audited financial report earlier than
5 June first with ninety days' advance notice to the insurer.

6 2. Extensions of the June first filing date may be granted by the director for thirty-day
7 periods upon a showing by the insurer and its independent certified public accountant **of** the
8 reasons for requesting such extension and determination by the director of good cause for an
9 extension. The request for extension must be submitted in writing not less than [twenty] **ten**
10 days prior to the due date in sufficient detail to permit the director to make an informed decision
11 with respect to the requested extension.

12 **3. If an extension is granted in accordance with the provisions of subsection 2 of**
13 **this section, a similar extension of thirty days is granted to the filing of management's**
14 **report of internal control over financial reporting.**

15 **4. Every insurer required to file an annual audited financial report under sections**
16 **375.1025 to 375.1062 shall designate a group of individuals as constituting its audit**
17 **committee, as defined in section 375.1025. The audit committee of an entity that controls**
18 **an insurer may be deemed to be the insurer's audit committee for purposes of sections**
19 **375.1025 to 375.1062 at the election of the controlling person.**

375.1032. 1. The annual audited financial report shall report the financial condition of
2 the insurer as of the end of the most recent calendar year and the results of its operation, cash
3 flows and changes in capital and surplus for the previous year ended in conformity with
4 accounting practices prescribed, or otherwise permitted, by law or rule of the department of
5 insurance of the state of domicile of the insurer.

- 6 2. The annual audited financial report shall include the following:
- 7 (1) Report of independent certified public accountant;
- 8 (2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
- 9 (3) Statement of [gain or loss from] operations;
- 10 (4) Statement of cash [flows] **flow**;
- 11 (5) Statement of changes in capital and surplus;
- 12 (6) Notes to financial statements. These notes shall be those required by the
- 13 **appropriate** National Association of Insurance Commissioners' Annual Statement Instructions
- 14 [and any other notes required by generally accepted accounting principles] **the NAIC's**
- 15 **Accounting Practices and Procedures Manual as adopted by the director** and shall include[:
- 16 (a)] a reconciliation of differences, if any, between the audited statutory financial
- 17 statements and the annual statement filed pursuant to section 375.041 and section 354.105,
- 18 354.435, RSMo, 376.350, RSMo, 377.100, 377.380, RSMo, 378.350, RSMo, 379.105, RSMo,
- 19 380.051 or 380.482, RSMo, with a written description of the nature of these differences[;
- 20 (b) A summary of ownership and relationships of the insurer and all affiliated
- 21 companies; and
- 22 (c) A narrative explanation of all significant intercompany transactions and balances].
- 23 3. The financial statements included in the audited financial report shall be prepared in
- 24 a form and using language and groupings substantially the same as the relevant sections of the
- 25 annual statement of the insurer filed with the director[:
- 26 (1)] , **and** the financial statement shall be comparative, presenting the amounts as of
- 27 December thirty-first of the current year and the amounts as of the immediately preceding
- 28 December thirty-first. However, in the first year in which an insurer is required to file an audited
- 29 financial report, the comparative data may be omitted[;
- 30 (2) Amounts may be rounded to the nearest thousand dollars;
- 31 (3) Insignificant amounts may be combined].

375.1035. 1. Each insurer required by sections 375.1025 to [375.1057] **375.1062** to file

2 an annual audited financial report shall, within sixty days after becoming subject to such

3 requirement, register with the director in writing the name and address of its independent

4 certified public accountant or accounting firm [(generally referred to in sections 375.1025 to

5 375.1057 as the "accountant")]**retained** to conduct the annual audit set forth in sections 375.1025

6 to [375.1057] **375.1062**. Any insurer not retaining an independent certified public accountant

7 on the effective date of sections 375.1025 to [375.1057] **375.1062** shall register the name and

8 address of its retained **independent** certified public accountant not less than six months before

9 the date when the first audited financial report is to be filed.

10 2. The insurer shall obtain a letter from such accountant, and file a copy with the director
11 stating that the accountant is aware of the provisions of the insurance laws and the rules and
12 regulations of the department of insurance of the state of domicile that relate to accounting and
13 financial matters and affirming that [he] **the accountant** will express his **or her** opinion on the
14 financial statements in [the] terms of their conformity to the statutory accounting practices
15 prescribed or otherwise permitted by that department of insurance, specifying such exceptions
16 as he **or she** may believe appropriate.

17 3. If an accountant who was the accountant for the immediately preceding filed audited
18 financial report is dismissed or resigns, the insurer shall within five business days notify the
19 director of this event. The insurer shall also furnish the director with a separate letter within ten
20 business days of the notification stating whether in the twenty-four months preceding such event
21 there were any disagreements with the former accountant on any matter of accounting principles
22 or practices, financial statement disclosure, or auditing scope or procedure, which disagreements,
23 if not resolved to the satisfaction of the former accountant, would have caused him **or her** to
24 make reference to the subject matter of the disagreement in connection with his **or her** opinion.
25 Disagreements required to be reported by this section include both disagreements resolved to the
26 former accountant's satisfaction, and disagreements not resolved to the former accountant's
27 satisfaction. Disagreements contemplated by this section are those that occur at the
28 decision-making level, between personnel of the insurer responsible for the presentation of its
29 financial statements and personnel of the accounting firm responsible for rendering its report.
30 The insurer shall also in writing request such former accountant to furnish a letter addressed to
31 the [director] **insurer** stating whether the accountant agrees with the statements contained in the
32 insurer's letter and, if not, stating the reasons for which he does not agree, and the insurer shall
33 furnish such responsive letter from the former accountant to the director together with its own.

375.1037. 1. The director shall not recognize [or approve] any person or firm as [an] **a**
2 **qualified** independent certified public accountant [that] **if such person or firm:**

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

6 (2) **Has either directly or indirectly entered into an indemnification with respect to**
7 **the audit of the insurer.**

8 2. Except as otherwise provided [herein, a] **in sections 375.1025 to 375.1062, the**
9 **director shall recognize an independent** certified public accountant [shall be recognized as
10 independent] **as qualified** as long as he **or she** conforms to the standards of his **or her**
11 profession, as contained in the code of professional ethics of the American Institute of Certified

12 Public Accountants and rules and regulations and code of ethics and rules of professional
13 conduct of the Missouri state board of accountancy, or similar code.

14 3. [No partner or other person responsible for rendering a report may] **The lead or**
15 **coordinating audit partner or person having primary responsibility for the audit shall not**
16 act in that capacity for more than [seven] **five** consecutive years. [Following any period of
17 service] Such **partner or** person shall be disqualified from acting in that or a similar capacity
18 for the same company or its insurance subsidiaries or affiliates for a period of [two] **five** years.
19 An insurer may make application to the director for relief from the above rotation requirement
20 on the basis of unusual circumstances. **Such application shall be made at least thirty days**
21 **before the end of the calendar year. The insurer shall file, with its annual statement filing,**
22 **the approval, if any, for relief from this subsection with the states that it is licensed in or**
23 **doing business in and with the NAIC. If the nondomestic state accepts electronic filing**
24 **with the NAIC, the insurer shall file the approval in an electronic format acceptable to the**
25 **NAIC.** The director may consider the following factors in determining if the relief should be
26 granted:

27 (1) Number of partners, expertise of the partners or the number of insurance clients in
28 the currently registered firm;

29 (2) Premium volume of the insurer; or

30 (3) Number of jurisdictions in which the insurer transacts business.

31 4. The director shall [not] **neither** recognize as [capable or competent,] a **qualified**
32 **independent** certified public accountant, nor [shall the director] accept any annual audited
33 financial report, prepared in whole or in part by any **natural** person who:

34 (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and
35 Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or
36 practices under federal law or the laws of any state;

37 (2) Has **been found to have** violated the laws of this state with respect to any previous
38 audited financial report submitted pursuant to sections 375.1025 to [375.1057 or the similar laws
39 of any other state] **375.1062**; or

40 (3) Has demonstrated a pattern or practice of failing to detect or disclose material
41 information in previous reports filed under the provisions of sections 375.1025 to [375.1057]
42 **375.1062.**

43 5. The director [shall notify the insurer should he determine that the certified public
44 accountant is not independent or is incapable or incompetent] **may hold a hearing under**
45 **sections 536.100 to 536.140, RSMo, to determine whether an independent certified public**
46 **accountant is qualified and, considering the evidence presented, may rule that the**
47 **accountant is not qualified** for purposes of expressing his **or her** opinion on the financial

48 statements in the annual audited financial report made pursuant to sections 375.1025 to
49 [375.1057. If the insurer contests such determination, the director shall hold a hearing to
50 determine whether the certified public accountant is independent, capable and competent, and,
51 considering the evidence presented, may rule that the accountant is not independent or is
52 incapable or incompetent for purposes of expressing his opinion on the financial statements in
53 the annual audited financial report] **375.1062** and require the insurer to replace the accountant
54 with another whose relationship with the insurer is [independent] **qualified** within the meaning
55 of[, or who is capable or competent to perform the requirements of,] sections 375.1025 to
56 [375.1057] **375.1062**.

57 **6. A qualified independent certified public accountant may enter into an agreement**
58 **with an insurer to have disputes relating to an audit resolved by mediation or arbitration.**
59 **However, in the event of a delinquency proceeding commenced against the insurer under**
60 **sections 375.570 to 375.750, the mediation or arbitration provisions shall operate at the**
61 **option of the statutory successor.**

62 **7. The director shall not recognize as a qualified independent certified public**
63 **accountant, nor accept an annual audited financial report, prepared in whole or in part**
64 **by an accountant who functions in the role of management, audits his or her own work, or**
65 **serves in an advocacy role for the insurer. Without limiting the foregoing, the director**
66 **shall not recognize as a qualified independent certified public accountant, nor accept an**
67 **annual audited financial report, prepared in whole or in part by an accountant who**
68 **provides to an insurer, contemporaneously with the audit, the following nonaudit services:**

69 **(1) Bookkeeping or other services related to the accounting records or financial**
70 **statements of the insurer;**

71 **(2) Financial information systems design and implementation;**

72 **(3) Appraisal or valuation services, fairness opinions, or contribution-in-kind**
73 **reports;**

74 **(4) Actuarially oriented advisory services involving the determination of amounts**
75 **recorded in the financial statements. The accountant may assist an insurer in**
76 **understanding the methods, assumptions, and inputs used in the determination of amounts**
77 **recorded in the financial statement only if it is reasonable to conclude that the services**
78 **provided will not be subject to audit procedures during an audit of the insurer's financial**
79 **statements. An accountant's actuary may also issue an actuarial opinion or certification**
80 **("opinion") on an insurer's reserves if the following conditions have been met:**

81 **(a) Neither the accountant nor the accountant's actuary has performed any**
82 **management functions or made any management decisions;**

83 (b) The insurer has competent personnel (or engages a third party actuary) to
84 estimate the reserves for which management takes responsibility; and

85 (c) The accountant's actuary tests the reasonableness of the reserves after the
86 insurer's management has determined the amount of the reserves;

87 (5) Internal audit outsourcing services;

88 (6) Management functions or human resources;

89 (7) Broker or dealer, investment adviser, or investment banking services;

90 (8) Legal services or expert services unrelated to the audit; or

91 (9) Any other services that the director determines, by rule, are impermissible.

92 8. Insurers having direct written and assumed premiums of less than one hundred
93 million dollars in any calendar year may request an exemption from subsection 7 of this
94 section. The insurer shall file with the director a written statement discussing the reasons
95 why the insurer should be exempt from these provisions. If the director finds, upon review
96 of this statement, that compliance with this requirement would constitute a financial or
97 organizational hardship upon the insurer, an exemption may be granted.

98 9. A qualified independent certified public accountant who performs the audit may
99 engage in other nonaudit services, including tax services, that are not described in and do
100 not conflict with subsection 7 of this section, only if the activity is approved in advance by
101 the audit committee, in accordance with subsection 10 of this section.

102 10. All auditing services and nonaudit services provided to an insurer by the
103 qualified independent certified public accountant of the insurer shall be preapproved by
104 the audit committee. The preapproval requirement is waived with respect to nonaudit
105 services if the insurer is a SOX compliant entity or a direct or indirect wholly owned
106 subsidiary of a SOX compliant entity or:

107 (1) The aggregate amount of all such nonaudit services provided to the insurer
108 constitutes not more than five percent of the total amount of fees paid by the insurer to its
109 qualified independent certified public accountant during the fiscal year in which the
110 nonaudit services are provided;

111 (2) The services were not recognized by the insurer at the time of the engagement
112 to be nonaudit services; and

113 (3) The services are promptly brought to the attention of the audit committee and
114 approved prior to the completion of the audit by the audit committee or by one or more
115 members of the audit committee who are the members of the board of directors to whom
116 authority to grant such approvals has been delegated by the audit committee.

117 11. The audit committee may delegate to one or more designated members of the
118 audit committee the authority to grant the preapprovals required by subsection 10 of this

section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

12. The director shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due.

13. Subsection 12 of this section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the director for relief from subsection 12 of this section on the basis of unusual circumstances. The insurer shall file, with its annual statement filing, the approval for relief from subsection 12 of this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

375.1038. An insurer may make written application to the director for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

375.1040. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) [That he] **Such accountant** is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the code of professional ethics and

5 pronouncements of the American Institute of Certified Public Accountants, and the rules of
6 professional conduct of the Missouri board of accountancy, or similar code;

7 (2) The background and experience in general, and the experience in audits of insurers,
8 of the staff assigned to audit the financial statements of the insurer and whether each is an
9 independent certified public accountant. **Nothing within this requirement shall be construed**
10 **as prohibiting the accountant from utilizing such staff as he or she deems appropriate**
11 **where use is consistent with the standards prescribed by generally accepted auditing**
12 **standards;**

13 (3) That the accountant understands the annual audited financial report and his opinion
14 thereon will be filed in compliance with sections 375.1025 to 375.1062 and that the director will
15 be relying on this information in the monitoring and regulation of the financial position of the
16 insurer;

17 (4) That the accountant consents to the requirements of section 375.1050 and that the
18 accountant consents and agrees to make available for review by the director, [his] **the director's**
19 designee or [his] appointed agent, the workpapers, as defined in section 375.1050;

20 (5) That the accountant is properly licensed by an appropriate state licensing authority
21 and that [he] **the accountant** is a member in good standing in the American Institute of Certified
22 Public Accountants;

23 (6) [That the accountant has liability insurance coverage of the lesser of one million
24 dollars or ten percent of the insurer's admitted assets; and

25 (7)] That the accountant is in compliance with the requirements of section 375.1037.

375.1042. Financial statements of the insurer to be filed pursuant to section 375.1030
2 shall be examined by an independent certified public accountant. The [examination] **audit** by
3 the independent certified public accountant of the insurer's financial statements shall be
4 conducted in accordance with generally accepted auditing standards [and consideration] . **In**
5 **accordance with AU Section 319 of the Professional Standards of the AICPA,**
6 **Consideration of Internal Control in a Financial Statement Audit, the independent**
7 **certified public accountant should obtain an understanding of internal control sufficient**
8 **to plan the audit. To the extent required by AU 319, for those insurers required to file a**
9 **Management's Report of Internal Control over Financial Reporting under section**
10 **375.1056, the independent certified public accountant should consider, as such term is**
11 **defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional**
12 **Requirements in Statements on Auditing Standards or its replacement, the most recently**
13 **available report in planning and performing the audit of the statutory financial statements.**
14 **Consideration** shall be given to procedures illustrated in the Financial Condition Examiner's

15 Handbook promulgated by the National Association of Insurance Commissioners **as the**
16 **independent certified public accountant deems necessary.**

375.1045. 1. The insurer required to furnish the annual audited financial report shall
2 require the independent certified public accountant to report, in writing, within five business days
3 to the board of directors or its audit committee any determination by the independent certified
4 public accountant that the insurer has materially misstated its financial condition as reported to
5 the director as of the balance sheet date currently under [examination] **audit** or that the insurer
6 does not meet the minimum capital and surplus requirement of the law as of that date. An
7 insurer who has received a report pursuant to this subsection shall forward a copy of the report
8 to the director within five business days of receipt of such report and shall provide the
9 independent certified public accountant making the report with evidence of the report being
10 furnished to the director. If the independent certified public accountant fails to receive such
11 evidence within the required five-business-day period, the independent certified public
12 accountant shall furnish to the director a copy of its report within the next five business days.

13 2. No independent public accountant shall be liable in any manner to any person for any
14 statement made in connection with subsection 1 of this section if such statement is made in good
15 faith in compliance with subsection 1 of this section.

16 3. If the accountant, subsequent to the date of the audited financial report filed [pursuant
17 to this section] **under sections 375.1025 to 375.1062**, becomes aware of facts which might have
18 affected his **or her** report, [the department notes the obligation of the] **such** accountant **is**
19 **required** to take such action [under] **as prescribed in** the professional standards of the
20 American Institute of Certified Public Accountants.

375.1047. 1. In addition to the annual audited financial report, each insurer shall furnish
2 the director with a [report of evaluation performed by the accountant, in connection with his
3 examination, of the system of internal accounting controls of the insurer] **written**
4 **communication as to any unremediated material weaknesses in its internal control over**
5 **financial reporting noted during the audit. Such communication shall be prepared by the**
6 **accountant within sixty days after the filing of the annual audited financial report and**
7 **shall contain a description of any unremediated material weakness, as the term material**
8 **weakness is defined by Statement on Auditing Standard 60, Communication of Internal**
9 **Control Related Matters Noted in an Audit, or its replacement, as of December thirty-first**
10 **immediately preceding in the insurer's internal control over financial reporting noted by**
11 **the accountant during the course of their audit of the financial statements. If no**
12 **unremediated material weaknesses were noted, the communication shall so state.**

13 2. [A report of the evaluation by the accountant of the system of internal accounting
14 controls of the insurer, including any remedial action taken or proposed, shall be filed annually

15 by the insurer with the director within sixty days after the filing of the annual audited financial
16 report. This report shall follow generally the form for reports on internal control structure related
17 matters noted in an audit described in Volume 1, Section AU 325 of the professional standards
18 of the American Institute of Certified Public Accountants, as may be amended, or in the event
19 that such standards no longer be published, a similar standard to be designated by the director
20 by duly promulgated regulation] **The insurer is required to provide a description of remedial**
21 **actions taken or proposed to correct unremediated material weaknesses, if the actions are**
22 **not described in the accountant's communication.**

375.1050. 1. As used in this section, "workpapers" are the records kept by the
2 independent certified public accountant of the procedures followed, the tests performed, the
3 information obtained and the conclusions reached pertinent to [his examination] **such**
4 **accountant's audit** of the financial statements of an insurer. Workpapers may include audit
5 planning documentation, work programs, analyses, memoranda, letters of confirmation and
6 representation, abstracts of company documents, [any communications between the accountant
7 and the insurer,] and schedules or commentaries prepared or obtained by the independent
8 certified public accountant in the course of [his examination] **such accountant's audit** of the
9 financial statements of an insurer **and** which [relate to his opinion thereof] **support such**
10 **accountant's opinion.**

11 2. Every insurer required to file an audited financial report pursuant to sections 375.1025
12 to 375.1062 shall require the accountant to make available for review by the examiners of the
13 department of insurance, financial institutions and professional registration all workpapers
14 prepared in the conduct of [his examination] **the accountant's audit** and any communications
15 related to the audit between the accountant and the insurer, at the offices of the insurer, at the
16 department of insurance, financial institutions and professional registration or at any other
17 reasonable place designated by the director. The insurer shall require that the accountant retain
18 the audit workpapers **and communications** until the department has filed a report on
19 examination covering the period of the audit, but no longer than seven years from the date of the
20 audit report.

21 3. In the conduct of any examination or review by the department examiners, it shall be
22 agreed that photocopies of pertinent audit workpapers may be made and retained by the [director]
23 **department.** Such reviews by the [director or his] **department** examiners shall be considered
24 investigations and all working papers and communications obtained during the course of such
25 investigations shall be afforded the same confidentiality as other examination workpapers
26 generated by the department.

375.1052. 1. Upon written application of any insurer, the director may grant a temporary
2 exemption from compliance with sections 375.1025 to 375.1062 if the director finds, upon

3 review of the application, that compliance with sections 375.1025 to 375.1062 would constitute
4 a financial or organizational hardship upon the insurer. An exemption may be granted at any
5 time and from time to time for a specified period or periods. Within ten days from a denial of
6 an insurer's written request for an exemption from sections 375.1025 to 375.1062, such insurer
7 may request in writing a hearing on its application for an exemption. Such hearing shall be held
8 in accordance with the provisions of chapter 536, RSMo, pertaining to administrative hearing
9 procedures and shall be a public meeting as provided by subdivision (3) of section 610.010,
10 RSMo.

11 2. Domestic insurers:

12 **(1) Retaining a certified public accountant on the effective date of this section who**
13 **qualifies as independent shall comply with sections 375.1025 to 375.1062 for the year**
14 **ending December 31, 2009, and each year thereafter unless the director permits otherwise;**

15 **(2) Not retaining a certified public accountant on the effective date of this**
16 **regulation who qualifies as independent**

17

18 shall meet the following schedule for compliance with sections 375.1025 to 375.1062 unless the
19 director permits otherwise:

20 [(1) As of May 1, 1992, with respect to the calendar year ending on December 31, 1991,
21 each domestic insurer shall file with the director:

22 (a) Report of independent certified public accountant;

23 (b) Audited balance sheet;

24 (c) Notes to audited balance sheet;

25 **(2)] (a) As of December 31, 2009, file with the director an audited financial report;**

26 **(b) For the year ending December 31, [1992] 2010, and each year thereafter, such**
27 **insurers shall file with the director all reports and communications required by sections**
28 **375.1025 to 375.1062.**

29 3. Foreign insurers shall comply with sections 375.1025 to 375.1062 for the year ending
30 December 31, 1992, and each year thereafter, unless the director permits otherwise.

31 **4. The requirements of subsection three of section 375.1037 shall be in effect for**
32 **audits of the year beginning January 1, 2010, and thereafter.**

33 **5. The requirements of section 375.1053 are to be in effect January 1, 2010. An**
34 **insurer or group of insurers that is not required to have independent audit committee**
35 **members or only a majority but not a supermajority of independent audit committee**
36 **members, because the total written and assumed premium is below the threshold and**
37 **subsequently becomes subject to one of the independence requirements due to changes in**
38 **premium shall have one year following the year the threshold is exceeded, but not earlier**

39 than January 1, 2010, to comply with the independence requirements. Likewise, an insurer
40 that becomes subject to one of the independence requirements as a result of a business
41 combination shall have one calendar year following the date of acquisition or combination
42 to comply with the independence requirements.

43 6. The requirements of sections 375.1038, 375.1054, and 375.1056 are effective
44 beginning with the reporting period ending December 31, 2010, and each year thereafter.
45 An insurer or group of insurers that is not required to file a report because the total
46 written premium is below the threshold and subsequently becomes subject to the reporting
47 requirements shall have two years following the year the threshold is exceeded to file a
48 report. Likewise, an insurer acquired in a business combination shall have two calendar
49 years following the date of acquisition or combination to comply with the reporting
50 requirements.

 375.1053. 1. This section shall not apply to foreign or alien insurers licensed in this
2 state or an insurer that is a SOX compliant entity or a direct or indirect wholly owned
3 subsidiary of a SOX compliant entity.

4 2. The audit committee shall be directly responsible for the appointment,
5 compensation, and oversight of the work of any accountant, including resolution of
6 disagreements between management and the accountant regarding financial reporting, for
7 the purpose of preparing or issuing the audited financial report or related work under
8 sections 375.1025 to 375.1062. Each accountant shall report directly to the audit
9 committee.

10 3. Each member of the audit committee shall be a member of the board of directors
11 of the insurer or a member of the board of directors of an entity elected under subsection
12 6 of this section and subdivision (6) of section 375.1025.

13 4. In order to be considered independent for purposes of this section, a member of
14 the audit committee shall not, other than in his or her capacity as a member of the audit
15 committee, the board of directors, or any other board committee, accept any consulting,
16 advisory, or other compensatory fee from the entity or be an affiliated person of the entity
17 or any subsidiary thereof. However, if law requires board participation by otherwise
18 nonindependent members, such law shall prevail and such members may participate in the
19 audit committee and be designated as independent for audit committee purposes, unless
20 they are an officer or employee of the insurer or one of its affiliates.

21 5. If a member of the audit committee ceases to be independent for reasons outside
22 the member's reasonable control, that person, with notice by the responsible entity to the
23 state, may remain an audit committee member of the responsible entity until the earlier of

24 the next annual meeting of the responsible entity or one year from the occurrence of the
25 event that caused the member to be no longer independent.

26 6. To exercise the election of the controlling person to designate the audit committee
27 for purposes of sections 375.1025 to 375.1062, the ultimate controlling person shall provide
28 written notice to the chief state insurance regulatory officials of the affected insurers.
29 Notification shall be made timely prior to the issuance of the statutory audit report and
30 include a description of the basis for the election. The election can be changed through
31 notice to the director by the insurer, which shall include a description of the basis for the
32 change. The election shall remain in effect for perpetuity, until rescinded.

33 7. (1) The audit committee shall require the accountant that performs for an
34 insurer any audit required by sections 375.1025 to 375.1062 to timely report to the audit
35 committee in accordance with the requirements of the auditing profession, including:

36 (a) All significant accounting policies and material permitted practices;

37 (b) All material alternative treatments of financial information within statutory
38 accounting principles that have been discussed with management officials of the insurer,
39 ramifications of the use of the alternative disclosures and treatments, and the treatment
40 preferred by the accountant; and

41 (c) Other material written communications between the accountant and the
42 management of the insurer, such as any management letter or schedule of unadjusted
43 differences.

44 (2) If an insurer is a member of an insurance holding company system, the reports
45 required by subdivision (1) of this subsection may be provided to the audit committee on
46 an aggregate basis for insurers in the holding company system; provided that any
47 substantial differences among insurers in the system are identified to the audit committee.

48 8. The proportion of independent audit committee members shall meet or exceed
49 the following criteria:

50 (1) If the insurer wrote direct and assumed premiums of zero to three hundred
51 million dollars during the prior calendar year, no minimum requirements are required
52 regarding the number or proportion of audit committee members who shall be
53 independent;

54 (2) If the insurer wrote direct and assumed premiums of three hundred million to
55 five hundred million dollars during the prior calendar year, at least a majority of the
56 members of the audit committee shall be independent; and

57 (3) If the insurer wrote direct and assumed premiums of five hundred million
58 dollars or more during the prior calendar year, a supermajority of at least seventy-five
59 percent of the members of the audit committee shall be independent.

60 **9. An insurer with direct written and assumed premium, excluding premiums**
61 **reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less**
62 **than five hundred million dollars may make application to the director for a waiver from**
63 **the requirements of this section based upon hardship. The insurer shall file, with its**
64 **annual statement filing, the approval for relief from this section with the states that it is**
65 **licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic**
66 **filing with the NAIC, the insurer shall file the approval in an electronic format acceptable**
67 **to the NAIC.**

375.1054. 1. No director or officer of an insurer shall, directly or indirectly:

2 **(1) Make or cause to be made a materially false or misleading statement to an**
3 **accountant in connection with any audit, review, or communication required under**
4 **sections 375.1025 to 375.1062; or**

5 **(2) Omit to state, or cause another person to omit to state, any material fact**
6 **necessary in order to make statements made, in light of the circumstances under which the**
7 **statements were made, not misleading to an accountant in connection with any audit,**
8 **review, or communication required under sections 375.1025 to 375.1062.**

9 **2. No officer or director of an insurer, or any other person acting under the**
10 **direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead,**
11 **or fraudulently influence any accountant engaged in the performance of an audit under**
12 **sections 375.1025 to 375.1062 if such person knew or should have known that the action,**
13 **if successful, could result in rendering the insurer's financial statements materially**
14 **misleading.**

15 **3. For purposes of subsection 2 of this section, actions that, "if successful, could**
16 **result in rendering the insurer's financial statements materially misleading" include, but**
17 **are not limited to, actions taken at any time with respect to the professional engagement**
18 **period to coerce, manipulate, mislead, or fraudulently influence an accountant:**

19 **(1) To issue or reissue a report on an insurer's financial statements that is not**
20 **warranted in the circumstances, due to material violations of statutory accounting**
21 **principles prescribed by the director, generally accepted auditing standards, or other**
22 **professional or regulatory standards;**

23 **(2) Not to perform audit, review, or other procedures required by generally**
24 **accepted auditing standards or other professional standards;**

25 **(3) Not to withdraw an issued report; or**

26 **(4) Not to communicate matters to an insurer's audit committee.**

27 **4. Any violation of any provision of this section is a level three violation under**
28 **section 374.049, RSMo.**

375.1056. 1. Every insurer required to file an audited financial report under sections 375.1025 to 375.1062 that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five hundred million dollars or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as such terms are defined in section 375.1025. The report shall be filed with the director along with the communication of internal control related matters noted in an audit described under section 375.1047. Management's report of internal control over financial reporting shall be as of December thirty-first immediately preceding.

2. Notwithstanding the premium threshold in subsection 1 of this section, the director may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in rules adopted by the director.

3. An insurer or a group of insurers that is:

(1) Directly subject to Section 404;

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

(3) Not directly subject to Section 404 but is a SOX compliant entity; or

(4) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity

may file its or its parent's Section 404 report and an addendum in satisfaction of the requirement of this section, provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements, namely those items included in subdivisions 2 to 6 of subsection 2 of section 375.1032, were included in the scope of the Section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file a report under this section, or the Section 404 report and a report under this section for those internal controls that have a

36 material impact on the preparation of the insurer's or group of insurers' audited statutory
37 financial statements not covered by the Section 404 report.

38 4. Management's report of internal control over financial reporting shall include:

39 (1) A statement that management is responsible for establishing and maintaining
40 adequate internal control over financial reporting;

41 (2) A statement that management has established internal control over financial
42 reporting and an assertion, to the best of management's knowledge and belief, after
43 diligent inquiry, as to whether its internal control over financial reporting is effective to
44 provide reasonable assurance regarding the reliability of financial statements in
45 accordance with statutory accounting principles;

46 (3) A statement that briefly describes the approach or processes by which
47 management evaluated the effectiveness of its internal control over financial reporting; and

48 (4) A statement that briefly describes the scope of work that is included and
49 whether any internal controls were excluded;

50 (5) Disclosure of any unremediated material weaknesses in the internal control over
51 financial reporting identified by management as of December thirty-first immediately
52 preceding. Management is not permitted to conclude that the internal control over
53 financial reporting is effective to provide reasonable assurance regarding the reliability of
54 financial statements in accordance with statutory accounting principles if there is one or
55 more unremediated material weaknesses in its internal control over financial reporting;

56 (6) A statement regarding the inherent limitations of internal control systems; and

57 (7) Signatures of the chief executive officer and the chief financial officer, or the
58 equivalent position or title.

59 5. Management shall document and make available upon financial condition
60 examination the basis upon which its assertions required in subsection 4 of this section are
61 made. Management may base its assertions, in part, upon its review, monitoring and
62 testing of internal controls undertaken in the normal course of its activities. Management
63 shall have discretion as to the nature of the internal control framework used, and the
64 nature and extent of documentation, in order to make its assertion in a cost-effective
65 manner and, as such, may include assembly of or reference to existing documentation.
66 Management's report on internal control over financial reporting, required by subsection
67 1 of this section, and any documentation provided in support thereof during the course of
68 a financial condition examination, shall be kept confidential by the department.

69 6. No officer responsible for financial reporting may be a member of the audit
70 committee.

375.1057. 1. In the case of Canadian and British insurers, the annual audited financial
2 report shall be defined as the annual statement of total business on the form filed by such
3 companies with their [domiciliary supervisory] **supervision** authority duly audited by an
4 independent chartered accountant.

5 2. For such Canadian and British insurers, the letter required by **subsection 2 of** section
6 375.1035 shall state that the accountant is aware of the requirements relating to the annual
7 audited financial report filed with the director pursuant to section 375.1030 and shall affirm that
8 the opinion expressed is in conformity with such requirements.

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