

FIRST REGULAR SESSION

SENATE BILL NO. 483

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 25, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2099S.011

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, with penalty provisions.

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375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, and 375.1057, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1038, 375.1040,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, 375.1055, 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" of, or person "affiliated" with, a specific person, is 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;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

16 (4) "Audit committee", a committee, or equivalent body,
17 established by the board of directors of an entity for the purpose of
18 overseeing the accounting and financial reporting processes of an
19 insurer or group of insurers, and audits of financial statements of the
20 insurer or group of insurers. The audit committee of any entity that
21 controls a group of insurers may be deemed to be the audit committee
22 for one or more of these controlled insurers solely for the purposes of
23 sections 375.1025 to 375.1062, at the election of the controlling
24 person. This election shall be exercised under subsection 5 of section
25 375.1053. If an audit committee is not designated by the insurer, the
26 insurer's entire board of directors shall constitute the audit committee;

27 (5) "Audited financial report" means and includes those items
28 specified in section 375.1032;

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

31 [(3)] (7) "Director", the director of the department of insurance, financial
32 institutions and professional registration;

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

37 (9) "Indemnification", an agreement of indemnity or a release
38 from liability where the intent or effect is to shift or limit in any
39 manner the potential liability of the person or firm for failure to
40 adhere to applicable auditing or professional standards, whether or not
41 resulting in part from knowing of other misrepresentations made by
42 the insurer or its representative;

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

45 [(4)] (11) "Insurer", an insurer certified to do business in this state
46 pursuant to section 375.161 or 375.831, and to companies authorized to transact
47 business in this state pursuant to chapters 354, 376, 377, 378, 379 and 381,
48 RSMo;

49 (12) "Internal control over financial reporting", a process effected
50 by an entity's board of directors, management, and other personnel

51 designed to provide reasonable assurance regarding the reliability of
52 the financial statements, i.e., those items specified in subsections 2 to
53 7 of section 375.1032, and includes those policies and procedures that:

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

57 (b) Provide reasonable assurance that transactions are recorded
58 as necessary to permit preparation of financial statements, i.e., those
59 items specified in subsections 2 to 7 of section 375.1032, and that
60 receipts and expenditures are being made only in accordance with
61 authorizations of management and directors; and

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

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

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

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

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

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

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

82 (b) The audit committee independence requirements of Section
83 301 (Section 10A(m)(3) of the federal Securities Exchange Act of 1934);
84 and

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

375.1028. 1. Sections 375.1025 to 375.1062 shall apply to all insurers as

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

11 2. Foreign or alien insurers filing audited financial reports in another
12 state, pursuant to such other state's requirement for **filing of** audited financial
13 reports which [are] **has been** found by the director to be substantially similar
14 to the requirements herein, are exempt from sections [375.1025 to 375.1062]
15 **375.1030 to 375.1050** if:

16 (1) A copy of the audited financial report, **communication of internal**
17 **control related matters noted in an audit**, and the [evaluation of accounting
18 procedures and systems of internal control report which] **accountant's letter**
19 **of qualifications that** are filed with such other state are filed with the director
20 in accordance with the filing dates specified in sections 375.1030, **375.1047**, and
21 [375.1052] **375.1040**, respectively. Canadian insurers may submit accountant's
22 reports as filed with the [Canadian Dominion Department of Insurance] **Office**
23 **of the Superintendent of Financial Institutions, Canada; and**

24 (2) A copy of any notification of adverse financial condition report filed
25 with such other state is filed with the director within the time specified in section
26 375.1045.

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

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

375.1030. 1. All insurers shall have an annual audit [performed] by an
2 independent certified public accountant and shall file an audited financial report

3 with the director on or before June first [with respect to the calendar] **for the**
4 year ended December thirty-first immediately preceding. The director may
5 require an insurer to file an audited financial report earlier than June first with
6 ninety days' advance notice to the insurer.

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

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

18 4. **Every insurer required to file an annual audited financial**
19 **report under sections 375.1025 to 375.1062 shall designate a group of**
20 **individuals as constituting its audit committee, as defined in section**
21 **375.1025. The audit committee of an entity that controls an insurer may**
22 **be deemed to be the insurer's audit committee for purposes of sections**
23 **375.1025 to 375.1062 at the election of the controlling person.**

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

7 2. The annual audited financial report shall include the following:

- 8 (1) Report of independent certified public accountant;
- 9 (2) Balance sheet reporting admitted assets, liabilities, capital and
10 surplus;
- 11 (3) Statement of [gain or loss from] operations;
- 12 (4) Statement of cash [flows] **flow**;
- 13 (5) Statement of changes in capital and surplus;
- 14 (6) Notes to financial statements. These notes shall be those required by
15 the **appropriate** National Association of Insurance Commissioners' Annual

16 Statement Instructions and [any other notes required by generally accepted
17 accounting principles] **the NAIC's Accounting Practices and Procedures**
18 **Manual as adopted by the director** and shall include[:

19 (a)] a reconciliation of differences, if any, between the audited statutory
20 financial statements and the annual statement filed pursuant to section 375.041
21 and section 354.105, 354.435, RSMo, 376.350, RSMo, 377.100, 377.380, RSMo,
22 378.350, RSMo, 379.105, RSMo, 380.051 or 380.482, RSMo, with a written
23 description of the nature of these differences[;

24 (b) A summary of ownership and relationships of the insurer and all
25 affiliated companies; and

26 (c) A narrative explanation of all significant intercompany transactions
27 and balances].

28 3. The financial statements included in the audited financial report shall
29 be prepared in a form and using language and groupings substantially the same
30 as the relevant sections of the annual statement of the insurer filed with the
31 director[:

32 (1)], **and** the financial statement shall be comparative, presenting the
33 amounts as of December thirty-first of the current year and the amounts as of the
34 immediately preceding December thirty-first. However, in the first year in which
35 an insurer is required to file an audited financial report, the comparative data
36 may be omitted[;

37 (2) Amounts may be rounded to the nearest thousand dollars;

38 (3) Insignificant amounts may be combined].

375.1035. 1. Each insurer required by sections 375.1025 to [375.1057]
2 **375.1062** to file an annual audited financial report shall, within sixty days after
3 becoming subject to such requirement, register with the director in writing the
4 name and address of its independent certified public accountant or accounting
5 firm [(generally referred to in sections 375.1025 to 375.1057 as the "accountant")]
6 retained to conduct the annual audit set forth in sections 375.1025 to [375.1057]
7 **375.1062**. Any insurer not retaining an independent certified public accountant
8 on the effective date of sections 375.1025 to [375.1057] **375.1062** shall register
9 the name and address of its retained **independent** certified public accountant
10 not less than six months before the date when the first audited financial report
11 is to be filed.

12 2. The insurer shall obtain a letter from such accountant, and file a copy
13 with the director stating that the accountant is aware of the provisions of the

14 insurance laws and the rules and regulations of the department of insurance of
15 the state of domicile that relate to accounting and financial matters and affirming
16 that [he] **the accountant** will express his **or her** opinion on the financial
17 statements in [the] terms of their conformity to the statutory accounting practices
18 prescribed or otherwise permitted by that department of insurance, specifying
19 such exceptions as he **or she** may believe appropriate.

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

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

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

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

9 2. Except as otherwise provided [herein, a] **in sections 375.1025 to**

10 **375.1062, the director shall recognize an independent** certified public
11 accountant [shall be recognized] as [independent] **qualified** as long as he **or she**
12 conforms to the standards of his **or her** profession, as contained in the code of
13 professional ethics of the American Institute of Certified Public Accountants and
14 rules and regulations and code of ethics and rules of professional conduct of the
15 Missouri state board of accountancy, or similar code.

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

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

34 (2) Premium volume of the insurer; or

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

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

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

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

46 (3) Has demonstrated a pattern or practice of failing to detect or disclose
47 material information in previous reports filed under the provisions of sections
48 375.1025 to [375.1057] **375.1062**.

49 5. The director [shall notify the insurer should he] **may hold a hearing**
50 **under sections 536.100 to 536.140, RSMo, to determine [that the] whether**
51 **an independent** certified public accountant is [not independent or is incapable
52 or incompetent] **qualified and, considering the evidence presented, may**
53 **rule that the accountant is not qualified** for purposes of expressing his or
54 **her** opinion on the financial statements in the annual audited financial report
55 made pursuant to sections 375.1025 to [375.1057. If the insurer contests such
56 determination, the director shall hold a hearing to determine whether the
57 certified public accountant is independent, capable and competent, and,
58 considering the evidence presented, may rule that the accountant is not
59 independent or is incapable or incompetent for purposes of expressing his opinion
60 on the financial statements in the annual audited financial report] **375.1062** and
61 require the insurer to replace the accountant with another whose relationship
62 with the insurer is [independent] **qualified** within the meaning of[, or who is
63 capable or competent to perform the requirements of,] sections 375.1025 to
64 [375.1057] **375.1062**.

65 6. A **qualified independent certified public accountant may enter**
66 **into an agreement with an insurer to have disputes relating to an audit**
67 **resolved by mediation or arbitration. However, in the event of a**
68 **delinquency proceeding commenced against the insurer under sections**
69 **375.570 to 375.750 the mediation or arbitration provisions shall operate**
70 **at the option of the statutory successor.**

71 7. The director shall not recognize as a **qualified independent**
72 **certified public accountant, nor accept an annual audited financial**
73 **report, prepared in whole or in part by an accountant who functions in**
74 **the role of management, audits his or her own work, or serves in an**
75 **advocacy role for the insurer. Without limiting the foregoing, the**
76 **director shall not recognize as a qualified independent certified public**
77 **accountant, nor accept an annual audited financial report, prepared in**
78 **whole or in part by an accountant who provides to an insurer,**
79 **contemporaneously with the audit, the following non-audit services:**

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

82 (2) Financial information systems design and implementation;

83 (3) Appraisal or valuation services, fairness opinions, or
84 contribution-in-kind reports;

85 (4) Actuarially-oriented advisory services involving the
86 determination of amounts recorded in the financial statements. The
87 accountant may assist an insurer in understanding the methods,
88 assumptions, and inputs used in the determination of amounts recorded
89 in the financial statement only if it is reasonable to conclude that the
90 services provided will not be subject to audit procedures during an
91 audit of the insurer's financial statements. An accountant's actuary
92 may also issue an actuarial opinion or certification on an insurer's
93 reserves if the following conditions have been met:

94 (a) Neither the accountant nor the accountant's actuary has
95 performed any management functions or made any management
96 decisions;

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

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

103 (5) Internal audit outsourcing services;

104 (6) Management functions or human resources;

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

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

108 (9) Any other services that the director determines, by
109 regulation, are impermissible.

110 8. Insurers having direct written and assumed premiums of less
111 than one hundred million dollars in any calendar year may request an
112 exemption from subsection 7 of this section. The insurer shall file with
113 the director a written statement discussing the reasons why the insurer
114 should be exempt from these provisions. If the director finds, upon
115 review of this statement, that compliance with this regulation would
116 constitute a financial or organizational hardship upon the insurer, an
117 exemption may be granted.

118 9. A qualified independent certified public accountant who

119 performs the audit may engage in other nonaudit services, including
120 tax services, that are not described in and do not conflict with
121 subsection 7 of this section, only if the activity is approved in advance
122 by the audit committee, in accordance with subsection 10 of this
123 section.

124 10. All auditing services and nonaudit services provided to an
125 insurer by the qualified independent certified public accountant of the
126 insurer shall be preapproved by the audit committee. The preapproval
127 requirement is waived with respect to nonaudit services if the insurer
128 is a SOX compliant entity or a direct or indirect wholly-owned
129 subsidiary of a SOX compliant entity or:

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

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

137 (3) The services are promptly brought to the attention of the
138 audit committee and approved prior to the completion of the audit by
139 the audit committee or by one or more members of the audit committee
140 who are the members of the board of directors to whom authority to
141 grant such approvals has been delegated by the audit committee.

142 11. The audit committee may delegate to one or more designated
143 members of the audit committee the authority to grant the
144 preapprovals required by subsection 10 of this section. The decisions
145 of any member to whom this authority is delegated shall be presented
146 to the full audit committee at each of its scheduled meetings.

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

155 13. Subsection 12 of this section shall only apply to partners and

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

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

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

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

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

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

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

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

4 (1) [That he] **Such accountant** is independent with respect to the
5 insurer and conforms to the standards of his **or her** profession as contained in
6 the code of professional ethics and pronouncements of the American Institute of
7 Certified Public Accountants, and the rules of professional conduct of the
8 Missouri board of accountancy, or similar code;

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

16 (3) That the accountant understands the annual audited financial report
17 and his opinion thereon will be filed in compliance with sections 375.1025 to
18 375.1062 and that the director will be relying on this information in the
19 monitoring and regulation of the financial position of the insurer;

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

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

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

29 (7)] That the accountant is in compliance with the requirements of section
30 375.1037.

 375.1042. Financial statements of the insurer to be filed pursuant to
2 section 375.1030 shall be examined by an independent certified public
3 accountant. The [examination] **audit** by the independent certified public
4 accountant of the insurer's financial statements shall be conducted in accordance
5 with generally accepted auditing standards and consideration. **In accordance**
6 **with AU Section 319 of the Professional Standards of the AICPA,**
7 **Consideration of Internal Control in a Financial Statement Audit, the**
8 **independent certified public accountant should obtain an**
9 **understanding of internal control sufficient to plan the audit. To the**
10 **extent required by AU 319, for those insurers required to file a**
11 **Management's Report of Internal Control over Financial Reporting**
12 **pursuant to section 375.1055, the independent certified public**
13 **accountant should consider, as that term is defined in Statement on**
14 **Auditing Standards (SAS) No. 102, Defining Professional Requirements**

15 **in Statements on Auditing Standards or its replacement, the most**
16 **recently available report in planning and performing the audit of the**
17 **statutory financial statements. Consideration** shall be given to procedures
18 illustrated in the Financial Condition Examiner's Handbook promulgated by the
19 National Association of Insurance Commissioners **as the independent**
20 **certified public accountant deems necessary.**

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

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

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

375.1047. 1. In addition to the annual audited financial report, each
2 insurer shall furnish the director with a [report of evaluation performed by the
3 accountant, in connection with his examination, of the system of internal
4 accounting controls of the insurer] **written communication as to any**
5 **unremediated material weaknesses in its internal control over financial**

6 reporting noted during the audit. Such communication shall be
7 prepared by the accountant within sixty days after the filing of the
8 annual audited financial report, and shall contain a description of any
9 unremediated material weakness, as the term "material weakness" is
10 defined by Statement on Auditing Standard 60, Communication of
11 Internal Control Related Matters Noted in an Audit, or its replacement,
12 as of December thirty-first immediately preceding in the insurer's
13 internal control over financial reporting noted by the accountant
14 during the course of their audit of the financial statements. If no
15 unremediated material weaknesses were noted, the communication
16 should so state.

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

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

12 2. Every insurer required to file an audited financial report pursuant to
13 sections 375.1025 to 375.1062 shall require the accountant to make available for

14 review by the examiners of the department of insurance, financial institutions
15 and professional registration all workpapers prepared in the conduct of [his
16 examination] **the accountant's audit** and any communications related to the
17 audit between the accountant and the insurer, at the offices of the insurer, at the
18 department of insurance, financial institutions and professional registration or
19 at any other reasonable place designated by the director. The insurer shall
20 require that the accountant retain the audit workpapers **and communications**
21 until the department has filed a report on examination covering the period of the
22 audit, but no longer than seven years from the date of the audit report.

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

375.1052. 1. Upon written application of any insurer, the director may
2 grant a temporary exemption from compliance with sections 375.1025 to 375.1062
3 if the director finds, upon review of the application, that compliance with sections
4 375.1025 to 375.1062 would constitute a financial or organizational hardship
5 upon the insurer. An exemption may be granted at any time and from time to
6 time for a specified period or periods. Within ten days from a denial of an
7 insurer's written request for an exemption from sections 375.1025 to 375.1062,
8 such insurer may request in writing a hearing on its application for an
9 exemption. Such hearing shall be held in accordance with the provisions of
10 chapter 536, RSMo, pertaining to administrative hearing procedures and shall be
11 a public meeting as provided by subdivision (3) of section 610.010, RSMo.

12 2. Domestic insurers:

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

17 (2) **Not retaining a certified public accountant on the effective**
18 **date of this regulation who qualifies as independent** shall meet the
19 following schedule for compliance with sections 375.1025 to 375.1062 unless the
20 director permits otherwise:

21 [(1)] **(a)** As of [May 1, 1992] **December 31, 2009**, [with respect to the
22 calendar year ending on December 31, 1991, each domestic insurer shall] file with
23 the director[:

24 (a) Report of independent certified public accountant;

25 (b) Audited balance sheet;

26 (c) Notes to audited balance sheet] **an audited financial report; and**

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

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

33 4. **The requirements of subsection 3 of section 375.1037 shall be**
34 **in effect for audits of the year beginning January 1, 2010 and**
35 **thereafter.**

36 5. **The requirements of section 375.1053 are to be in effect**
37 **January 1, 2010. An insurer or group of insurers that is not required**
38 **to have independent audit committee members or only a majority but**
39 **not a supermajority of independent audit committee members, because**
40 **the total written and assumed premium is below the threshold and**
41 **subsequently becomes subject to one of the independence requirements**
42 **due to changes in premium shall have one year following the year the**
43 **threshold is exceeded, but not earlier than January 1, 2010, to comply**
44 **with the independence requirements. Likewise, an insurer that**
45 **becomes subject to one of the independence requirements as a result of**
46 **a business combination shall have one calendar year following the date**
47 **of acquisition or combination to comply with the independence**
48 **requirements.**

49 6. **The requirements of sections 375.1038, 375.1054, and 375.1055**
50 **are effective beginning with the reporting period ending December 31,**
51 **2010, and each year thereafter. An insurer or group of insurers that is**
52 **not required to file a report because the total written premium is below**
53 **the threshold and subsequently becomes subject to the reporting**
54 **requirements shall have two years following the year the threshold is**
55 **exceeded to file a report. Likewise, an insurer acquired in a business**
56 **combination shall have two calendar years following the date of**
57 **acquisition or combination to comply with the reporting requirements.**

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

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

12 3. Each member of the audit committee shall be a member of the
13 board of directors of the insurer or a member of the board of directors
14 of an entity elected pursuant to subsection 6 and subdivision (6) of
15 section 375.1025.

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

26 5. If a member of the audit committee ceases to be independent
27 for reasons outside the member's reasonable control, that person, with
28 notice by the responsible entity to the state, may remain an audit
29 committee member of the responsible entity until the earlier of the next
30 annual meeting of the responsible entity or one year from the
31 occurrence of the event that caused the member to no longer be
32 independent.

33 6. To exercise the election of the controlling person to designate
34 the audit committee for purposes of sections 375.1025 to 375.1062, the
35 ultimate controlling person shall provide written notice to the chief
36 state insurance regulatory officials of the affected
37 insurers. Notification shall be made timely prior to the issuance of the

38 statutory audit report and include a description of the basis for the
39 election. The election can be changed through notice to the director by
40 the insurer, which shall include a description of the basis for the
41 change. The election shall remain in effect for perpetuity, until
42 rescinded.

43 7. (1) The audit committee shall require the accountant that
44 performs for an insurer any audit required by sections 375.1025 to
45 375.1062 to timely report to the audit committee in accordance with the
46 requirements of the auditing profession, including:

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

49 (b) All material alternative treatments of financial information
50 within statutory accounting principles that have been discussed with
51 management officials of the insurer, ramifications of the use of the
52 alternative disclosures and treatments, and the treatment preferred by
53 the accountant; and

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

57 (2) If an insurer is a member of an insurance holding company
58 system, the reports required by subdivision (1) of this subsection may
59 be provided to the audit committee on an aggregate basis for insurers
60 in the holding company system, provided that any substantial
61 differences among insurers in the system are identified to the audit
62 committee.

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

65 (1) If the insurer wrote direct and assumed premiums of zero to
66 three hundred million dollars during the prior calendar year, no
67 minimum requirements are required regarding the number or
68 proportion of audit committee members who must be independent;

69 (2) If the insurer wrote direct and assumed premiums of three
70 hundred million to five hundred million dollars during the prior
71 calendar year, at least a majority of the members of the audit
72 committee must be independent; and

73 (3) If the insurer wrote direct and assumed premiums of five
74 hundred million dollars or more during the prior calendar year, a

75 super-majority of at least seventy-five percent of the members of the
76 audit committee must be independent.

77 9. An insurer with direct written and assumed premium,
78 excluding premiums reinsured with the Federal Crop Insurance
79 Corporation and Federal Flood Program, less than five hundred million
80 dollars may make application to the director for a waiver from the
81 requirements of this section based upon hardship. The insurer shall
82 file, with its annual statement filing, the approval for relief from this
83 section with the states that it is licensed in or doing business in and
84 the NAIC. If the nondomestic state accepts electronic filing with the
85 NAIC, the insurer shall file the approval in an electronic format
86 acceptable to the NAIC.

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

3 (1) Make or cause to be made a materially false or misleading
4 statement to an accountant in connection with any audit, review or
5 communication required under this regulation; or

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

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

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

23 (1) To issue or reissue a report on an insurer's financial
24 statements that is not warranted in the circumstances, due to material
25 violations of statutory accounting principles prescribed by the director,

26 generally accepted auditing standards, or other professional or
27 regulatory standards;

28 (2) Not to perform audit, review, or other procedures required
29 by generally accepted auditing standards or other professional
30 standards;

31 (3) Not to withdraw an issued report; or

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

33 4. Violation of any provision of this section is a level three
34 violation under section 374.049, RSMo.

375.1055. 1. Every insurer required to file an audited financial
2 report pursuant to this regulation that has annual direct written and
3 assumed premiums, excluding premiums reinsured with the Federal
4 Crop Insurance Corporation and Federal Flood Program, of five
5 hundred million dollars or more shall prepare a report of the insurer's
6 or group of insurers' internal control over financial reporting, as these
7 terms are defined in section 375.1025. The report shall be filed with the
8 director along with the communication of internal control related
9 matters noted in an audit described under section
10 375.1047. Management's report of internal control over financial
11 reporting shall be as of December thirty-first immediately preceding.

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

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

19 (1) Directly subject to Section 404;

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

22 (3) Not directly subject to Section 404 but is a SOX Compliant
23 Entity; or

24 (4) A member of a holding company system whose parent is not
25 directly subject to Section 404 but is a SOX Compliant Entity;
26 may file its or its parent's Section 404 report and an addendum in
27 satisfaction of this section's requirement provided that those internal
28 controls of the insurer or group of insurers having a material impact

29 on the preparation of the insurer's or group of insurers' audited
30 statutory financial statements, namely those items included in
31 subdivisions (2) to (6) of subsection 2 of section 375.1032, were included
32 in the scope of the Section 404 report. The addendum shall be a
33 positive statement by management that there are no material processes
34 with respect to the preparation of the insurer's or group of insurers'
35 audited statutory financial statements excluded from the Section 404
36 report. If there are internal controls of the insurer or group of insurers
37 that have a material impact on the preparation of the insurer's or
38 group of insurers' audited statutory financial statements and those
39 internal controls were not included in the scope of the Section 404
40 report, the insurer or group of insurers may either file a report under
41 this section, or the Section 404 report and a report under this section
42 for those internal controls that have a material impact on the
43 preparation of the insurer's or group of insurers' audited statutory
44 financial statements not covered by the Section 404 report.

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

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

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

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

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

60 (5) Disclosure of any unremediated material weaknesses in the
61 internal control over financial reporting identified by management as
62 of December thirty-first immediately preceding. Management is not
63 permitted to conclude that the internal control over financial reporting
64 is effective to provide reasonable assurance regarding the reliability
65 of financial statements in accordance with statutory accounting

66 principles if there is one or more unremediated material weaknesses
67 in its internal control over financial reporting;

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

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

72 5. Management shall document and make available upon
73 financial condition examination the basis upon which its assertions
74 required in subsection 4 of this section are made. Management may
75 base its assertions, in part, upon its review, monitoring, and testing of
76 internal controls undertaken in the normal course of its
77 activities. Management shall have discretion as to the nature of the
78 internal control framework used, and the nature and extent of
79 documentation, in order to make its assertion in a cost effective
80 manner and, as such, may include assembly of or reference to existing
81 documentation. Management's report on internal control over financial
82 reporting, required by subsection 1 of this section, and any
83 documentation provided in support thereof during the course of a
84 financial condition examination, shall be kept confidential by the
85 department.

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

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

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

✓