

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. \_\_\_\_\_

Insurance-financial reporting requirements.

Sponsored by: Joint Corporations, Elections and Political  
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance companies; providing for  
2 independence of certified public accountants completing  
3 audits; providing for audit committees; providing for  
4 conduct of insurers preparing financial statements;  
5 providing for management reports of internal control over  
6 financial reporting; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 26-3-315 through 26-3-317 are created  
11 to read:

12

13 **26-3-315. Requirements for audit committees.**

1

2 (a) An audit committee shall be directly responsible  
3 for the appointment, compensation and oversight of the work  
4 of any accountant, including resolution of disagreements  
5 between management and the accountant regarding financial  
6 reporting, employed for the purpose of preparing or issuing  
7 the audited financial report or related work pursuant to  
8 this article and each accountant shall report directly to  
9 the audit committee.

10

11 (b) Each member of the audit committee shall be a  
12 member of the board of directors of the insurer or a member  
13 of the board of directors of an entity elected pursuant to  
14 W.S. 26-3-315(e) and 26-3-302(a)(vi).

15

16 (c) In order to be considered independent for  
17 purposes of this section, a member of the audit committee  
18 shall not, other than in his capacity as a member of the  
19 audit committee, the board of directors or any other board  
20 committee, accept any consulting, advisory or other  
21 compensatory fee from the entity or be an affiliated person  
22 of the entity or any subsidiary thereof. If any other  
23 provision of law requires board participation by otherwise

1 non-independent members, that law shall prevail and such  
2 members may participate in the audit committee and be  
3 designated as independent for audit committee purposes  
4 unless they are an officer or employee of the insurer or  
5 one (1) of its affiliates.

6

7 (d) If a member of the audit committee ceases to be  
8 independent for reasons outside the member's reasonable  
9 control, that person, with notice by the responsible entity  
10 to the state, may remain an audit committee member of the  
11 responsible entity until the earlier of the next annual  
12 meeting of the responsible entity or one (1) year from the  
13 occurrence of the event that caused the member to be no  
14 longer independent.

15

16 (e) To exercise the election of the controlling  
17 person to designate the audit committee for purposes of  
18 this article, the ultimate controlling person shall provide  
19 written notice to the commissioners of the affected  
20 insurers. Notification shall be made timely prior to the  
21 issuance of the statutory audit report and include a  
22 description of the basis for the election. The election  
23 may be changed through notice to the commissioner by the

1 insurer which shall include a description of the basis for  
2 the change. The election shall remain in effect for  
3 perpetuity, until rescinded.

4

5 (f) The audit committee shall require the accountant  
6 that performs for an insurer any audit required by this  
7 article to timely report to the audit committee in  
8 accordance with the requirements of SAS 61, Communication  
9 with Audit Committees, or its replacement, including:

10

11 **\*\*\* Staff note: Should we have a definition of SAS**  
12 **61? \*\*\***

13

14 (i) All significant accounting policies and  
15 material permitted practices;

16

17 (ii) All material alternative treatments of  
18 financial information within statutory accounting  
19 principles that have been discussed with management  
20 officials of the insurer, ramifications of the use of the  
21 alternative disclosures and treatments and the treatment  
22 preferred by the accountant; and

23

1           (iii)     Other material written communications  
2 between the accountant and the management of the insurer,  
3 such as any management letter or schedule of unadjusted  
4 differences.

5  
6           (g)     If an insurer is a member of an insurance holding  
7 company system the reports required under subsection (f) of  
8 this section may be provided to the audit committee on an  
9 aggregate basis for insurers in the holding company system,  
10 provided that any substantial differences among insurers in  
11 the system are identified to the audit committee.

12  
13           (h)     The proportion of independent audit committee  
14 members shall meet or exceed the following criteria, except  
15 that the commissioner has authority afforded by state law  
16 to require the entity's board to enact improvements to the  
17 independence of the audit committee membership if the  
18 insurer is in a RBC action level event, meets one (1) or  
19 more of the standards of an insurer deemed to be in  
20 hazardous financial condition or otherwise exhibits  
21 qualities of a troubled insurer:

22

1           (i) For insurers with prior calendar year direct  
2 written and assumed premiums of three hundred million  
3 dollars (\$300,000,000.00) or less there is no minimum  
4 requirement, however such insurers are encouraged to  
5 structure their audit committees with at least a  
6 supermajority of independent audit committee members;

7

8           (ii) For insurers with prior calendar year  
9 direct written and assumed premiums of between three  
10 hundred million dollars (\$300,000,000.00) and five hundred  
11 million dollars (\$500,000,000.00) the audit committee shall  
12 have a majority of members that are independent and such  
13 insurers are encouraged to structure their audit committees  
14 with at least a supermajority of independent audit  
15 committee members;

16

17           (iii) For insurers with prior calendar year  
18 direct written and assumed premiums of more than five  
19 hundred million dollars (\$500,000,000.00) at least seventy-  
20 five percent (75%) of the members of the audit committee  
21 shall be independent;

22

1           (iv)     For purposes of this subsection, prior  
2 calendar year direct written and assumed premiums shall be  
3 the combined total of direct premiums and assumed premiums  
4 from non-affiliates for the reporting entities.

5  
6           (j)     An insurer with direct written and assumed  
7 premiums, excluding premiums reinsured with the Federal  
8 Crop Insurance Corporation and Federal Flood Program, less  
9 than five hundred million dollars (\$500,000,000.00) may  
10 make application to the commissioner for a waiver from the  
11 requirements of this section based on hardship.     The  
12 insurer shall file, with its annual statement filing, the  
13 approval for relief from this section with the states that  
14 it is licensed in or doing business in and the NAIC.     If  
15 the nondomestic state accepts electronic filing with the  
16 NAIC, the insurer shall file the approval in an electronic  
17 format acceptable to the NAIC.

18  
19           (k)     This section shall not apply to foreign or alien  
20 insurers licensed in this state or an insurer that is a SOX  
21 compliant entity or a direct or indirect wholly-owned  
22 subsidiary of a SOX compliant entity.

23

1           (m)    The requirements of this section shall be in  
2 effect beginning January 1, 2010. An insurer or group of  
3 insurers that is not required to have independent audit  
4 committee members or only a majority of independent audit  
5 committee members because the total written and assumed  
6 premium is below the threshold and subsequently becomes  
7 subject to any of the independence requirements due to  
8 changes in premiums shall have one (1) year following the  
9 year the threshold is exceeded to comply with the  
10 independence requirements. An insurer that becomes subject  
11 to any of the independence requirements as a result of a  
12 business combination shall have one (1) calendar year  
13 following the date of acquisition or combination to comply  
14 with the independence requirements.

15

16           **26-3-316.    Conduct of insurer in connection with**  
17 **preparation of required reports and documents.**

18

19           (a)    No director or officer of an insurer shall,  
20 directly or indirectly:

21

22                   (i)    Make or cause to be made a materially false  
23 or misleading statement to an accountant in connection with



1 any audit, review or communication required under this  
2 article; or

3

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

10

11 (b) No officer or director of an insurer or any other  
12 person acting under the direction thereof shall directly or  
13 indirectly take any action to coerce, manipulate, mislead  
14 or fraudulently influence any accountant engaged in the  
15 performance of an audit pursuant to this article if that  
16 person knew or should have known that the action, if  
17 successful, could result in rendering the insurer's  
18 financial statements materially misleading. For purposes  
19 of this subsection, actions that, if successful, could  
20 result in rendering the insurer's financial statements  
21 materially misleading include, but are not limited to,  
22 actions taken at any time with respect to the professional

1 engagement period to coerce, manipulate, mislead or  
2 fraudulently influence an accountant to:

3

4 (i) Issue or reissue a report on an insurer's  
5 financial statements that is not warranted in the  
6 circumstances due to material violations of statutory  
7 accounting principles prescribed by the commissioner,  
8 generally accepted auditing standards or other professional  
9 or regulatory standards;

10

11 (ii) Not perform any audit, review or other  
12 procedures required by generally accepted auditing  
13 standards or other professional standards;

14

15 (iii) Not withdraw an issued report; or

16

17 (iv) Not communicate matters to an insurer's  
18 audit committee.

19

20 (c) Violation of this section shall be punishable as  
21 provided in W.S. 26-1-107.

22

1           **26-3-317. Management's report of internal control**  
2 **over financial reporting.**

3  
4           (a) Every insurer required to file an audited  
5 financial report pursuant to this article that has annual  
6 direct written and assumed premiums, excluding premiums  
7 reinsured with the Federal Crop Insurance Corporation and  
8 Federal Flood Program, of five hundred million dollars  
9 (\$500,000,000.00) or more shall prepare a report of the  
10 insurer's or group of insurers' internal control over  
11 financial reporting. The report shall be filed with the  
12 commissioner along with the communication of internal  
13 control related matters noted in an audit described in W.S.  
14 26-3-310. Management's report of internal control over  
15 financial reporting shall be dated as of the immediately  
16 preceding December 31.

17  
18           (b) Notwithstanding the premium threshold in  
19 subsection (a) of this section, the commissioner may  
20 require an insurer to file management's report of internal  
21 control over financial reporting if the insurer is in any  
22 RBC level event or meets any one (1) or more of the

1 standards of an insurer deemed to be in hazardous financial  
2 condition as defined in W.S. 26-3-116.

3

4 (c) An insurer or group of insurers that is directly  
5 subject to Section 404, part of a holding company system  
6 whose parent is directly subject to Section 404, not  
7 directly subject to Section 404 but is a SOX compliant  
8 entity or a member of a holding company system whose parent  
9 is not directly subject to Section 404 but is a SOX  
10 compliant entity may file its or its parent's Section 404  
11 report and an addendum in satisfaction of this section  
12 provided that those internal controls of the insurer or  
13 group of insurers having material impact on the preparation  
14 of the insurer's or group of insurers' audited statutory  
15 financial statements were included in the scope of the  
16 Section 404 report. The addendum shall be a positive  
17 statement by management that there are no material  
18 processes with respect to the preparation of the insurer's  
19 or group of insurers' audited financial statements excluded  
20 from the Section 404 report. If there are internal  
21 controls of the insurer or group of insurers that have a  
22 material impact on the preparation of the insurer's or  
23 group of insurers' audited statutory financial statements

1 and those internal controls were not included in the scope  
2 of the Section 404 report, the insurer or group of insurers  
3 may either file a report under this section or the Section  
4 404 report and a report under this section for those  
5 internal controls that have a material impact on the  
6 preparation of the insurer's or group of insurers' audited  
7 statutory financial statements not covered by the Section  
8 404 report.

9

10 (d) A management's report of internal control over  
11 financial reporting shall include:

12

13 (i) A statement that management is responsible  
14 for establishing and maintaining adequate internal control  
15 over financial reporting;

16

17 (ii) A statement that management has established  
18 internal control over financial reporting and an assertion  
19 to the best of management's knowledge and belief, after  
20 diligent inquiry, as to whether its internal control over  
21 financial reporting is effective to provide reasonable  
22 assurance regarding the reliability of financial statements  
23 in accordance with statutory accounting principles;

1

2 (iii) A statement that briefly describes the  
3 approach or processes by which management evaluated the  
4 effectiveness of its internal control over financial  
5 reporting;

6

7 (iv) A statement that briefly describes the  
8 scope of work that is included and whether any internal  
9 controls were excluded;

10

11 (v) Disclosure of any unremediated material  
12 weaknesses in the internal control over financial reporting  
13 identified by management as of the immediately preceding  
14 December 31. Management is not permitted to conclude that  
15 the internal control over financial reporting is effective  
16 to provide reasonable assurance regarding the reliability  
17 of financial statements in accordance with statutory  
18 accounting principles if there is one (1) or more  
19 unremediated material weakness in its internal controls  
20 over financial reporting;

21

22 (vi) A statement regarding the inherent  
23 limitations of internal control systems; and

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2

(vii) Signatures of the chief executive officer and the chief financial officer or the equivalent position.

4

5

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions required in subsection (d) of this section are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities. Management shall have discretion as to the nature of the internal control framework used and the nature and extent of documentation in order to make its assertions in a cost effective manner and may include assembly of or reference to existing documentation. Management's report on internal control over financial reporting and any documentation provided in support thereof during the course of a financial conditions examination shall be kept confidential by the department.

20

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22

23

(f) The requirements of this section are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of

1 insurers that is not required to file a report because the  
2 total written premium is below the threshold and  
3 subsequently becomes subject to the reporting requirements  
4 shall have two (2) years following the year the threshold  
5 is exceeded to file a report. An insurer that becomes  
6 subject to any of the reporting requirements as a result of  
7 a business combination shall have two (2) calendar years  
8 following the date of acquisition or combination to comply  
9 with the reporting requirements.

10

11 **Section 2.** W.S. 26-3-301 through 26-3-314 are amended  
12 to read:

13

14 **26-3-301. Scope of article.**

15

16 (a) Every insurer as defined by W.S. 26-1-102(a)(xvi)  
17 shall be subject to this article. Insurers having direct  
18 premiums written in this state of less than one million  
19 dollars (\$1,000,000.00) in any calendar year ~~or~~ and less  
20 than one thousand (1,000) policyholders or certificate  
21 holders of ~~directly~~ direct written policies nationwide at  
22 the end of a calendar year shall be exempt from this



1 article for that year except an insurer shall not be exempt  
2 if:

3

4 (b) Foreign or alien insurers filing the audited  
5 financial ~~reports~~ report in another state, pursuant to that  
6 state's requirement for filing of audited financial reports  
7 which has been found by the commissioner to be  
8 substantially similar to the requirements of this article,  
9 are exempt from ~~this article~~ W.S. 26-3-304 through 26-3-312

10 if:

11

12 (i) A copy of the ~~report on significant~~  
13 ~~deficiencies in internal controls,~~ audited financial  
14 report, communication of internal control related matters  
15 noted in an audit and the accountant's letter of  
16 qualifications which are filed with the other state are  
17 filed with the commissioner and a copy of the audited  
18 financial report which is on file with the other state is  
19 filed with the National Association of Insurance  
20 Commissioners in accordance with the filing dates specified  
21 in W.S. 26-3-303, 26-3-310 and 26-3-311, respectively.  
22 Canadian insurers may submit accountants' reports as filed  
23 with the ~~Canadian dominion department of insurance~~ office

1 of the superintendent of financial institutions, Canada;  
2 and

3  
4 (d) Foreign or alien insurers required to file  
5 management's report of internal control over financial  
6 reporting in another state are exempt from filing the  
7 report in this state provided the other state has  
8 substantially similar reporting requirements and the report  
9 is filed with the commissioner of the other state within  
10 the time specified.

11  
12 **26-3-302. Definitions.**

13  
14 (a) As used in this article:

15  
16 (iv) "Insurer" means as defined in W.S.  
17 26-1-102(a) (xvi);

18  
19 (v) "Affiliate of" or "affiliated with" a  
20 specific person means a person that directly, or indirectly  
21 through one (1) or more intermediaries, controls or is  
22 controlled by or is under common control with the person  
23 specified;

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(vi) "Audit committee" means a committee established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one (1) or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee;

(vii) "Independent board member" means as defined in W.S. 26-3-315(c);

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

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

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

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

(ix) "Group of insurers" means those licensed insurers included in the reporting requirements of W.S. 26-44-101 through 26-44-117 or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting;

1           (x) "SEC" means the United States Securities and  
2 Exchange Commission;

3

4           (xi) "Section 404" means section 404 of the  
5 Sarbanes-Oxley Act of 2002 and the SEC's rules and  
6 regulations promulgated thereunder;

7

8           (xii) "Section 404 report" means management's  
9 report on internal control over financial reporting as  
10 defined by the SEC and the related attestation report of  
11 the independent certified public accountant;

12

13           (xiii) "SOX compliant entity" means an entity  
14 that either is required to be compliant with or voluntarily  
15 is compliant with all of the following provisions of the  
16 Sarbanes-Oxley Act of 2002:

17

18           (A) The preapproval requirements of Section  
19 201;

20

21           (B) The audit committee independence  
22 requirements of Section 301; and

23

1                   (C) The internal control over financial  
2 reporting requirements of Section 404.

3  
4           **26-3-303. General requirements related to filing and**  
5 **extensions for filing of annual audited financial reports;**  
6 **audit committee appointment.**

7  
8           (a) All insurers shall have an annual audit by an  
9 independent certified public accountant and shall file an  
10 audited financial report with the commissioner on or before  
11 June 1 for the immediately preceding calendar year. The  
12 commissioner may require an insurer to file an audited  
13 financial report earlier than June 1 with ninety (90) days  
14 advance notice to the insurer.

15  
16           (b) Extensions of the June 1 filing date may be  
17 granted by the commissioner for thirty (30) day periods  
18 upon a showing by the insurer and its independent certified  
19 public accountant of the reasons for requesting the  
20 extension and a determination by the commissioner there is  
21 good cause for an extension. The request for extension  
22 shall be submitted in writing not less than ten (10) days  
23 prior to the due date in sufficient detail to permit the

1 commissioner to make an informed decision with respect to  
2 the requested extension.

3

4 (c) If an extension is granted in accordance with  
5 subsection (b) of this section, a similar extension of  
6 thirty (30) days is granted to the filing of the  
7 management's report of internal control over financial  
8 reporting.

9

10 (d) Every insurer required to file an annual audited  
11 financial report pursuant to this section shall designate a  
12 group of individuals as constituting its audit committee.  
13 The audit committee of an entity that controls an insurer  
14 may be deemed to be the insurer's audit committee for  
15 purposes of this article at the election of the controlling  
16 person.

17

18 **26-3-305. Designation of independent certified public**  
19 **accountant.**

20

21 (a) Each insurer required by this article to file an  
22 annual audited financial report shall within sixty (60)  
23 days after becoming subject to the requirement, register

1 with the commissioner in writing the name and address of  
2 the independent certified public accountant or accounting  
3 firm retained to conduct the annual audit. Insurers not  
4 retaining an independent certified public accountant on or  
5 before April 1, 1994 shall register the name and address of  
6 their retained independent certified public accountant not  
7 less than six (6) months before the date when the first  
8 audited financial report is to be filed.

9  
10 **26-3-306. Qualifications of independent certified**  
11 **public accountant.**

12  
13 (a) The commissioner shall not recognize any person  
14 or firm as a qualified independent certified public  
15 accountant if that person or firm:

16  
17 (i) Is not in good standing with the American  
18 Institute of Certified Public Accountants and in all states  
19 in which the accountant is licensed to practice, or, for a  
20 Canadian or British company, that is not a chartered  
21 accountant; or

22



1           (ii) Has either directly or indirectly entered  
2 into an agreement of indemnification with respect to the  
3 audit of the insurer.

4  
5           (b) Except as otherwise provided in this section, the  
6 commissioner shall recognize an independent certified  
7 public accountant as qualified as long as he conforms to  
8 the standards of his profession, as contained in the code  
9 of professional ethics of the American Institute of  
10 Certified Public Accountants and rules and regulations and  
11 code of ethics and rules of professional conduct of the  
12 Wyoming board of certified public accountants, or similar  
13 code.

14  
15           (c) ~~After April 1, 1996 no partner or other person~~  
16 ~~responsible for rendering a report under this article~~ After  
17 January 1, 2010, the lead or coordinating audit partner  
18 having primary responsibility for the audit shall not act  
19 in that capacity for more than ~~seven (7)~~ five (5)  
20 consecutive years. ~~Following that period of service the~~  
21 ~~person shall be disqualified from acting~~ The person shall  
22 be disqualified from acting in that or a similar capacity  
23 for the same company or its insurance subsidiaries or

1 affiliates for a period of ~~two (2)~~ five (5) consecutive  
2 years. An insurer may make application to the commissioner  
3 for relief from the rotation requirement on the basis of  
4 unusual circumstances. This application shall be made at  
5 least thirty (30) days before the end of the calendar year.  
6 The insurer shall file with its annual statement, the  
7 approval for relief pursuant to this subsection with the  
8 states in which it is licensed or doing business and with  
9 the NAIC. If the nondomestic state accepts electronic  
10 filing with the NAIC, the insurer shall file the approval  
11 in an electronic format acceptable to the NAIC. The  
12 commissioner may consider the following factors in  
13 determining whether the relief should be granted:

14

15 (i) Number of partners, expertise of the  
16 partners or the number of insurance clients in the  
17 currently registered firm;

18

19 (ii) Premium volume of the insurer; or

20

21 (iii) Number of jurisdictions in which the  
22 insurer transacts business.

23

1           (d) The commissioner shall ~~not~~neither recognize as a  
2 qualified independent certified public accountant, nor  
3 accept any annual audited financial report, prepared in  
4 whole or in part by, any natural person who:

5

6           (i) Has been convicted of fraud, bribery, a  
7 violation of the Racketeer Influenced and Corrupt  
8 Organizations Act, 18 U.S.C. Sections 1961 through 1968, or  
9 any dishonest conduct or practices under federal or state  
10 law;

11

12           (ii) Has been found to have violated the  
13 insurance laws of this state with respect to any previous  
14 reports submitted under this article; or

15

16           (iii) Has demonstrated a pattern or practice of  
17 failing to detect or disclose material information in  
18 previous reports filed under the provisions of this  
19 article.

20

21           (e) The commissioner may hold a hearing to determine  
22 whether ~~a~~an independent certified public accountant is  
23 qualified and, considering the evidence presented, may rule

1 that the accountant is not qualified for purposes of  
2 expressing his opinion on the financial statements in the  
3 annual audited financial report made pursuant to this  
4 article and require the insurer to replace the accountant  
5 with another whose relationship with the insurer is  
6 qualified within the meaning of this article.

7

8 (f) A qualified independent certified public  
9 accountant may enter into an agreement with an insurer to  
10 have disputes relating to an audit resolved by mediation or  
11 arbitration. However, in the event of a delinquency  
12 proceeding commenced against the insurer under chapter 28  
13 of this code, the mediation or arbitration provisions shall  
14 operate at the option of the statutory successor.

15

16 (g) The commissioner shall not recognize as a  
17 qualified independent certified public accountant, nor  
18 accept an annual audited financial report, prepared in  
19 whole or in part by an accountant who provides to an  
20 insurer, contemporaneously with the audit, the following  
21 non-audit services:

22

1           (i) Bookkeeping or other services related to the  
2 accounting records or financial statements of the insurer;

3  
4           (ii) Financial information systems design and  
5 implementation;

6  
7           (iii) Appraisal or valuation services, fairness  
8 opinion or contribution-in-kind reports;

9  
10           (iv) Actuarially-oriented advisory services  
11 involving the determination of amounts recorded in the  
12 financial statements. The accountant may assist an insurer  
13 in understanding the methods, assumptions and inputs used  
14 in the determination of amounts recorded in the financial  
15 statement only if is reasonable to conclude that the  
16 services provided will not be subject to audit procedures  
17 during an audit of the insurer's financial statements. An  
18 accountant's actuary may also issue an actuarial opinion or  
19 certification on an insurer's reserves if the following  
20 conditions have been met:

21

1                   (A) Neither the accountant nor the  
2 accountant's actuary has performed any management functions  
3 or made any management decisions;

4  
5                   (B) The insurer has competent personnel or  
6 engages a third party actuary to estimate the reserves for  
7 which management takes responsibility; and

8  
9                   (C) The accountant's actuary tests the  
10 reasonableness of the reserves after insurer's management  
11 has determined the amount of the reserves.

12  
13                   (v) Internal audit outsourcing services;

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15                   (vi) Management functions or human resources;

16  
17                   (vii) Broker or dealer, investment adviser or  
18 investment banking services;

19  
20                   (viii) Legal services or expert services  
21 unrelated to the audit; or

22

1           (ix) Any other services that the commissioner  
2 determines by regulation to be impermissible. In  
3 determining whether other services are impermissible, the  
4 commissioner shall consider the principle that the  
5 accountant may not function in the role of management, may  
6 not audit his own work and may not serve in an advocacy  
7 role for the insurer.

8  
9           (h) Insurers having direct written and assumed  
10 premiums of less than one hundred million dollars  
11 (\$100,000,000.00) in any calendar year may request an  
12 exemption from subsection (g) of this section. The insurer  
13 shall file with the commissioner a written statement  
14 discussing the reasons why the insurer should be exempt  
15 from subsection (g) of this section. If the commissioner  
16 finds, upon review of the statement, that compliance with  
17 subsection (g) of this section would constitute a financial  
18 or organizational hardship on the insurer, an exemption may  
19 be granted.

20  
21           (j) A qualified independent certified public  
22 accountant who performs the audit may engage in other non-  
23 audit services, including tax services, that are not

1 described in subsection (g) of this section or that do not  
2 conflict with paragraph (g)(ix) of this section only if the  
3 activity is approved in advance by the audit committee in  
4 accordance with subsection (k) of this section.

5  
6 (k) All auditing services and non-audit services  
7 provided to an insurer by the qualified independent  
8 certified public accountant of the insurer shall be  
9 preapproved by the audit committee. The preapproval  
10 requirement shall be waived with respect to non-audit  
11 services if the insurer is a SOX compliant entity or a  
12 direct or indirect wholly-owned subsidiary of a SOX  
13 compliant entity or if:

14  
15 (i) The aggregate amount of all non-audit  
16 services provided to the insurer constitutes not more than  
17 five percent (5%) of the total amount of fees paid by the  
18 insurer to its qualified independent certified public  
19 accountant during the fiscal year in which the non-audit  
20 services are provided;

21  
22 **\*\*\* Staff note: "and" or "or"? \*\*\***

23



1           (ii) The services were not recognized by the  
2 insurer at the time of the engagement to be non-audit  
3 services.

4  
5           (m) The audit committee may delegate to one (1) or  
6 more designated members of the audit committee the  
7 authority to grant the preapprovals required under  
8 paragraph (k)(iii) of this section. The decisions of any  
9 member to whom this authority is delegated shall be  
10 presented to the full audit committee at each of its  
11 scheduled meetings.

12  
13           (n) The commissioner shall not recognize an  
14 independent certified public accountant as qualified for a  
15 particular insurer if a member of the board, president,  
16 chief executive officer, controller, chief financial  
17 officer, chief accounting officer or any person serving in  
18 an equivalent position for that insurer was employed by the  
19 independent certified public accountant and participated in  
20 the audit of that insurer during the one (1) year period  
21 preceding the date that the most current statutory opinion  
22 is due. This subsection shall only apply to partners and  
23 senior managers involved in the audit. An insurer may make

1 application to the commissioner for relief from this  
2 subsection on the basis of unusual circumstances. The  
3 insurer shall file with its annual statement filing the  
4 approval for relief under this subsection with the states  
5 that it is licensed in or doing business in and with the  
6 NAIC. If the nondomestic state accepts electronic filing  
7 with the NAIC, the insurer shall file the approval in an  
8 electronic format acceptable to the NAIC.

9  
10 **26-3-308. Scope of audit and report of independent**  
11 **certified public accountant.**

12  
13 Financial statements furnished pursuant to W.S. 26-3-304  
14 shall be examined by ~~an~~the independent certified public  
15 accountant. The ~~examination~~audit of the insurer's  
16 financial statements shall be conducted in accordance with  
17 generally accepted auditing standards. In accordance with  
18 AU Section 319 of the professional standards of the  
19 American Institute of Certified Public Accountants,  
20 Consideration of Internal Control in a Financial Statement  
21 Audit, the independent certified public accountant shall  
22 obtain an understanding of internal control sufficient to  
23 plan the audit. To the extent required by AU 319, for

1 those insurers required to file a management's report of  
2 internal control over financial reporting pursuant to W.S.  
3 26-3-317, the independent certified public accountant shall  
4 consider the most recently available report in planning and  
5 performing the audit of the statutory financial statements.

6 Consideration shall be given to the procedures illustrated  
7 in the financial condition examiner's handbook promulgated  
8 by the National Association of Insurance Commissioners as  
9 the independent certified public accountant deems  
10 necessary.

11  
12 **26-3-309. Notification of adverse financial**  
13 **condition.**

14  
15 (a) An insurer required to furnish an annual audited  
16 financial report shall require the independent certified  
17 public accountant to report, in writing, within five (5)  
18 business days to the board of directors or its audit  
19 committee any determination supported by adequate research  
20 conducted by the independent certified public accountant:

21  
22 (i) That the insurer has materially misstated  
23 its financial condition reported to the commissioner as of

1 the balance sheet date currently under ~~examination~~ audit;  
2 or

3

4 (ii) That the insurer does not meet the minimum  
5 capital and surplus requirement of this code as of that  
6 date.

7

8 **26-3-310. Communication of internal control related**  
9 **matters noted in an audit.**

10

11 (a) In addition to the annual audited financial  
12 ~~statements~~ report, each insurer shall furnish the  
13 commissioner with a written ~~report prepared by the~~  
14 ~~accountant describing significant deficiencies in the~~  
15 ~~insurer's~~ communication as to any unremediated material  
16 weakness, as defined in statement on auditing standard 60  
17 or its replacement, in its internal control ~~structure over~~  
18 financial reporting noted by the accountant during the  
19 audit. ~~No additional report shall be issued if the~~  
20 ~~accountant does not identify significant deficiencies. If~~  
21 ~~significant deficiencies are noted, the written report~~  
22 ~~shall be filed annually by the insurer with the department~~  
23 Such communication shall be prepared by the accountant

1 within sixty (60) days after the filing of the annual  
2 audited financial ~~statements~~report and shall contain a  
3 description of any unremediated material weakness as of  
4 December 31 immediately preceding in the insurer's internal  
5 control over financial reporting noted by the accountant  
6 during the course of the audit of the financial statements.  
7 If no remediated material weaknesses were noted, the  
8 communication shall so state. The insurer shall provide a  
9 description of remedial actions taken or proposed to  
10 correct ~~significant deficiencies~~unremediated material  
11 weaknesses, if the actions are not described in the  
12 accountant's ~~report~~communication.

13

14 **26-3-312. Definition, availability and maintenance of**  
15 **independent certified public accountants' workpapers.**

16

17 (a) Workpapers are the records kept by the  
18 independent certified public accountant of the procedures  
19 followed, the tests performed, the information obtained,  
20 and the conclusions reached pertinent to his ~~examination~~  
21 audit of the financial statements of an insurer. Workpapers  
22 may include audit planning documentation, work programs,  
23 analyses, memoranda, letters of confirmation and

1 representation, abstracts of company documents and  
2 schedules or commentaries prepared or obtained by the  
3 independent certified public accountant in the course of  
4 his ~~examination~~audit of the financial statements of an  
5 insurer and which support his opinion of those financial  
6 statements.

7

8 (b) Every insurer required to file an audited  
9 financial report pursuant to this article shall require the  
10 accountant to make available for review by department  
11 examiners, all workpapers prepared in the conduct of his  
12 ~~examination~~audit and any communications related to the  
13 audit between the accountant and the insurer, at the  
14 offices of the insurer, the department or at any other  
15 reasonable place designated by the commissioner. The  
16 insurer shall require that the accountant retain the audit  
17 workpapers and communications until the department has  
18 filed a report on examination covering the period of the  
19 audit but no longer than seven (7) years from the date of  
20 the audit report.

21

22 **26-3-313. Exemptions and effective dates.**

23

1           (a) Upon written application of any insurer, the  
2 commissioner may grant an exemption from compliance with  
3 any or all provisions of this article if the commissioner  
4 finds, upon review of the application, that compliance with  
5 this article would constitute a financial or organizational  
6 hardship upon the insurer. Exemptions may be granted at  
7 any time for a specified period. Within ten (10) days from  
8 a denial of an insurer's written request for an exemption  
9 from this article, the insurer may request in writing a  
10 hearing on its application for an exemption. The hearing  
11 shall be held in accordance with the rules and regulations  
12 of the department pertaining to administrative hearing  
13 procedures.

14

15           (b) Domestic insurers shall comply with this article  
16 for the year ending December 31, 1993 and each year  
17 thereafter unless the commissioner permits otherwise.

18

19           (c) Foreign insurers shall comply with this article  
20 for the year ending December 31, 1994 and each year  
21 thereafter, unless the commissioner permits otherwise.

22

1           **\*\*\* Staff note: The model act provides for phase in**  
2 **of the provisions. We need to know whether the**  
3 **commissioner wants those provisions included. \*\*\***

4  
5           **26-3-314. Canadian and British companies.**

6  
7 In the case of Canadian and British insurers, the annual  
8 audited financial report shall be defined as the annual  
9 statement of total business on the form filed by such  
10 companies with their ~~domiciliary~~ supervision authority duly  
11 audited by an independent chartered accountant. For  
12 Canadian and British insurers, the letter required in W.S.  
13 26-3-305(b) shall state that the accountant is aware of the  
14 requirements relating to the annual audited ~~statement~~  
15 financial report filed with the commissioner pursuant to  
16 W.S. 26-3-303 and shall affirm that the opinion expressed  
17 is in conformity with those requirements.

18  
19           **26-34-110. Annual report.**

20  
21           (b) The health maintenance organization shall file on  
22 or before March 1, unless otherwise stated:

23



1           (i)    Audited financial statements in accordance with  
2 the provisions of W.S. 26-3-301 through ~~26-3-314~~26-3-317  
3 on or before June 1;

4

5           **Section 3.** This act is effective January 1, 2010.

6

7

(END)