

WORKING DRAFT

HOUSE BILL NO. _____

Insurance department regulation.

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

A BILL

for

1 AN ACT relating to insurance; amending provisions relating
2 to the regulation of insurers; modifying provisions
3 relating to actuarial opinions of reserves; authorizing the
4 use of electronic systems for holding and transferring
5 securities; authorizing other electronic filings;
6 prohibiting certain indemnification agreements; amending
7 filing and other deadlines; and providing for an effective
8 date.

9

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

11

***** STAFF COMMENTS *****

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The insurance department proposed amendments or new statutes in 6 areas. The Committee voted to have a bill drafted incorporating all 6 provisions. For the Committee's review the bill has been segregated into the 6 different areas. The provisions will be placed in proper order should the Committee vote to sponsor the bill for introduction.

1

2 **Section 2.** W.S. 26-6-208(c) is amended to read:

3

4 **Issue 1. Actuarial opinion of reserves.**

5 ***** Department COMMENTS *****

6 This wording conforms the statute to the NAIC model
7 law which is required for accreditation. The purpose
8 of this change, together with amendments to the
9 Department's current regulations, is to require all
10 insurers to perform an asset adequacy analysis.

11

12 **26-6-208. Actuarial opinion of reserves.**

13

14 (c) Every life insurer, except as exempted by
15 regulation, shall also annually include in the opinion
16 required by subsection (b) of this section, an opinion of
17 the same qualified actuary as to whether the reserves and
18 related actuarial items held in support of the policies and
19 contracts specified by the commissioner by regulation, when
20 considered in light of the assets held by the insurer with
21 respect to the reserves and related actuarial items,
22 including but not limited to the investment earnings on the
23 assets and the considerations anticipated to be received
24 and retained under the policies and contracts, make
25 adequate provision for the insurer's obligations under the
26 policies and contracts, including but not limited to the
27 benefits under and expenses associated with the policies

1 and contracts. The commissioner may provide by regulation
 2 for a transition period for establishing any higher
 3 reserves which the qualified actuary deems necessary in
 4 order to render the opinion required by this section.

5

6 **Issue 2. Model act regarding the use of clearing**
 7 **corporations.**

8

***** Department COMMENTS *****

9 The purpose of this law is to authorize insurers to
 10 utilize modern, electronic systems for holding and
 11 transferring securities without physical delivery of
 12 securities certificates, subject to appropriate
 13 regulations of the commissioner. The law merely
 14 recognizes modern electronic systems already in
 15 widespread use.

16

17

18 **Section 1.** W.S. 26-8-201 through 26-8-207 are created to
 19 read:

20

21 CHAPTER 8 - ADMINISTRATION OF ASSETS AND DEPOSITS

22

23 **ARTICLE 2. HOLDING OF SECURITIES.**

24

25 **26-8-201. Purpose.**

26

27 The purpose of this article is to authorize insurers
 28 to utilize modern systems for holding and transferring
 29 securities without physical delivery of securities

1 certificates, subject to appropriate regulations of the
2 commissioner.

3

4 **26-8-202. Definitions.**

5

6 (a) As used in this article:

7

8 (i) "Clearing corporation" means a corporation
9 as defined in W.S. 34.1-8-102(a)(v), except that with
10 respect to securities issued by institutions organized or
11 existing under the laws of any foreign country or
12 securities used to meet the deposit requirements pursuant
13 to the laws of a foreign country as a condition of doing
14 business therein, clearing corporation may include a
15 corporation which is organized or existing under the laws
16 of any foreign country and is legally qualified under those
17 laws to effect transactions in securities by computerized
18 book-entry;

19

20 (ii) "Direct participant" means a bank or trust
21 company or other institution which maintains an account in
22 its name in a clearing corporation and through which an
23 insurer participates in a clearing corporation;

24

1 (iii) "Federal reserve book-entry system" means
2 the computerized systems sponsored by the United States
3 department of the treasury and certain agencies and
4 instrumentalities of the United States for holding and
5 transferring securities of the United States government and
6 those agencies and instrumentalities, respectively, in
7 federal reserve banks through banks which are members of
8 the federal reserve system or which otherwise have access
9 to the computerized systems;

10

11 (iv) "Member bank" means a national bank, state
12 bank or trust company which is a member of the federal
13 reserve system and through which an insurer participates in
14 the federal reserve book-entry system;

15

16 (v) "Security" means as defined in W.S. 34.1-8-
17 102(a) (xv).

18

19 **26-8-203. Use of book-entry systems.**

20

21 (a) Notwithstanding any other provision of law, a
22 domestic insurer may deposit or arrange for the deposit of
23 securities held in or purchased for its general account and
24 its separate accounts in a clearing corporation or the

1 federal reserve book-entry system. When securities are
2 deposited with a clearing corporation, certificates
3 representing securities of the same class of the same
4 issuer may be merged and held in bulk in the name of the
5 nominee of the clearing corporation with any other
6 securities deposited with the clearing corporation by any
7 person, regardless of the ownership of the securities, and
8 certificates representing securities of small denominations
9 may be merged into one (1) or more certificates of larger
10 denominations. The records of any member bank through which
11 an insurer holds securities in the federal reserve book-
12 entry system, and the records of any custodian banks
13 through which an insurer holds securities in a clearing
14 corporation, shall at all times show that the securities
15 are held for the insurer and the accounts in which they are
16 held. Ownership of, and other interests in, the securities
17 may be transferred by bookkeeping entry on the books of the
18 clearing corporation or in the federal reserve book-entry
19 system without, in either case, physical delivery of
20 certificates representing the securities.

21

22 (b) The commissioner is authorized to promulgate
23 rules and regulations governing the deposit by insurers of

1 securities with clearing corporations and in the federal
2 reserve book-entry system.

3

4 **26-8-204. Deposit of securities by domestic insurers.**

5

6 Notwithstanding any other provision of law, the
7 securities qualified for deposit under this chapter may be
8 deposited with a clearing corporation or held in the
9 federal reserve book-entry system. Securities deposited
10 with a clearing corporation or held in the federal reserve
11 book-entry system and used to meet the deposit requirements
12 set forth in chapter 3 of this code shall be under the
13 control of the commissioner and shall not be withdrawn by
14 the insurer without the approval of the commissioner. Any
15 insurer holding securities as provided in this section
16 shall provide to the commissioner evidence issued by its
17 custodian or member bank through which the insurer has
18 deposited the securities in a clearing corporation or
19 through which the securities are held in the federal
20 reserve book-entry system, respectively, in order to
21 establish that the securities are actually recorded in an
22 account in the name of the custodian or other direct
23 participant or member bank, and that the records of the
24 custodian, other participant or member bank reflect that

1 the securities are held subject to the order of the
2 commissioner.

3

4 **26-8-205. Deposit of securities by foreign insurers.**

5

6 Notwithstanding any other provision of law, securities
7 eligible for deposit under the insurance laws of this state
8 relating to deposit of securities by an insurer as a
9 condition of commencing or continuing to do an insurance
10 business in this state may be deposited with a clearing
11 corporation or held in the federal reserve book-entry
12 system. Securities deposited with a clearing corporation
13 or held in the federal reserve book-entry system and used
14 to meet the deposit requirements under the insurance laws
15 of this state shall be under the control of the
16 commissioner and shall not be withdrawn by the insurer
17 without the approval of the commissioner. Any insurer
18 holding securities as provided in this section shall
19 provide to the commissioner evidence issued by its
20 custodian or a member bank through which the insurer has
21 deposited securities with a clearing corporation or held in
22 the federal reserve book-entry system, respectively, in
23 order to establish that the securities are actually
24 recorded in an account in the name of the custodian or

1 other direct participant or member bank and evidence that
2 the records of the custodian, other participant or member
3 bank reflect that the securities are held subject to the
4 order of the commissioner.

5

6 **Issue 3. Annual audited financial statements.**

7

***** Department COMMENTS *****

8 **These amendments will prohibit CPA firms that audit**
9 **insurers from entering into an agreement of indemnity**
10 **or a release of liability with respect to the audit of**
11 **the insurer.**

12

13 **Section 2.** W.S. 26-3-302(a) by creating a new
14 paragraph (iii) and renumbering (iii) as (iv) and 26-3-
15 306(a), (b) and by creating a new subsection (f) are
16 amended to read:

17

18 **26-3-302. Definitions.**

19

20 (a) As used in this article:

21

22 (iii) "Indemnification" means an agreement of
23 indemnity or a release from liability where the intent or
24 effect is to shift or limit in any manner the potential
25 liability of the person or firm for failure to adhere to
26 applicable auditing or professional standards, whether or

1 not resulting in part from knowing or other
2 misrepresentations made by the insurer or its
3 representatives;

4
5 ~~(iii)~~ (iv) "Insurer" means as defined in W.S. 26-
6 1-102(a) (xvi).

7

8 **26-3-306. Qualifications of independent certified**
9 **public accountant.**

10

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

14

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

20

21 (ii) Has either directly or indirectly entered
22 into an agreement of indemnification with respect to the
23 audit of the insurer.

24

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

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

18
19 **Issue 4 - electronic filing of annual and quarterly**
20 **statements and CPA audit findings.**

21
22 ***** Department COMMENTS *****

23 These amendments would allow the Commissioner
24 discretion to permit foreign (non-Wyoming) insurers to
25 file their quarterly and annual statements, and annual
26 CPA reports, electronically with the NAIC instead of
27 filing a hard copy of these documents with the
28 Department. The documents will be available to staff
29 and Wyoming consumers through a computer terminal in
30 the Department

1

2 **Section 2.** W.S. 26-3-123(d), 26-3-204(a) and (c), 26-
3 3-301(b) (i), 26-29-226(a) and 26-34-110(c) are amended to
4 read:

5

6 **26-3-123. Annual and quarterly statement; required;**
7 **form; verification; failure to file.**

8

9 (d) All annual and quarterly statements filed
10 pursuant to this section shall be completed pursuant to the
11 most recent National Association of Insurance
12 Commissioners' accounting practices and procedures manual
13 and accompanied by ~~a computer diskette~~ an electronic
14 version containing the same information as the statement.
15 The commissioner may specify the ~~size and~~ format of the
16 ~~computer diskette~~ electronic version. The commissioner may
17 accept for any foreign insurer required to file any
18 statement under this section, an electronic filing with the
19 National Association of Insurance Commissioners meeting the
20 requirements of this section as a filing with the
21 commissioner. The commissioner may refuse to continue or
22 may suspend or revoke the certificate of authority of any
23 insurer failing to file its annual or quarterly statement
24 when due.

1

2

26-3-204. Filing requirements; penalty.

3

4 (a) Each domestic, foreign or alien insurer
5 authorized to transact insurance in this state shall
6 annually on or before March 1, file with the National
7 Association of Insurance Commissioners a copy of its annual
8 statement convention blank along with such additional
9 filings prescribed by the commissioner for the preceding
10 year. The information filed with the National Association
11 of Insurance Commissioners shall be in the same format and
12 scope as that required by the commissioner and shall
13 include the signed jurat page and the actuarial
14 certification. Any amendments and addenda to the annual
15 statement filing subsequently filed with the commissioner
16 shall also be filed with the National Association of
17 Insurance Commissioners. Each insurer shall concurrently
18 provide the National Association of Insurance Commissioners
19 with a copy of the ~~computer diskette~~ electronic filing
20 containing its annual statement as required by W.S. 26-3-
21 123.

22

23

24

(c) Each domestic, foreign or alien insurer
authorized to transact insurance in this state shall

1 quarterly on or before forty-five (45) days after the end
2 of the quarter being reported, file with the National
3 Association of Insurance Commissioners a copy of its
4 quarterly statement blank. The information filed with the
5 National Association of Insurance Commissioners shall be in
6 the same format and scope as that required by the
7 commissioner and shall include the signed jurat page. Any
8 amendments and addenda to the quarterly statement filing
9 subsequently filed with the commissioner shall also be
10 filed with the National Association of Insurance
11 Commissioners. Each insurer shall concurrently provide the
12 National Association of Insurance Commissioners with a copy
13 of the ~~computer diskette~~ electronic filing containing its
14 quarterly statement as required by W.S. 26-3-123.

15

16 **26-3-301. Scope of article.**

17

18 (b) Foreign or alien insurers filing audited
19 financial reports in another state, pursuant to that
20 state's requirement of audited financial reports which has
21 been found by the commissioner to be substantially similar
22 to the requirements of this article, are exempt from this
23 article if:

24

1 (i) A copy of the ~~audited financial report,~~
2 report on significant deficiencies in internal controls,
3 and the accountant's letter of qualifications which are
4 filed with the other state are filed with the commissioner
5 and a copy of the audited financial report which is on file
6 with the other state is filed with the National Association
7 of Insurance Commissioners, all in accordance with the
8 filing dates specified in W.S. 26-3-303, 26-3-310 and 26-3-
9 311, respectively. Canadian insurers may submit
10 accountants' reports as filed with the Canadian dominion
11 department of insurance; and

12

13 **26-29-226. Reports.**

14

15 (a) Every society transacting business in this state
16 shall annually, on or before March 1, unless for cause
17 shown the time has been extended by the commissioner, file
18 with the commissioner a true statement of its financial
19 condition, transactions and affairs for the preceding
20 calendar year and pay a two hundred fifty dollar (\$250.00)
21 filing fee. The statement shall be in general form and
22 context as approved by the National Association of
23 Insurance Commissioners for fraternal benefit societies and
24 as supplemented by additional information required by the

1 commissioner. The statement shall be completed pursuant to
2 the most recent National Association of Insurance
3 Commissioners' accounting practices and procedures manual.

4 The commissioner may accept for any society not domiciled
5 in this state which is required to file any statement under
6 this subsection, an electronic filing with the National
7 Association of Insurance Commissioners meeting the
8 requirements of this subsection as a filing with the
9 commissioner.

10
11 **26-34-110. Annual report.**

12
13 (c) All annual and quarterly statements filed
14 pursuant to this section shall be accompanied by ~~a computer~~
15 ~~diskette~~ an electronic version containing the same
16 information as the statement. The commissioner may specify
17 the ~~size and~~ format of the ~~computer diskette~~ electronic
18 version. The commissioner may accept for any health
19 maintenance organization not domiciled in this state which
20 is required to file annual, quarterly and audited financial
21 statements under this section, an electronic filing with
22 the National Association of Insurance Commissioners meeting
23 the requirements of this section as a filing with the
24 commissioner. The commissioner may refuse to continue or

1 may suspend or revoke the certificate of authority of any
2 health maintenance organization failing to file its annual
3 or quarterly statement when due.

4

5 **Issue 5. Holding company act.**

6

***** Department COMMENTS *****

7

This conforms the statute to the model law.

8

9

10 **Section 2.** W.S. 26-44-105(b) is amended to read:

11

12 **26-44-105. Transactions within a holding company**
13 **system.**

14

15 (b) The following transactions involving a domestic
16 insurer and any person in its holding company system shall
17 not be entered into unless the insurer has notified the
18 commissioner in writing of its intention to enter into the
19 transaction at least ~~twenty (20)~~ thirty (30) days prior to
20 the transaction or a shorter period as the commissioner may
21 permit and the commissioner has not disapproved it within
22 that period. In assessing transactions under this
23 subsection, the commissioner shall consider whether the
24 transactions comply with subsection (a) of this section and

1 whether they may adversely affect the interests of
2 policyholders. The transactions to be considered are:

3

4 **Issue 6. Risk based capital.**

5 ***** Department COMMENTS *****

6 **This conforms the statute to the model law.**

7

8 **Section 2.** W.S. 26-48-102(a) is amended to read:

9

10 **26-48-102. Risk-based capital reports.**

11

12 (a) Every domestic insurer shall, annually on or
13 prior to ~~March 15~~ March 1, prepare and submit to the
14 commissioner a report of its RBC levels as of the end of
15 the calendar year just ended, in a form and containing
16 information as required by the RBC instructions. In
17 addition, every domestic insurer shall file its RBC report:

18

19 **Section 3.** This act is effective July 1, 2004.

20

21

(END)