SENATE FILE NO. SF0008

Insurance-audited annual financial reports.

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

A BILL

for

AN ACT relating to insurance; amending Wyoming's annual audited financial reports law to conform to model regulations; adopting internal audit function requirements; providing definitions; making conforming amendments; specifying applicability; and providing for an effective date.

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

Section 1. W.S. 26-3-316 is created to read:

26-3-316. Internal audit function requirements.

(a) An insurer is exempt from the requirements of this section if:

(i) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars ($500,000,000.00); and

(ii) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than one billion dollars ($1,000,000,000.00).

(b) Each insurer or group of insurers shall establish an internal audit function providing independent oversight regarding the insurer's governance, risk management and internal controls. This oversight shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency and evaluate compliance with policies and regulations.

(c) The internal audit function shall be organizationally independent. Specifically, the internal audit function shall not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who shall have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual reporting relationships.

(d) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(e) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

Section 2. W.S. 26-3-302(a)(vi), (vii) and by creating a new paragraph (xiv), 26-3-308, 26-3-313 by creating a new subsection (d), 26-3-315 by creating a new subsection (b), by amending and renumbering (b) as (c), by renumbering (c) through (f) as (d) through (g), by amending and renumbering (g) as (h) and by renumbering (h) through (m) as (j) through (n) and 26-34-110(b)(i) are amended to read:

26-3-302. Definitions.

(a) As used in this article:

(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, the internal audit function of an insurer or group of insurers and external 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)~~ 26-3-315(d);

(xiv) "Internal audit function" means a person who provides independent oversight designed to improve an organization's operations and who accomplishes this oversight by using an objective approach to evaluate and improve risk management, control and corporate governance.

26-3-308. Scope of audit and report of independent certified public accountant.

Financial statements furnished pursuant to W.S. 26-3-304 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with Accumulation of Audit Standards (AU) Section 319 of the professional standards of the American Institute of Certified Public Accountants, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to W.S. ~~26-3-317~~ 26-3-318, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the financial condition examiner's handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

26-3-313. Exemptions and effective dates.

(d) The requirements of W.S. 26-3-316 are effective January 1, 2019. If an insurer or group of insurers who are exempt from the requirements of W.S. 26-3-316 no longer qualify for the exemption, the insurer or group of insurers shall have one (1) year after the year the threshold is exceeded in which to comply with the requirements of this article.

26-3-315. Requirements for audit committees.

(b) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the persons performing the function suitable authority and resources to fulfill their responsibilities if required by W.S. 26-3-316.

~~(b)~~ (c) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to W.S. 26-3-302(a)(vi) and ~~26-3-315(e)~~ subsection (f) of this section.

~~(c)~~(d) In order to be considered independent for purposes of this section, a member of the audit committee shall not, other than in his capacity as a member of the audit committee, the board of directors or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. If any other provision of law requires board participation by otherwise nonindependent members, that law shall prevail and those members may participate in the audit committee and be designated as independent for audit committee purposes unless they are an officer or employee of the insurer or one (1) of its affiliates.

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

~~(e)~~(f) To exercise the election of the controlling person to designate the audit committee for purposes of this article, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election may be changed through notice to the commissioner by the insurer which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

~~(f)~~(g) The audit committee shall require the accountant that performs for an insurer any audit required by this article to timely report to the audit committee in accordance with the requirements of Statement on Auditing Standards 61, Communication with Audit Committees, or its replacement, including:

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

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

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

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

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

(i) For insurers with prior calendar year direct written and assumed premiums of five hundred million dollars ($500,000,000.00) or less the audit committee shall have a majority of members that are independent and the insurers are encouraged to structure their audit committees with at least seventy-five percent (75%) of the audit committee members being independent;

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

(iii) For purposes of this subsection, prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

~~(j)~~(k) An insurer with direct written and assumed premiums, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars ($500,000,000.00) may make application to the commissioner for a waiver from the requirements of this section based on hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

~~(k)~~(m) This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity, as defined in W.S. 26-3-302(a)(xiii).

~~(m)~~ (n) An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premium is below the threshold and subsequently becomes subject to any of the independence requirements due to changes in premiums shall have one (1) year following the year the threshold is exceeded to comply with the independence requirements. An insurer that becomes subject to any of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

26-34-110. Annual report.

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

(i) Audited financial statements in accordance with the provisions of ~~W.S. 26-3-301 through 26-3-317~~ title 26, chapter 3, article 3 of the Wyoming statutes on or before June 1;

Section 3. W.S. 26-3-316 and 26-3-317 are renumbered as 26-3-317 and 26-3-318.

Section 4. This act is effective January 1, 2019.

(END)