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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2051

03/04/2019 Authored by Elkins and Halverson
The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to insurance; making changes to conform with certain model regulations;
1.3 amending Minnesota Statutes 2018, section 60A.1291, subdivisions 1, 15, 18, by
1.4 adding a subdivision.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 60A.1291, subdivision 1, is amended to read:

1.7 Subdivision 1. Definitions. The definitions in this subdivision apply to this section.

1.8 (a) "Accountant" and "independent public accountant" mean an independent certified
1.9 public accountant or accounting firm in good standing with the American Institute of Certified
1.10 Public Accountants and in all states in which the accountant or firm is licensed or is required
1.11 to be licensed to practice. For Canadian and British companies, the term means a
1.12 Canadian-chartered or British-chartered accountant.

1.13 (b) "Audit committee" means a committee or equivalent body established by the board
1.14 of directors of an entity for the purpose of overseeing the accounting and financial reporting
1.15 processes of an insurer or group of insurers, and audits of financial statements of the insurer
1.16 or group of insurers. The audit committee of any entity that controls a group of insurers
1.17 may be deemed to be the audit committee for one or more of these controlled insurers solely
1.18 for the purposes of this section at the election of the controlling person under subdivision
1.19 15, paragraph (e). If an audit committee is not designated by the insurer, the insurer's entire
1.20 board of directors constitutes the audit committee.

1.21 (c) "Indemnification" means an agreement of indemnity or a release from liability where
1.22 the intent or effect is to shift or limit in any manner the potential liability of the person or
1.23 firm for failure to adhere to applicable auditing or professional standards, whether or not

2.1 resulting in part from knowing of other misrepresentations made by the insurer or its
2.2 representatives.

2.3 (d) "Independent board member" has the same meaning as described in subdivision 15,
2.4 paragraph (c).

2.5 (e) "Internal audit function" means a person or persons that provide independent, objective
2.6 and reasonable assurance designed to add value and improve an organization's operations
2.7 and accomplish its objectives by bringing a systematic, disciplined approach to evaluate
2.8 and improve the effectiveness of risk management, control, and governance processes.

2.9 ~~(e)~~ (f) "Internal control over financial reporting" means a process effected by an entity's
2.10 board of directors, management, and other personnel designed to provide reasonable
2.11 assurance regarding the reliability of the financial statements, for example, those items
2.12 specified in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), and includes those
2.13 policies and procedures that:

2.14 (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly
2.15 reflect the transactions and dispositions of assets;

2.16 (2) provide reasonable assurance that transactions are recorded as necessary to permit
2.17 preparation of the financial statements, for example, those items specified in subdivision 4,
2.18 paragraphs (a), clauses (2) to (6), (b), and (c), and that receipts and expenditures are being
2.19 made only in accordance with authorizations of management and directors; and

2.20 (3) provide reasonable assurance regarding prevention or timely detection of unauthorized
2.21 acquisition, use, or disposition of assets that could have a material effect on the financial
2.22 statements, for example, those items specified in subdivision 4, paragraphs (a), clauses (2)
2.23 to (6), (b), and (c).

2.24 ~~(f)~~ (g) "SEC" means the United States Securities and Exchange Commission.

2.25 ~~(g)~~ (h) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the
2.26 SEC's rules and regulations promulgated under it.

2.27 ~~(h)~~ (i) "Section 404 report" means management's report on "internal control over financial
2.28 reporting" as defined by the SEC and the related attestation report of the independent certified
2.29 public accountant as described in paragraph (a).

2.30 ~~(i)~~ (j) "SOX compliant entity" means an entity that either is required to be compliant
2.31 with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley
2.32 Act of 2002: (i) the preapproval requirements of Section 201 (section 10A(i) of the Securities
2.33 Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301

3.1 (section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the internal control
3.2 over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

3.3 Sec. 2. Minnesota Statutes 2018, section 60A.1291, subdivision 15, is amended to read:

3.4 Subd. 15. **Requirements for audit committee.** (a) The audit committee must be directly
3.5 responsible for the appointment, compensation, and oversight of the work of any accountant
3.6 including resolution of disagreements between management and the accountant regarding
3.7 financial reporting for the purpose of preparing or issuing the audited financial report or
3.8 related work pursuant to this section. Each accountant shall report directly to the audit
3.9 committee.

3.10 (b) The audit committee of an insurer or group of insurers is responsible for overseeing
3.11 the insurer's internal audit function and granting the person or persons performing the
3.12 function suitable authority and resources to fulfill their responsibilities if required by
3.13 subdivision 15a.

3.14 ~~(b)~~ (c) Each member of the audit committee must be a member of the board of directors
3.15 of the insurer or a member of the board of directors of an entity elected pursuant to paragraph
3.16 ~~(e)~~ (f) and subdivision 1, paragraph (b).

3.17 ~~(e)~~ (d) In order to be considered independent for purposes of this section, a member of
3.18 the audit committee may not, other than in his or her capacity as a member of the audit
3.19 committee, the board of directors, or any other board committee, accept any consulting,
3.20 advisory, or other compensatory fee from the entity or be an affiliated person of the entity
3.21 or any subsidiary of the entity. However, if law requires board participation by otherwise
3.22 nonindependent members, that law shall prevail and such members may participate in the
3.23 audit committee and be designated as independent for audit committee purposes, unless
3.24 they are an officer or employee of the insurer or one of its affiliates.

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

3.30 ~~(e)~~ (f) To exercise the election of the controlling person to designate the audit committee
3.31 for purposes of this section, the ultimate controlling person shall provide written notice to
3.32 the commissioners of the affected insurers. Notification must be made timely before the
3.33 issuance of the statutory audit report and include a description of the basis for the election.

4.1 The election can be changed through notice to the commissioner by the insurer, which shall
4.2 include a description of the basis for the change. The election remains in effect for perpetuity,
4.3 until rescinded.

4.4 ~~(f)~~ (g) The audit committee shall require the accountant that performs for an insurer any
4.5 audit required by this section to timely report to the audit committee in accordance with the
4.6 requirements of SAS No. 114, The Auditor's Communication with Those Charged with
4.7 Governance, or its replacement, including:

4.8 (1) all significant accounting policies and material permitted practices;

4.9 (2) all material alternative treatments of financial information within statutory accounting
4.10 principles that have been discussed with management officials of the insurer, ramifications
4.11 of the use of the alternative disclosures and treatments, and the treatment preferred by the
4.12 accountant; and

4.13 (3) other material written communications between the accountant and the management
4.14 of the insurer, such as any management letter or schedule of unadjusted differences.

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

4.19 ~~(h)~~ (i) The proportion of independent audit committee members shall meet or exceed
4.20 the following criteria:

4.21 (1) for companies with prior calendar year direct written and assumed premiums \$0 to
4.22 \$300,000,000, no minimum requirements;

4.23 (2) for companies with prior calendar year direct written and assumed premiums over
4.24 \$300,000,000 to \$500,000,000, majority of members must be independent; and

4.25 (3) for companies with prior calendar year direct written and assumed premiums over
4.26 \$500,000,000, 75 percent or more must be independent.

4.27 ~~(i)~~ (j) An insurer with direct written and assumed premium, excluding premiums reinsured
4.28 with the Federal Crop Insurance Corporation and Federal Flood Program, less than
4.29 \$500,000,000 may make application to the commissioner for a waiver from the requirements
4.30 of this subdivision based upon hardship. The insurer shall file, with its annual statement
4.31 filing, the approval for relief from this subdivision with the states that it is licensed in or
4.32 doing business in and the NAIC. If the nondomestic state accepts electronic filing with the
4.33 NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

5.1 This subdivision does not apply to foreign or alien insurers licensed in this state or an
5.2 insurer that is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a
5.3 SOX compliant entity.

5.4 Sec. 3. Minnesota Statutes 2018, section 60A.1291, is amended by adding a subdivision
5.5 to read:

5.6 Subd. 15a. **Internal audit function requirements.** (a) An insurer is exempt from the
5.7 requirements of this section if:

5.8 (1) the insurer has annual direct written and unaffiliated assumed premium, including
5.9 international direct and assumed premium but excluding premiums reinsured with the Federal
5.10 Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

5.11 (2) the insurer is a member of a group of insurers, the group has annual direct written
5.12 and unaffiliated assumed premium including international direct and assumed premium,
5.13 but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal
5.14 Flood Program, less than \$1,000,000,000.

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

5.21 (c) In order to ensure that internal auditors remain objective, the internal audit function
5.22 must be organizationally independent. Specifically, the internal audit function will not defer
5.23 ultimate judgment on audit matters to others, and shall appoint an individual to head the
5.24 internal audit function who will have direct and unrestricted access to the board of directors.
5.25 Organizational independence does not preclude dual-reporting relationships.

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

5.31 (e) If an insurer is a member of an insurance holding company system or included in a
5.32 group of insurers, the insurer may satisfy the internal audit function requirements set forth

6.1 in this section at the ultimate controlling parent level, an intermediate holding company
6.2 level or the individual legal entity level.

6.3 Sec. 4. Minnesota Statutes 2018, section 60A.1291, subdivision 18, is amended to read:

6.4 Subd. 18. **Exemptions.** (a) Upon written application of any insurer, the commissioner
6.5 may grant an exemption from compliance with the provisions of this section. In order to
6.6 receive an exemption, an insurer must demonstrate to the satisfaction of the commissioner
6.7 that compliance would constitute a financial or organizational hardship upon the insurer.
6.8 An exemption may be granted at any time and from time to time for specified periods.
6.9 Within ten days from the denial of an insurer's written request for an exemption, the insurer
6.10 may request in writing a hearing on its application for an exemption. This hearing must be
6.11 held in accordance with chapter 14. Upon written application of any insurer, the
6.12 commissioner may permit an insurer to file annual audited financial reports on some basis
6.13 other than a calendar year basis for a specified period. An exemption may not be granted
6.14 until the insurer presents an alternative method satisfying the purposes of this section. Within
6.15 ten days from a denial of a written request for an exemption, the insurer may request in
6.16 writing a hearing on its application. The hearing must be held in accordance with chapter
6.17 14.

6.18 (b) This section applies to all insurers, unless otherwise indicated, required to file an
6.19 annual audit by subdivision 2, except insurers having less than \$1,000,000 of direct written
6.20 premiums in this state in any calendar year and fewer than 1,000 policyholders or certificate
6.21 holders of directly written policies nationwide at the end of the calendar year, are exempt
6.22 from this section for that year, unless the commissioner makes a specific finding that
6.23 compliance is necessary for the commissioner to carry out statutory responsibilities, except
6.24 that insurers having assumed premiums from reinsurance contracts or treaties of \$1,000,000
6.25 or more are not exempt.

6.26 (c) The requirements of subdivision 15a are effective January 1, 2020. If an insurer or
6.27 group of insurers that is exempt from the subdivision 15a requirements no longer qualifies
6.28 for that exemption, it shall have one year after the year the threshold is exceeded to comply
6.29 with the requirements of this article.