

**60A.129 LOSS RESERVE CERTIFICATION AND ANNUAL AUDIT.**

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

(a) "Qualified actuary," except as it relates to subdivision 2, paragraph (c), for companies authorized to provide life insurance coverage under section 60A.06, subdivision 1, clause (4), is a person who is either:

(1) a member in good standing of the Casualty Actuarial Society; or

(2) a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or

(3) a person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days prior to the filing of its annual statement, the insurer must request approval that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners biographical form and a list of all loss reserve opinions issued in the last three years by this person.

(b) For purposes of subdivision 2, paragraph (c), a qualified actuary for companies authorized to write life insurance coverage under section 60A.06, subdivision 1, clause (4), shall be:

(1) a member in good standing of the American Academy of Actuaries;

(2) qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing these statements;

(3) familiar with the valuation requirements applicable to life and health insurance companies.

(c) A qualified actuary as defined by this subdivision is an individual who:

(1) has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(i) violated any provision of, or any obligation imposed by, the state insurance law or other law in the course of the actuary's dealings as a qualified actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

(iv) submitted to the commissioner during the past five years, pursuant to this chapter, an actuarial opinion that the commissioner rejected because it did not meet the provisions of this chapter including standards set by the actuarial standards board;

(2) has resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards of the American Academy of Actuaries; and

(3) has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under clause (1).

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

**Subd. 2. Loss reserve certification.** (a) Each domestic company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), must have its loss reserves certified by a qualified actuary. The company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification may be an employee of the company but the commissioner may still require an independent actuarial certification as described in subdivision 1. This subdivision does not apply to township mutual companies, or to other domestic insurers having less than \$1,000,000 of premiums written in any year and fewer than 1,000 policyholders. The commissioner may allow an exception to the stand alone certification where it can be demonstrated that a company in a group has a pooling or 100 percent reinsurance agreement used in a group which substantially affects the solvency and integrity of the reserves of the company, or where it is only the parent company of a group which is licensed to do business in Minnesota. If these circumstances exist, the company may file a written request with the commissioner for an exception. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "In my opinion, the reserves described in this certification are consistent with reserves computed in accordance with standards and principles established by the Actuarial Standards Board and are fairly stated."

(b) Each foreign company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), required by this section to file an annual audited financial report, whose total net earned premium for Schedule P, Part 1A to Part 1H plus Part 1R, (Schedule P, Part 1A to Part 1H plus Part 1R, Column 4, current year premiums earned, from the company's most currently filed annual

statement) is equal to one-third or more of the company's total net earned premium (Underwriting and Investment Exhibit, Part 2, Column 4, total line, of the annual statement) must have a reserve certification by a qualified actuary at least every three years. In the year that the certification is due, the company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification may be an employee of the company. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "The loss reserves and loss expense reserves have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."

Subd. 3. **Annual audit.** (a) Every insurance company doing business in this state, including fraternal benefit societies, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision 5, paragraph (a), or by subdivision 7, shall have an annual audit of the financial activities of the most recently completed calendar year performed by an independent certified public accountant, and shall file the report of this audit with the commissioner on or before June 1 for the immediately preceding year ending December 31. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days before the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(b) Foreign and alien insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from this subdivision if a copy of the audited financial report, accountant's letter of qualifications, and report on significant deficiencies in internal controls, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in paragraphs (a) and (l), (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in paragraph (k). This paragraph does not prohibit or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under the authority of this chapter.

(c)(i) The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year ended. The annual audited financial report shall include a report of an independent certified public accountant; a balance sheet reporting admitted assets, liabilities, capital, and surplus; a statement of operations; a statement of cash flows; a statement of changes in capital and surplus; and notes to the financial statements.

(ii) The notes required under item (i) shall be those required by the appropriate National Association of Insurance Commissioners annual statement instructions and National Association of Insurance Commissioners Accounting Practices and Procedures Manual and shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under section 60A.13, subdivision 1, with a written description of the nature of these differences.

(iii) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The amounts may be rounded to the nearest \$1,000, and all insignificant amounts may be combined.

(d) Each insurer required by this section to file an annual audited financial report must notify the commissioner in writing of the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement. The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance regulatory authority of the state of domicile. The letter shall affirm that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance regulatory authority, specifying the exceptions believed to be appropriate. A copy of the accountant's letter shall be filed with the commissioner.

(e) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the commissioner of this event within five business days. Within ten business days of this notification, the insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this event there were any disagreements with the former accountant on any matter of accounting

principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused that person to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for any disagreement. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

(f) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant. Except as otherwise provided, an independent certified public accountant shall be recognized as qualified as long as the person conforms to the standards of the person's profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota Board of Public Accountancy or similar code.

(g) No partner or other person responsible for rendering a report for calendar year 1997 and thereafter may act in that capacity for more than seven consecutive years. Following any period of service, the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the number of partners, the expertise of the partners or the number of insurance clients in the currently registered firm, the premium volume of the insurer, or the number of jurisdictions in which the insurer transacts business in determining if the relief should be granted.

(h) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any audited financial report, prepared in whole or in part by any natural person who has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to 1968, or any dishonest conduct or practices under federal or state law, has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this section, or has demonstrated

a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this section.

(i) The commissioner, after notice and hearing under chapter 14, may find that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this section.

(j) Financial statements furnished under paragraph (a), shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to other procedures illustrated in the Financial Condition Examiners Handbook, issued by the National Association of Insurance Commissioners, as the independent certified public accountant considers necessary.

(k) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to provide written notice within five business days to the board of directors of the insurer or its audit committee of any determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of sections 60A.07, 66A.32, and 66A.33 as of that date. An insurer required to file an annual audited financial report who received a notification of adverse financial condition from the accountant shall file a copy of the notification with the commissioner within five business days of the receipt of the notification. The insurer shall provide the independent certified public accountant making the notification with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-day period, the independent certified public accountant shall furnish to the commissioner a copy of the notification to the board of directors or its audit committee within the next five business days. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with this paragraph if the statement is made in good faith in compliance with this paragraph. If the accountant becomes aware of facts which might have affected the audited financial report after the date it was filed under this section, the accountant shall take the action prescribed by Professional Standards issued by the American Institute of Certified Public Accountants.

(l) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. The accountant shall follow the professional standards issued by the American Institute of Certified Public

Accountants, which require an accountant to communicate significant deficiencies, known as reportable conditions, noted during a financial statement audit, to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. Any such report by the accountant describing significant deficiencies in the insurer's internal control structure, shall be filed annually by the insurer with the commissioner within 60 days after the filing of the annual audited financial statements. This report on internal control shall be in the form prescribed by generally accepted auditing standards. The insurer shall provide the commissioner with a description of remedial actions taken or proposed to correct significant deficiencies, if those actions are not described in the accountant's report.

(m) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating that the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota Board of Accountancy or similar code; the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant; that the accountant understands that the annual audited financial report and the opinion thereon will be filed in compliance with this statute and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers; that the accountant consents to the requirements of paragraph (n) and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in paragraph (n); a representation that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and, a representation that the accountant complies with paragraph (f). Nothing in this section shall be construed as prohibiting the accountant from utilizing staff the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(n) Workpapers are the records kept by the independent certified public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. Workpapers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and that support the accountant's opinion. Every insurer required to file an audited financial report shall require the

accountant, through the insurer, to make available for review by the examiners the workpapers prepared in the conduct of the examination and any communications related to the audit between the accountant and the insurer. The workpapers shall be made available at the offices of the insurer, at the offices of the commissioner, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the period reported upon. In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner. These copies shall be part of the commissioner's workpapers and shall be given the same confidentiality as other examination workpapers generated by the commissioner.

(o)(i) In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

(ii) For these insurers, the letter required in paragraph (d), shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under paragraph (a), and shall affirm that the opinion expressed is in conformity with those requirements.

(p) The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under paragraph (a), shall contain a statement as to whether anything, in connection with the audit, came to the accountant's attention that caused the accountant to believe that the insurer failed to adopt and consistently apply the valuation procedures as required by sections 60A.122 and 60A.123.

Subd. 4. **Examinations.** (a) The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this section conducted by examiners under section 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioners, Insurance Regulatory Information Systems, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this section shall be compliance examinations, targeted examinations, and comprehensive examinations.

(b) Compliance examinations will consist of a review of the accountant's workpapers defined under this section and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the Department of Commerce. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

(c) Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

(d) Comprehensive examinations will be performed when the report of the accountant as provided for in subdivision 3, paragraph (g), the notification required by subdivision 3, paragraph (h), the results of compliance or targeted examinations, or other circumstances indicate in the judgment of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

(e) Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the registered independent certified public accountant if included as a supplement to the examination.

**Subd. 5. Consolidated filing.** (a) The commissioner may allow an insurer to file a consolidated loss reserve certification required by subdivision 2, in lieu of separate loss certifications and may allow an insurer to file consolidated or combined audited financial statements required by subdivision 3, paragraph (a), in lieu of separate annual audited financial statements, where it can be demonstrated that an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement which substantially affects the solvency and integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed business to the pool. An affiliated insurance company not meeting these requirements may be included in the consolidated or combined audited financial statements, if the company's total admitted assets are less than five percent of the consolidated group's total admitted assets. If these circumstances exist, then the company may file a written application to file a consolidated loss reserve certification and/or consolidated or combined audited financial statements. This application shall be for a specified period.

(b) Upon written application by a domestic insurer, the commissioner may authorize the domestic insurer to include additional affiliated insurance companies in the consolidated

or combined audited financial statements. Foreign insurers must obtain the prior written authorization of the commissioner of their state of domicile in order to submit an application for authority to file consolidated or combined audited financial statements. This application shall be for a specified period.

(c) A consolidated annual audit filing shall include a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet. Amounts for each insurer shall be stated separately. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Explanations of consolidating or eliminating entries shall be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers shall be included on the worksheet.

Subd. 6. **Penalties.** No annual statement, report, or document related to the business of insurance shall be filed with the commissioner or issued to the public if it is signed by anyone who is represented in the instrument as an "actuary" or "accountant," unless the person is qualified as defined by this section. A violation of this subdivision is a violation of section 72A.19 and punishable in accordance with section 72A.25.

Subd. 7. **Exemptions.** (a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of this section. In order to receive an exemption, an insurer must demonstrate to the satisfaction of the commissioner that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from the denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with chapter 14. Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this section. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with chapter 14.

(b) This section applies to all insurers, unless otherwise indicated, required to file an annual audit by subdivision 3, paragraph (a), except insurers having less than \$1,000,000 of direct written premiums in this state in any calendar year and fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the calendar year, are exempt from this section for that year, unless the commissioner makes a specific finding that compliance is

necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums from reinsurance contracts or treaties of \$1,000,000 or more are not exempt.

**History:** *1993 c 299 s 3; 1994 c 426 s 4-6; 2000 c 350 s 8; 2000 c 483 s 4; 2001 c 131 s 3; 2001 c 215 s 4; 2004 c 285 art 3 s 1; 2005 c 69 art 2 s 18*