

CHAPTER 45-03-20
MODEL RULE REQUIRING ANNUAL AUDITED FINANCIAL REPORTS

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45-03-20-01. Purpose and scope. The purpose of this chapter is to improve the North Dakota insurance department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers. Every insurer, as defined in section 45-03-20-02, is subject to this chapter, except a company, so defined, which is licensed only in North Dakota. The commissioner may exempt an insurer, or type of insurer, from the requirements of this chapter. Insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of directly written policies nationwide at the end of the calendar year are exempt from this chapter 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 pursuant to contracts or treaties of reinsurance of one million dollars or more will not be so exempt. Foreign or alien insurers filing audited financial reports in another state, pursuant to the other state's requirement of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from this chapter if:

1. A copy of the audited financial report, report on significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with another state are filed with the commissioner in accordance with the filing dates specified in sections 45-03-20-03, 45-03-20-10, and 45-03-20-11, respectively.
2. A copy of any notification of adverse financial condition report filed with another state is filed with the commissioner within the time specified in section 45-03-20-09.

This chapter may not prohibit, preclude, or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the North Dakota department of insurance and the practices and procedures of the North Dakota department of insurance.

History: Effective October 1, 1995; amended effective April 1, 1996.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-02. Definitions.

1. "Accountant" and "independent certified 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 they are licensed to practice.
2. "Audited financial report" means and includes those items specified in section 45-03-20-04.
3. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
4. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.

History: Effective October 1, 1995; amended effective January 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-03. Filing and extensions for filing of annual audited financial reports. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June first for the year ended December thirty-first immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June first with ninety days' advance notice to the insurer.

Extensions of the June first filing date may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient

detail to permit the commissioner to make an informed decision with respect to the requested extension.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-04. Contents of annual audited financial report. The annual audited financial report must report 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 then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

The annual audited financial report must include the following:

1. Report of independent certified public accountant.
2. Balance sheet reporting admitted assets, liabilities, capital, and surplus.
3. Statement of operations.
4. Statement of cash flows.
5. Statement of changes in capital and surplus.
6. Notes to financial statements. These notes must be those required by the appropriate national association of insurance commissioners annual statement instructions and the national association of insurance commissioners accounting practices and procedures manual. These notes must also include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to North Dakota Century Code section 26.1-03-07 with a written description of the nature of these differences.
7. The financial statements included in the audited financial report must 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, and the financial statement must be comparative, presenting the amounts as of December thirty-first of the current year and the amounts as of the immediately preceding December thirty-first. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

History: Effective October 1, 1995; amended effective August 1, 2000.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-05. Designation of independent certified public accountant.

Each insurer required by this chapter to file an annual audited financial report within sixty days after becoming subject to the requirement, shall register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm, generally referred to in this chapter as the "accountant", retained to conduct the annual audit under this chapter. Insurers not retaining an independent certified public accountant on October 1, 1995, shall register the name and address of their retained certified public accountants not less than six months before the date when the first audited financial report is to be filed.

The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming 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 department, specifying the exceptions as the accountant may believe appropriate.

If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the department of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the 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 disagreements, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this section 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 that occur at the decisionmaking level, that is 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 which the accountant does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-06. Qualifications of independent certified public accountant.

1. The commissioner shall not recognize any person or firm as a qualified independent certified public accountant which:
 - a. 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;
 - b. Has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer.
2. Except as otherwise provided in this chapter, an independent certified public accountant must be recognized as qualified as long as the independent certified public accountant conforms to the standards of the independent certified public accountant's profession, as contained in the code of professional ethics of the American institute of certified public accountants and rules and regulations and code of ethics and rules of professional conduct of the North Dakota board of accountancy, or similar code.
3. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under North Dakota Century Code chapter 26.1-06.1, the mediation or arbitration provisions shall operate at the option of the statutory successor.
4. A partner or other person responsible for rendering a report may not act in that capacity for more than seven consecutive years. Following any period of service, the person must 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 following factors in determining if the relief should be granted:
 - a. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
 - b. Premium volume of the insurer; or
 - c. Number of jurisdictions in which the insurer transacts business.

The requirements of this subsection become effective October 1, 1997.

5. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:

- a. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;
 - b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or
 - c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.
6. The commissioner may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

History: Effective October 1, 1995; amended effective January 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-07. Consolidated or combined audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet must be filed with the report, as follows:

1. Amounts shown on the consolidated or combined audited financial report must be shown on the worksheet.
2. Amounts for each insurer subject to this section must be stated separately.
3. Noninsurance operations may be shown on the worksheet on a combined or individual basis.
4. Explanations of consolidating and eliminating entries must be included.

5. A reconciliation must be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-08. Scope of examination and report of independent certified public accountant. Financial statements furnished under section 45-03-20-04 must be examined by an independent certified public accountant. The independent certified public accountant shall examine the insurer's financial statements in accordance with generally accepted auditing standards. The independent certified public accountant shall also consider 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.

History: Effective October 1, 1995; amended effective January 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-09. Notification of adverse financial condition. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the 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 the North Dakota insurance statute as of that date. An insurer who has received a report under this section shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report 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-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

An independent public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with this section.

If the accountant, subsequent to the date of the audited financial report filed under this chapter, becomes aware of facts that might have affected the accountant's report, the department notes the obligation of the accountant to take

action as prescribed in volume 1, section AU 561 of the professional standards of the American institute of certified public accountants.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-10. Report on significant deficiencies in internal controls.

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. SAS No. 60, communication of internal control structure matters noted in an audit, AU section 325 of the professional standards of the American institute of certified public accountants, requires 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 should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report must be filed annually by the insurer with the department within sixty days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant's report.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-11. Accountant's letter of qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. 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 and pronouncements of the American institute of certified public accountants and the rules of professional conduct of the North Dakota board of accountancy, or similar code.
2. 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. Nothing within this chapter may be construed as prohibiting the accountant from utilizing the staff as deemed appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.
3. That the accountant understands the annual audited financial report and the accountant's opinion thereon will be filed in compliance with this chapter and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

4. That the accountant consents to the requirements of section 45-03-20-12 and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent, the workpapers, as defined in section 45-03-20-12.
5. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American institute of certified public accountants.
6. A representation that the accountant is in compliance with the requirements of section 45-03-20-06.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-12. Definition, availability, and maintenance of certified public accountant workpapers. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's examination of the financial statements of an insurer and which support the accountant's opinion thereof.

Every insurer required to file an audited financial report under this chapter, shall require the accountant to make available for review by department examiners, all workpapers prepared in the conduct of the accountant's examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department, 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 insurance department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

In the conduct of the aforementioned periodic review by the department examiners, it must be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners must be considered investigations and all working papers and communications obtained during the course of the investigations must be afforded

the same confidentiality as other examination workpapers generated by the department.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-13. Exemptions and effective dates. Upon written application of any insurer, the commissioner may grant an exemption from compliance with this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. Such hearing must be held in accordance with the rules and regulations of the North Dakota department of insurance pertaining to administrative hearing procedures.

Domestic insurers retaining a certified public accountant on October 1, 1995, who qualify as independent shall comply with this chapter for the year ending December 31, 1996, and each year thereafter unless the commissioner permits otherwise.

Domestic insurers not retaining a certified public accountant on October 1, 1995, who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise:

1. As of December 31, 1996, file with the commissioner:
 - a. Report of independent certified public accountant.
 - b. Audited balance sheet.
 - c. Notes to audited balance sheet.
2. For the year ending December 31, 1996, and each year thereafter, the insurers shall file with the commissioner all reports required by this chapter.

Foreign insurers shall comply with this chapter for the year ending December 31, 1996, and each year thereafter, unless the commissioner permits otherwise.

History: Effective October 1, 1995.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1