

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

1

HOUSE BILL 1161

Short Title: Revise Insurance Financial Conditions.-AB (Public)

Sponsors: Representatives Wray, Goforth (Primary Sponsors); and Lucas.

Referred to: Insurance, if favorable, Judiciary II.

April 8, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN THE LAWS RELATED TO THE FINANCIAL
3 CONDITIONS OF INSURANCE COMPANIES, INCLUDING REINSURANCE
4 INTERMEDIARIES, RECEIVERSHIP, THIRD-PARTY ADMINISTRATORS AND
5 AUDITS OF WORKERS' COMPENSATION SELF-INSURERS, AND FOREIGN
6 INSURERS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 9 of Chapter 58 of the General Statutes is amended by adding
9 a new section to read:

10 **"§ 58-9-22. Compliance with orders.**

11 An intermediary shall comply with any order of a court of competent jurisdiction or a duly
12 constituted arbitration panel requiring the production of nonprivileged documents by the
13 intermediary, or the testimony of an employee or other individual otherwise under the control
14 of the intermediary with respect to any reinsurance transaction for which it acted as an
15 intermediary."

16 **SECTION 2.** G.S. 58-30-85(e) reads as rewritten:

17 "(e) If the rehabilitator determines that reorganization, consolidation, conversion,
18 reinsurance, merger, runoff, or other transformation of the insurer is appropriate, he shall
19 prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the
20 plan, and after such notice and hearings as the Court may prescribe, the Court may either
21 approve or disapprove the plan proposed, or may modify it and approve it as modified. Any
22 plan approved under this section shall be, in the opinion of the Court, fair and equitable to all
23 parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case
24 of a life insurer, the plan proposed may include the imposition of liens upon the policies of the
25 insurer, if all rights of shareholders are first relinquished. A plan for a life insurer may also
26 propose imposition of a moratorium upon loan and cash surrender rights under policies, for
27 such period and to such an extent as may be necessary."

28 **SECTION 3.** G.S. 58-30-165(d) reads as rewritten:

29 "(d) The liquidator shall give notice of the order to show cause by publication ~~and~~ or by
30 first class mail to each member liable thereunder mailed to his last known address as it appears
31 on the insurer's records, at least 20 days before the return day of the order to show cause."

32 **SECTION 4.** G.S. 58-47-205 reads as rewritten:

33 **"§ 58-47-205. Other requirements.**

34 (a) A TPA or service company, or any owner, officer, employee, or agent of a TPA or
35 service company, or any other person affiliated with or related to the TPA or service company
36 shall ~~not~~ not:

37 (1) ~~serve~~ Serve as a trustee of a self-insurer.



1 (2) Make a contribution to the surplus of a self-insurer.

2 "

3 **SECTION 5.** G.S. 97-165 reads as rewritten:

4 "**§ 97-165. Definitions.**

5 As used in this Article:

6

7 (2) "Certified audit" means an audit on which a certified public accountant or a
8 foreign registered public accounting firm expresses his or her professional
9 opinion that the accompanying statements fairly present the financial
10 position of the self-insurer or the guarantor, in conformity with accounting
11 principles generally accepted in the United ~~States~~ States or prepared in
12 accordance with International Financial Reporting Standards.

13 (3) "Certified public accountant" or "CPA" means a CPA who is in good
14 standing with the American Institute of Certified Public Accountants and in
15 all states in which the CPA is licensed to practice. A CPA shall be
16 recognized as independent as long as the CPA conforms to the standards of
17 the profession, as contained in the Code of Professional Ethics of the
18 American Institute of Certified Public Accountants and Rules and
19 Regulations and Code of Ethics and Rules of Professional Conduct of the
20 North Carolina State Board of Certified Public Accountant Examiners, or
21 similar code. The Commissioner may hold a hearing to determine whether a
22 CPA is independent and, considering the evidence presented, may rule that
23 the CPA is not independent for purposes of expressing an opinion on ~~the~~
24 ~~GAAP financial statement and~~ financial statements prepared in accordance
25 with United States Generally Accepted Accounting Principles or
26 International Financial Reporting Standards. The Commission may require
27 the self-insurer or the guarantor to replace the CPA with another whose
28 relationship with the self-insurer or the guarantor is independent within the
29 meaning of this definition.

30 ...

31 ~~(6)~~(5a) "GAAP financial" Financial statement" means a financial statement as
32 defined by accounting principles generally accepted in the United
33 ~~States~~ States or a financial statement prepared in accordance with
34 International Financial Reporting Standards.

35 (6) "Foreign registered public accounting firm" means a public accounting firm
36 that is organized and operates under the laws of a non-United States
37 jurisdiction, government, or political subdivision and is registered and in
38 good standing with the Public Company Accounting Oversight Board to
39 prepare or issue any audit report with respect to any issuer.

40 "

41 **SECTION 6.** G.S. 97-170(d) reads as rewritten:

42 "(d) The license application shall be comprised of the following information:

43 ...

44 (2) Certified audited GAAP financial statements prepared by a CPA or
45 submitted by a foreign registered accounting firm for the two most recent
46 years. The financial statement presentation shall facilitate application of ratio
47 and trend analysis.

48 "

49 **SECTION 7.** G.S. 97-180(a) reads as rewritten:

50 "(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a
51 certified audited ~~GAAP~~ financial statement, prepared by a ~~CPA~~ CPA or submitted by a foreign

1 registered accounting firm, for that fiscal year. The financial statement presentation shall
2 facilitate the application of ratio and trend analysis. If the self-insurer was issued a license
3 pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of
4 the guarantor."

5 **SECTION 8.** G.S. 58-16-5 reads as rewritten:

6 "**§ 58-16-5. Conditions of licensure.**

7 A foreign or alien insurance company may be licensed to do business when it:

8

9 (2) Satisfies the Commissioner that it is fully and legally organized under the
10 laws of its state or government to do the business it proposes to transact as
11 direct insurance or assumed ~~reinsurance, and that it has been successful in~~
12 ~~the conduct of the business;~~ reinsurance; that it has, if a stock company, a
13 free surplus and a fully paid-up and unimpaired capital, exclusive of
14 stockholders' obligations of any description of an amount not less than that
15 required for the organization of a domestic company writing the same kinds
16 of business; and if a mutual company that its free surplus is not less than that
17 required for the organization of a domestic company writing the same kind
18 of business, and that the capital, surplus, and other funds are invested
19 substantially in accordance with the requirements of this Chapter.

20"

21 **SECTION 9.** This act becomes effective October 1, 2009.