

April 9, 2009

H 1314. ANNUAL FINANCIAL REPORTING. Filed 4/8/09. *TO IMPROVE THE INSURANCE COMMISSIONER'S ABILITY TO MONITOR THE FINANCIAL CONDITION OF INSURERS.*

Enacts new Part 7, *Annual Financial Reporting* in Article 10 of GS Chapter 58 to improve the Commissioner of Insurance's (Commissioner) ability to monitor the financial condition of insurers, as defined in GS 58-10-190, by requiring (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants (CPAs), (2) communication of internal control related matters noted in an audit, and (3) management's report of internal control over financial reporting. Exempts insurers having direct premiums written in this state of less than \$1 million in any calendar year and less than 1,000 policyholders at the end of the calendar year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Creates an exemption for foreign or alien insurers filing a substantially similar audited financial report in another state under specified conditions. Provides that the Commissioner is not prohibited from ordering, conducting, or performing examinations of insurers under GS 58-2-131 through GS 58-2-134. Creates a definition section.

Requires the annual audited financial report to be filed with the Commissioner by June 1 for the preceding year. However, the Commissioner may require an insurer to file an audited financial report earlier with 90 days' advance notice. Allows the Commissioner, upon determining good cause, to grant extensions for 30-day periods upon a showing by the insurer and its CPA of reasons for requesting an extension. Requires the extension be received by the Commissioner at least 10 days before the report's due date. If the insurer is granted an extension, a similar extension applies to the filing of management's report of internal control over financial reporting, if applicable. Requires the insurer to designate an audit committee, which must preapprove all auditing services and non-audit services provided to an insurer by a qualified CPA. An audit committee of an entity controlling the insurer is deemed to be the insurer's audit committee at the election of the controlling person. Provides that each member of the audit committee must be a member of the insurer's or controlling entity's board of directors and may not accept compensation for serving on the committee. Provides for the composition of the audit committee, including the number of independent members under specified premium thresholds. Allows an insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program (FCICFFP), of less than \$500 million to apply for a waiver from audit committee requirements based upon hardship.

Provides that 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. Provides for the report's format and the specific information to be included in the report. Requires the insurer to register, with the Commissioner, information regarding the CPA or accounting firm retained to conduct the annual audit within 60 days of becoming subject to the requirements of this Part, with an insurer who has not retained a CPA by the effective date of the act to register that information at least six months before the audit report due date. Provides for reporting to the Commissioner of the dismissal or resignation of the CPA. Sets forth qualification requirements for CPAs. Allows insurers having direct written and assumed premiums of less than \$100 million in any calendar year to request an exemption from retaining an independent CPA who may not provide, contemporaneously with the audit, specified non-audit services. An exemption may be granted by the Commissioner upon a finding of financial or organizational hardship upon the insurer. Provides for the scope of the audit and report, availability and maintenance of the CPA's work papers, notification to the insurer of any adverse financial condition, and inclusion of an accountant's letter of qualifications. Provides for conduct of insurers in connection with the preparation of required reports and documents.

Allows an insurer to apply to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer (1) is part of a group of insurance companies that utilizes a pooling or 100% reinsurance agreement that affects the solvency of the insurer and affects the integrity of the insurer's reserves and (2) cedes all of its direct and assumed business to the pool. Provides for the format of such a report.

Requires each insurer to furnish the Commissioner with a written communication as to any unremediated material weaknesses, or lack thereof, in its internal control over financial reporting noted during the audit, prepared by the CPA within 60 days after filing the audit report. Also requires the insurer to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses if those actions were not described in the CPA's communication.

Requires each insurer that has annual direct written and assumed premiums, excluding premiums reinsured with FCICFFP, of \$500 million or more to prepare a report of the insurer's or group of insurers' (management's) internal control over financial reporting for the previous year along with the filing of the written communication of internal control related matters. Allows the Commissioner to require this report, regardless of the premium threshold, if the insurer is in any risk-based capital level event or is deemed to be in hazardous financial condition. Allows certain insurers to file a Section 404 report and an addendum that no material processes were excluded from the Section 404 report to satisfy this requirement. Specifies certain information to be included in management's report of internal control over financial reporting.

Sets forth additional procedures related to obtaining exemptions from compliance with any and all provisions of this Part based on financial and organizational hardship upon the insurer. Specifies requirements for Canadian or British insurers. Requires that (1) domestic insurers retaining a qualified CPA on the effective date of the act and (2) foreign insurers must comply with this Part beginning with the year ending December 31, 2010. Provides that requirements related to the rotation of lead audit partners is effective for audits of the year beginning January 1, 2010. Provides that requirements concerning the structure of audit committees are effective on January 1, 2010. Specifies that an insurer becoming subject to independence requirements for audit committee members because of a change in premium amounts or a business combination must comply within one year after the change. Provides that the requirement to file the management's report of internal control over financial reporting becomes effective beginning with the reporting period ending December 31, 2010. Specifies that an insurer who becomes subject to this requirement because of a change in premium amounts or a business combination must comply within two years after the change.

Makes conforming changes to GS 58-23-26, GS 58-65-2, and GS 58-67-171.

Intro. by Goforth, Wray.

GS 58

June 15, 2009

H 1314. ANNUAL FINANCIAL REPORTING. Filed 4/8/09. Senate committee substitute makes the following changes to 1st edition. Makes technical changes only.

August 3, 2009

SL 2009-384 (H 1314). ANNUAL FINANCIAL REPORTING. AN ACT TO IMPROVE THE INSURANCE COMMISSIONER'S ABILITY TO MONITOR THE FINANCIAL CONDITION OF INSURERS. Summarized in *Daily Bulletin* 4/9/09 and 6/15/09. Enacted July 31, 2009. Effective July 31, 2009.