

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1161  
PROPOSED COMMITTEE SUBSTITUTE H1161-PCS10871-RD-30

Short Title: Revise Insurance Financial Conditions.-AB

(Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE LAWS RELATED TO THE FINANCIAL  
CONDITIONS OF INSURANCE COMPANIES, INCLUDING REINSURANCE  
INTERMEDIARIES, RECEIVERSHIP, THIRD-PARTY ADMINISTRATORS AND  
AUDITS OF WORKERS' COMPENSATION SELF-INSURERS, AND FOREIGN  
INSURERS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

**§ 58-47-205. Other requirements.**



\* H 1 1 6 1 - P C S 1 0 8 7 1 - R D - 3 0 \*

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

- 4 (1) ~~serve~~Serve as a trustee of a self-insurer.
- 5 (2) Make a contribution to the surplus of a self-insurer.

6 ...."

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

8 "**§ 97-165. Definitions.**

9 As used in this Article:

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

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

34 ...  
 35 ~~(6)(5a)~~ "GAAP financial statement" means a financial statement as  
 36 defined by accounting principles generally accepted in the United  
 37 ~~States~~States or a financial statement prepared in accordance with  
 38 International Financial Reporting Standards.

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

45 ...."

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

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

- 48 ...
- 49 (2) Certified audited ~~GAAP~~financial statements prepared by a CPA or  
 50 submitted by a foreign registered public accounting firm for the two most

recent years. The financial statement presentation shall facilitate application of ratio and trend analysis.

...."

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

"(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited ~~GAAP~~ financial statement, prepared by a ~~CPA, CPA~~ or submitted by a foreign registered public accounting firm, for that fiscal year. The financial statement presentation shall facilitate the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of the guarantor."

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

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

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

...

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

...."

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