

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-172
HOUSE BILL 1161**

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 certified 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.

(a) A TPA or service company, or any owner, officer, employee, or agent of a TPA or service company, or any other person affiliated with or related to the TPA or service company shall notnot:

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

...."

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



"§ 97-165. Definitions.

As used in this Article:

- ...
- (2) "Certified audit" means an audit on which a certified public accountant or a foreign registered public accounting firm expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer or the guarantor, in conformity with accounting principles generally accepted in the United States or prepared in accordance with International Financial Reporting Standards.
- (3) "Certified public accountant" or "CPA" means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the 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 Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the GAAP financial statement and financial statements prepared in accordance with United States Generally Accepted Accounting Principles or International Financial Reporting Standards. The Commission may require the self-insurer or the guarantor to replace the CPA with another whose relationship with the self-insurer or the guarantor is independent within the meaning of this definition.
- ...
- (6) (5a) "~~GAAP financial~~ Financial statement" means a financial statement as defined by accounting principles generally accepted in the United States or a financial statement prepared in accordance with International Financial Reporting Standards.
- (6) "~~Foreign registered public accounting firm~~" means a public accounting firm that is organized and operates under the laws of a non-United States jurisdiction, government, or political subdivision and is registered and in good standing with the Public Company Accounting Oversight Board and authorized by the Board to prepare or issue any audit report with respect to any issuer.
-"

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

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

- ...
- (2) Certified audited ~~GAAP~~-financial statements prepared by a CPA or 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 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.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:28 a.m. this 26th day of June, 2009