

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 606\*

Short Title: Insurer Financial Solvency.

(Public)

Sponsors: Senator Seymour.

Referred to: Insurance.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE LAWS RELATING TO NORTH CAROLINA'S  
MONITORING OF INSURANCE COMPANY FINANCES AND THE  
PRESERVATION OF INSURANCE COMPANY SOLVENCY AND TO  
MAINTAIN NORTH CAROLINA'S ACCREDITATION BY THE NATIONAL  
ASSOCIATION OF INSURANCE COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**§ 58-3-71. Unearned premium reserves.**

(a) Every insurance company, other than a life or real estate title insurance company, shall maintain reserves equal to the unearned portions of the gross premiums charged on unexpired or unexpired risks and policies.

(b) No deductions may be made from the gross premiums in force except for original premiums canceled on risks terminated or reduced before expiration, or except for premiums paid or credited for risks reinsured with other solvent assuming insurers authorized to transact business in this State.

(c) Premiums charged for bulk or portfolio reinsurance assumed from other insurers shall be included as premiums in force on the basis of the original premiums and original terms of the policies of the ceding insurer.

(d) Reinsurance ceded to an authorized assuming insurer may be deducted on the basis of original premiums and original terms, except in the case of excess loss or catastrophe reinsurance, which may be deducted only on the basis of actual reinsurance premiums and actual reinsurance terms.

1       (e) The reserve for unearned premiums shall be computed on an actual basis or  
2 may be computed on the monthly pro rata fractional basis if in the opinion of the  
3 Commissioner this method produces an adequate reserve.

4       (f) With respect to marine insurance, premiums on trip risks not terminated shall  
5 be deemed unearned; and the Commissioner may require a reserve to be carried thereon  
6 equal to one hundred percent (100%) of the premiums on trip risks written during the  
7 month ended as of the statement date.

8       (g) The Commissioner may adopt rules for the unearned premium reserve  
9 computation for premiums covering indefinite terms."

10       Sec. 2. G.S. 58-3-75 reads as rewritten:

11 **"§ 58-3-75. Loss and loss expense reserves of fire and marine insurance companies.**

12       In any determination of the financial condition of any fire or marine or fire and  
13 marine insurance company authorized to do business in this State, such company shall  
14 be charged, in addition to its unearned premium liability as prescribed in G.S. 58-3-70,  
15 with a liability for loss reserves in an amount equal to the aggregate of the estimated  
16 amounts payable on all outstanding claims reported to it which arose out of any contract  
17 of insurance or reinsurance made by it, and in addition thereto an amount fairly  
18 estimated as necessary to provide for unreported losses incurred on or prior to the date  
19 of such determination, ~~as defined in G.S. 58-3-81(a),~~ and including, both as to reported  
20 and unreported claims, an amount estimated as necessary to provide for the expense of  
21 adjusting such claims, and there shall be deducted, in determining such liability for loss  
22 reserves, the amount of reinsurance recoverable by such company, in respect to such  
23 claims, from assuming insurers in accordance with G.S. 58-7-21. Such loss and loss  
24 expense reserves shall be calculated in accordance with any method adopted or  
25 approved by the NAIC, unless the Commissioner determines that another more  
26 conservative method is appropriate."

27       Sec. 3. Article 3 of Chapter 58 of the General Statutes is amended by adding  
28 a new section to read:

29 **"§ 58-3-81. Loss and loss expense reserves of casualty insurance and surety**  
30 **companies.**

31       (a) In determining the financial condition of any casualty insurance or surety  
32 company and in any financial statement or report of any such company, there shall be  
33 included in the liabilities of such company loss reserves and loss expense reserves at  
34 least equal to the amounts required under the provisions of this section, and the amount  
35 of such reserves shall be diminished by an allowance or credit for reinsurance  
36 recoverable from assuming insurers in accordance with G.S. 58-7-21. The date as of  
37 which such determination, statement, or report is made is hereinafter referred to as the  
38 date of determination.

39       (b) For all outstanding losses and loss expenses, the reserves shall include the  
40 following:

41           (1) The aggregate estimated amounts due or to become due on account of  
42 all known losses and claims and loss expenses incurred but not paid,  
43 including the estimated liability on any notice received by the

1           company of the occurrence of any event which may result in a loss;  
2           and

3           (2) The aggregate amounts of liability for all losses and loss expenses  
4           incurred but on which no notice has been received, estimated in  
5           accordance with the company's prior experience, if any, otherwise in  
6           accordance with the experience of similar companies under similar  
7           contracts of insurance. The estimated liabilities for such losses under  
8           all its bonds, policies, or contracts of fidelity insurance, shall be not  
9           less than ten percent (10%) of the net premiums in force thereon, and  
10           the estimated liabilities for all such losses under all its surety contracts  
11           shall be not less than five percent (5%) of the net premium in force  
12           thereon.

13           (c) Except as provided in subsection (e) of this section, the minimum reserves for  
14           outstanding losses and loss expenses under policies of personal injury liability insurance  
15           and under policies of employers' liability insurance, where the losses were incurred  
16           during the three years immediately preceding the date of determination, shall be  
17           calculated in accordance with any method adopted or approved by the NAIC and shall  
18           be not less than the aggregate of the estimated unpaid losses and loss expenses for  
19           claims incurred computed in accordance with subsection (b) of this section.

20           (d) The minimum reserves for outstanding losses and loss expenses under  
21           policies of workers' compensation insurance, except as provided in subsection (e) of this  
22           section, shall be computed as follows:

23           (1) For all such compensation policies where losses were incurred more  
24           than three years prior to the date of determination, such reserves shall  
25           be the sum of the present values, at three and one-half percent (3  
26           1/2%) interest per annum, of the determined and estimated unpaid  
27           losses computed on an individual case basis plus the estimated unpaid  
28           loss expenses computed in accordance with subsection (b) of this  
29           section.

30           (2) Where losses were incurred during the three years immediately  
31           preceding the date of determination, such reserves shall be the sum of  
32           the reserves for each year, which shall be calculated in accordance  
33           with any method adopted or approved by the NAIC and shall be not  
34           less than the sum of the present values, at three and one-half percent (3  
35           1/2%) interest per annum, of the determined and estimated unpaid  
36           losses computed on an individual case basis plus the estimated unpaid  
37           loss expenses computed in accordance with subsection (b) of this  
38           section.

39           (e) Whenever in the judgment of the Commissioner the loss and loss expense  
40           reserves of any casualty or surety company doing business in this State calculated in  
41           accordance with the foregoing provisions are inadequate or excessive, he may prescribe  
42           any other basis that will produce adequate and reasonable reserves.

43           (f) Every casualty insurance and every surety company doing business in this  
44           State shall keep a complete and itemized record showing all losses and claims on which

1 it has received notices, including all notices received by it of the occurrence of any  
2 event that may result in a loss."

3       Sec. 4. Article 7 of Chapter 58 of the General Statutes is amended by adding  
4 a new section to read:

5 **"§ 58-7-31. Life and health reinsurance agreements.**

6       (a) This section applies to every domestic life and accident and health insurer, to  
7 every other licensed life and accident and health insurer that is not subject to a  
8 substantially similar statute or administrative rule in its domiciliary state, and to every  
9 licensed property and casualty insurer with respect to its accident and health business.  
10 This section does not apply to assumption reinsurance, yearly renewable term  
11 reinsurance, nor to certain nonproportional reinsurance, such as stop loss or catastrophe  
12 reinsurance.

13       (b) No insurer shall, for reinsurance ceded, reduce any liability or establish any  
14 asset in any financial statement filed with the Commissioner if, by the terms of the  
15 reinsurance agreement, in substance or effect, any of the following conditions exist:

16           (1) Renewal expense allowances provided or to be provided to the ceding  
17 insurer by the reinsurer in any accounting period, are not sufficient to  
18 cover anticipated allocable renewal expenses of the ceding insurer on  
19 the portion of the business reinsured, unless a liability is established  
20 for the present value of the shortfall, using assumptions equal to the  
21 applicable statutory reserve basis on the business reinsured. Those  
22 expenses include commissions, premium taxes and direct expenses  
23 including, but not limited to, billing, valuation, claims, and  
24 maintenance expected by the company at the time the business is  
25 reinsured.

26           (2) The ceding insurer can be deprived of surplus or assets at the  
27 reinsurer's option or automatically upon the occurrence of some event,  
28 such as the insolvency of the ceding insurer; except that termination of  
29 the reinsurance agreement by the reinsurer for nonpayment of  
30 reinsurance premiums or other amounts due, such as modified  
31 coinsurance reserve adjustments, interest, and adjustments on funds  
32 withheld, and tax reimbursements, are not a deprivation of surplus or  
33 assets.

34           (3) The ceding insurer is required to reimburse the reinsurer for negative  
35 experience under the reinsurance agreement; except that neither  
36 offsetting experience refunds against current and prior years' losses  
37 under the reinsurance agreement nor payment by the ceding insurer of  
38 an amount equal to the current and prior years' losses under the  
39 reinsurance agreement upon voluntary termination of in force  
40 reinsurance by the ceding insurer are a reimbursement to the reinsurer  
41 for negative experience. Voluntary termination does not include  
42 situations where termination occurs because of unreasonable  
43 provisions that allow the reinsurer to reduce its risk under the  
44 reinsurance agreement.



1		<u>Immediate Annuities</u>	<u>0</u>	<u>±</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>0</u>
2		<u>Single Premium Deferred Annuities</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>	
3		<u>±</u>	<u>±</u>					
4		<u>Flexible Premium Deferred Annuities</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>	
5		<u>±</u>	<u>±</u>					
6		<u>Guaranteed Interest Contracts</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>	
7		<u>±</u>						
8		<u>Other Annuity Deposit Business</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>	
9		<u>±</u>	<u>±</u>					
10		<u>Single Premium Whole Life</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
11		<u>±</u>						
12		<u>Traditional Non-Par Permanent</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
13		<u>±</u>	<u>±</u>					
14		<u>Traditional Non-Par Term</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>0</u>	<u>0</u>	
15		<u>0</u>						
16		<u>Traditional Par Permanent</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
17		<u>±</u>						
18		<u>Traditional Par Term</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>0</u>	<u>0</u>	<u>0</u>
19		<u>Adjustable Premium Permanent</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
20		<u>±</u>	<u>±</u>					
21		<u>Indeterminate Premium Permanent</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
22		<u>±</u>	<u>±</u>					
23		<u>Universal Life Flexible Premium</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
24		<u>±</u>	<u>±</u>					
25		<u>Universal Life Fixed Premium</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
26		<u>±</u>						
27		<u>Universal Life Fixed Premium</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>	<u>±</u>	
28		<u>±</u>						
29		(dump-in premiums allowed)						

\*LTC = Long Term Care Insurance

\*LTD = Long Term Disability Insurance

(7)a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision (7)b. of this section either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner that legally segregates, by contract or contractual provisions, the underlying assets.)

b. Notwithstanding the requirements of subdivision (7)a. of this section, the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment, or

1 disintermediation risk may be held by the ceding company  
 2 without segregation of those assets:

- 3 - Health Insurance - LTC/LTD  
 4 - Traditional Non-Par Permanent  
 5 - Traditional Par Permanent  
 6 - Adjustable Premium Permanent  
 7 - Indeterminate Premium Permanent  
 8 - Universal Life Fixed Premium  
 9 (no dump-in premiums allowed)

10 The associated formula for determining the reserve interest rate  
 11 adjustment must use a formula that reflects the ceding company's  
 12 investment earnings and incorporates all realized and unrealized gains  
 13 and losses reflected in the statutory statement. The following is an  
 14 acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

15 Where: I is the net investment income.

16 CG is capital gains less capital losses.

17 X is the current year cash and invested assets plus investment income  
 18 due and accrued less borrowed money.

19 Y is the same as X but for the prior year.

20 (8) Settlements are made less frequently than quarterly or payments due  
 21 from the reinsurer are not made in cash within 90 days after the  
 22 settlement date.

23 (9) The ceding insurer is required to make representations or warranties  
 24 not reasonably related to the business being reinsured.

25 (10) The ceding insurer is required to make representations or warranties  
 26 about future performance of the business being reinsured.

27 (11) The reinsurance agreement is entered into for the principal purpose of  
 28 producing significant surplus aid for the ceding insurer, typically on a  
 29 temporary basis, while not transferring all of the significant risks  
 30 inherent in the business reinsured and, in substance or effect, the  
 31 expected potential liability to the ceding insurer remains basically  
 32 unchanged.

33 (c) Notwithstanding subsection (a) of this section, an insurer may, with the prior  
 34 approval of the Commissioner, take such reserve credit or establish such asset as the  
 35 Commissioner deems to be consistent with the insurance laws or rules of this State,  
 36 including actuarial interpretations or standards adopted by the Commissioner.

37 (d) (1) Reinsurance agreements entered into after October 1, 1993,  
 38 that involve the reinsurance of business issued prior to the effective  
 39 date of the reinsurance agreements, along with any subsequent  
 40 amendments thereto, shall be filed by the ceding company with the  
 41 commissioner within 30 days after its date of execution. Each filing  
 42 shall include data detailing the final impact of the transaction. The  
 43 commissioner shall have the authority to require the ceding company to  
 44 provide such data.

1           ceding insurer's actuary who signs the financial statement actuarial  
2           opinion with respect to valuation of reserves shall consider this  
3           statute and any applicable actuarial standards of practice when  
4           determining the proper credit in financial statements filed with the  
5           Commissioner. The actuary should maintain adequate  
6           documentation and be prepared upon request to describe the  
7           actuarial work performed for inclusion in the financial statements  
8           and to demonstrate that such work conforms to this statute.

9           (2) Any increase in surplus net of federal income tax resulting from  
10           arrangements described in subdivision (d)(1) of this section shall be  
11           identified separately on the insurer's statutory financial statement as a  
12           surplus item (aggregate write-ins for gains and losses in surplus in the  
13           Capital and Surplus Account, page 4 of the Annual Statement) and  
14           recognition of the surplus increase as income shall be reflected on a  
15           net of tax basis in the 'Reinsurance Ceded' line, page 4 of the Annual  
16           Statement as earnings emerge from the business reinsured.

17           (e) No reinsurance agreement or amendment to any reinsurance agreement may  
18           be used to reduce any liability or to establish any asset in any financial statement filed  
19           with the Commissioner, unless the reinsurance agreement, amendment, or a binding  
20           letter of intent has been duly executed by both parties no later than the 'as of date' of the  
21           financial statement.

22           (f) In the case of a letter of intent, a reinsurance agreement, or an amendment to  
23           a reinsurance agreement must be executed within a reasonable period of time, not  
24           exceeding 90 days after the execution date of the letter of intent, in order for credit to be  
25           granted for the reinsurance ceded.

26           (g) The reinsurance agreement shall contain provisions that provide that:

27           (1) The reinsurance agreement shall constitute the entire reinsurance  
28           agreement between the parties with respect to the business being  
29           reinsured thereunder and that there are no understandings between the  
30           parties other than as expressed in the reinsurance agreement; and

31           (2) Any change or modification to the reinsurance agreement shall be null  
32           and void unless made by amendment to the reinsurance agreement and  
33           signed by both parties.

34           (h) Insurers subject to this section shall reduce to zero by December 31, 1994,  
35           any reserve credits or assets established with respect to reinsurance agreements entered  
36           into prior to the effective date of this statute that, under the provisions of this section,  
37           would not be entitled to recognition of such reserve credits or assets; provided,  
38           however, that such reinsurance agreements shall have been in compliance with laws or  
39           regulations in existence immediately preceding October 1, 1993."

40           Sec. 5. G.S. 58-7-50 reads as rewritten:

41           "**§ 58-7-50. Maintenance and removal of records and assets.**

42           (a) ~~Every domestic insurer that has shall maintain its home or principal office in~~  
43           ~~a location outside this State shall nevertheless maintain an office or offices in this State~~



1 and keep therein for such period as the Commissioner may by regulation require  
2 complete records of its assets, transactions, and affairs, specifically including:

- 3 (1) Financial records;
- 4 (2) Corporate records;
- 5 (3) Reinsurance ~~document;~~ documents;
- 6 (4) ~~Access to all~~ All accounting transactions and access in this State, upon  
7 ~~demand by the Commissioner, to all original accounting documents;~~  
8 transactions;
- 9 (5) Claim files; and
- 10 (6) Payment of claims, in accordance with such methods and systems as  
11 are customary or suitable as to the kind or kinds of insurance  
12 transacted.

13 (b) Every domestic insurer ~~that has its home or principal office in a location outside~~  
14 ~~this State~~ shall have and maintain its assets in this State, except as to:

- 15 (1) Real property and personal property appurtenant thereto lawfully  
16 owned by the insurer and located outside this State; and
- 17 (2) Such property of the insurer as may be customary, necessary, and  
18 convenient to enable and facilitate the operation of its branch offices,  
19 regional home offices, and operations offices, located outside this State  
20 as referred to in G.S. 58-7-55.

21 (c) The removal from this State of all or a ~~material~~ part of the records or assets of  
22 a domestic insurer ~~that has its home or principal office outside this State~~ except pursuant to  
23 a plan of merger or consolidation approved by the Commissioner ~~under~~ or for such  
24 reasonable purposes and periods of time as may be approved by the Commissioner in  
25 writing in advance of such removal, or concealment of such records or assets or ~~material~~  
26 part thereof from the Commissioner is prohibited. Any person who, without the prior  
27 approval of the Commissioner, removes or attempts to remove such records or assets or  
28 ~~such material~~ part thereof from the office or offices in which they are required to be kept  
29 and maintained under subsection (a) of this section or who conceals or attempts to  
30 conceal such records from the Commissioner, in violation of this subsection, shall be  
31 guilty of a Class J felony. Upon any removal or attempted removal of such records or  
32 assets or upon retention of such records or assets or ~~material~~ part thereof outside this  
33 State, beyond the period therefor specified in the consent of the Commissioner under  
34 which consent the records were so removed thereat, or upon concealment of or attempt  
35 to conceal records or assets in violation of this section, the Commissioner may institute  
36 delinquency proceedings against the insurer pursuant to the provisions of Article 30 of  
37 this Chapter.

38 (d) Every domestic insurer that has its home or principal office in a location  
39 outside this State on October 1, 1993, shall petition the Commissioner for approval to  
40 continue to operate in that manner. The Commissioner, in determining whether to  
41 approve or disapprove the petition, shall consider the exceptions of G.S. 58-7-55, as  
42 well as any other factors that might affect the Commissioner's ability to regulate the  
43 insurer, or that might affect the insurer's ability to service or protect its policyholders."

44 Sec. 6. G.S. 58-7-115 reads as rewritten:

1 **"§ 58-7-115. Increase of capital stock.**

2 Any company organized under the provisions of Articles 1 through 64 of this  
3 Chapter may issue pro rata to its stockholders certificates of any portion of its ~~actual net~~  
4 surplus ~~over and above the minimum required by law it deems fit to divide,~~ which shall be  
5 considered an increase of its capital to the amount of such certificates. As used in this  
6 section, 'surplus' means earned surplus; provided, however, issuance of certificates out  
7 of paid-in and contributed surplus will be permitted on a case-by-case basis, with the  
8 prior approval of the Commissioner. The issuance of those certificates shall not lower  
9 the total surplus of the insurer to an amount less than that required to be maintained by  
10 G.S. 58-7-75. The company may, at a meeting called for the purpose, vote to increase  
11 the amount and number of shares of its capital stock, and to issue certificates therefor  
12 when paid for in full. In whichever method the increase is made, the company shall,  
13 within 30 days after the issue of such certificates, submit to the Commissioner a  
14 certificate setting forth the amount of the increase and the facts of the transaction,  
15 signed and sworn to by its president and secretary and a majority of its directors. If the  
16 Commissioner finds that the facts conform to the law, he shall endorse his approval  
17 thereof; and upon filing such certificate so endorsed with the Secretary of State, and the  
18 payment of a fee of five dollars (\$5.00) for filing the same, the company may transact  
19 business upon the capital as increased, and the Commissioner shall issue his certificate  
20 to that effect."

21 Sec. 7. G.S. 58-7-150(a) reads as rewritten:

22 **"§ 58-7-150. ~~Merger or consolidation.~~ Consolidation.**

23 (a) ~~Subject to the provisions of G.S. 58-10-1 and 58-10-5, relating to the~~  
24 ~~mutualization of stock insurers, a~~ A domestic insurer may ~~merge or consolidate~~ with  
25 another insurer, subject to the following conditions:

- 26 (1) The plan of ~~merger or consolidation~~ must be submitted to and be  
27 approved by the Commissioner in advance of the ~~merger or~~  
28 consolidation.
- 29 (2) The Commissioner shall not approve any such plan unless, after a  
30 hearing, he finds that it is fair, equitable to policyholders, consistent  
31 with law, and will not conflict with the public interest. If the  
32 Commissioner fails to approve the plan, he shall state his reasons for  
33 such failure in his order made on such hearing.
- 34 (3) No director, officer, member or subscriber of any such insurer, except  
35 as is expressly provided by the plan of ~~merger or consolidation~~, shall  
36 receive any fee, commission, other compensation or valuable  
37 consideration whatever, for in any manner aiding, promoting or  
38 assisting in the ~~merger or consolidation~~.
- 39 (4) Any ~~merger or consolidation~~ as to an incorporated domestic insurer  
40 shall in other respects be governed by the general laws of this State  
41 relating to business corporations, except that the ~~merger or~~  
42 consolidation of a domestic mutual insurer may be effected by vote of  
43 two thirds of the members voting thereon pursuant to such notice and  
44 procedure as the Commissioner may prescribe."

1           Sec. 8. G.S. 58-7-162 reads as rewritten:

2   "**§ 58-7-162. Allowable or admitted assets.**

3       In any determination of the financial condition of an insurer, there shall be allowed  
4 as assets only those assets owned by an insurer and that consist of:

5           (1)   Cash in the possession of the insurer, or in transit under its control, and  
6               including the true balance of any deposit in a solvent United States  
7               bank, savings and loan association, or trust company, and the balance  
8               of any such deposit in an insolvent United States bank, savings and  
9               loan association, or trust company, to the extent insured by a federal  
10              agency.

11          (2)   Investments, securities, properties, and loans acquired or held in  
12               accordance with this Chapter, and in connection therewith the  
13               following items:

14           a.    Interest due or accrued on any bond or evidence of indebtedness  
15               that is not in default.

16           b.    Declared and unpaid dividends on stock and shares, unless that  
17               amount has otherwise been allowed as an asset.

18           c.    Interest due or accrued upon a collateral loan in an amount not  
19               to exceed one year's interest thereon.

20           d.    Interest due or accrued on deposits in solvent banks, savings  
21               and loan associations, and trust companies, and interest due or  
22               accrued on other assets, if the interest is, in the Commissioner's  
23               judgment, a collectible asset.

24           e.    Interest due or accrued on a current mortgage loan, in an  
25               amount not exceeding in any event the amount, if any, of the  
26               excess of the value of the property less delinquent taxes thereon  
27               over the unpaid principal; but in no event shall interest accrued  
28               for a period in excess of 90 days be allowed as an asset.

29           f.    Rent due or accrued on real property if the rent is not in arrears  
30               for more than three months, and rent more than three months in  
31               arrears if the payment of the rent is adequately secured by  
32               property held in the tenant's name and conveyed to the insurer  
33               as collateral and the underlying collateral is admissible under  
34               this Chapter.

35           g.    The unaccrued portion of taxes paid before the due date on real  
36               property.

37          (3)   Premium notes, policy loans, and other policy assets and liens on  
38               policies and certificates of life insurance and annuity contracts and  
39               accrued interest thereon, in an amount not exceeding the legal reserve  
40               and other policy liabilities carried on each individual policy.

41          (4)   The net amount of uncollected and deferred premiums and annuity  
42               considerations in the case of a life insurer.

43          (5)   Premiums in the course of collection, other than for nonsingle  
44               premium life insurance, not more than 90 days past due, less

1 commissions payable thereon, except for premiums payable directly or  
2 indirectly by the United States government or by any of its  
3 instrumentalities.

4 (6) All premiums not more than 90 days past due, excluding commissions  
5 payable thereon, due from any person that solely or in combination  
6 with the person's affiliates owes the insurer an amount that exceeds  
7 five percent (5%) of the insurer's total premiums in course of  
8 collection, but only if:

9 a. The premiums collected by the person or affiliates and not  
10 remitted to the insurer are held in a trust account with a bank or  
11 other depository approved by the Commissioner. The funds  
12 shall be held as trust funds and may not be commingled with  
13 any other funds of the person or affiliates. Disbursements from  
14 the trust account may be made only to the insurer, the insured,  
15 or, for the purpose of returning premiums, a person that is  
16 entitled to returned premiums on behalf of the insured. A  
17 written copy of the trust agreement shall be filed with and  
18 approved by the Commissioner before becoming effective. The  
19 Commissioner shall disapprove any trust agreement filed under  
20 this sub-subdivision that does not assure the safety of the  
21 premiums collected. The investment income derived from the  
22 trust may be allocated as the parties consider to be proper. The  
23 person or affiliates shall deposit premiums collected into the  
24 trust account within 15 business days after collection; or

25 b. The person or affiliates shall provide to the insurer, and the  
26 insurer shall maintain in its possession, an unexpired, clean,  
27 irrevocable letter of credit, payable to the insurer, issued for a  
28 term of no less than one year and in conformity with the  
29 requirements set forth in this sub-subdivision, the amount of  
30 which equals or exceeds the liability of the person or affiliates  
31 to the insurer, at all times during the period that the letter of  
32 credit is in effect, for premiums collected by the person or  
33 affiliates. The letter of credit shall be issued under  
34 arrangements satisfactory to the Commissioner and the letter  
35 shall be issued by a banking institution that is a member of the  
36 Federal Reserve System and that has a financial standing  
37 satisfactory to the Commissioner; or

38 c. The person or affiliates shall provide to the insurer, and the  
39 insurer shall maintain in its possession, evidence that the person  
40 or affiliates have purchased and have currently in effect a  
41 financial guaranty bond, payable to the insurer, issued for a  
42 term of not less than one year and that is in conformity with the  
43 requirements set forth in this sub-subdivision, the amount of  
44 which equals or exceeds the liability of the person or affiliates

1 to the insurer, at all times during which the financial guaranty  
 2 bond is in effect, for the premiums collected by the person or  
 3 persons. The financial guaranty bond shall be issued under an  
 4 arrangement satisfactory to the Commissioner and the financial  
 5 guaranty bond shall be issued by an insurer that is authorized to  
 6 transact that business in this State, that has a financial standing  
 7 satisfactory to the Commissioner, and that is neither controlled  
 8 nor controlling in relation to either the insurer or the person or  
 9 affiliates for whom the bond is purchased.

10 Premiums receivable under this subdivision will not be allowed as an  
 11 admitted asset if a financial evaluation by the Commissioner indicates  
 12 that the person or affiliates are unlikely to be able to pay the premiums  
 13 as they become due. The financial evaluation shall be based on a  
 14 review of the books and records of the controlling or controlled  
 15 person.

- 16 (7) Installment premiums other than life insurance premiums to the extent  
 17 of the unearned premium reserve carried on the policy to which the  
 18 premiums apply.
- 19 (8) Notes and like written obligations not past due, taken for premiums  
 20 other than life insurance premiums, on policies permitted to be issued  
 21 on that basis, to the extent of the unearned premium reserves carried  
 22 thereon.
- 23 (9) The full amount of reinsurance which is recoverable by a ceding  
 24 insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.
- 25 (10) Amounts receivable by an assuming insurer representing funds  
 26 withheld by a solvent ceding insurer under a reinsurance treaty.
- 27 (11) Deposits or equities recoverable from underwriting associations,  
 28 syndicates, and reinsurance funds, or from any suspended banking  
 29 institution, to the extent considered by the Commissioner to be  
 30 available for the payment of losses and claims and at values to be  
 31 determined by the Commissioner.
- 32 (12) Electronic and mechanical machines, including operating and system  
 33 software constituting a management information system, if the cost of  
 34 the system is at least twenty-five thousand dollars (\$25,000) but not  
 35 more than two percent (2%) of total admitted assets; the cost shall be  
 36 amortized in full over a period not to exceed seven calendar years.
- 37 (13) Other assets, not inconsistent with the provisions of this section,  
 38 considered by the Commissioner to be available for the payment of  
 39 losses and claims, at values to be determined by the Commissioner."

40 Sec. 9. G.S. 58-7-163 reads as rewritten:

41 **"§ 58-7-163. Assets not allowed.**

42 In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the  
 43 following expressly shall not be allowed as assets in any determination of the financial  
 44 condition of an insurer:

- 1 (1) Goodwill, trade names, and other like intangible assets.
- 2 (2) Advances (other than policy loans) to officers, directors, and
- 3 controlling stockholders, whether secured or not, and advances to
- 4 employees, agents, and other persons on personal security only.
- 5 (3) Stock of the insurer or any material equity therein or loans secured
- 6 thereby, or any material proportionate interest in the stock acquired or
- 7 held through the ownership by the insurer of an interest in another
- 8 firm, corporation, or business unit.
- 9 (4) Furniture, fixtures, other equipment, safes, vehicles, libraries,
- 10 stationery, literature, and supplies, other than data processing and
- 11 accounting systems authorized under G.S. 58-7-162(12), except in the
- 12 case of title insurers the materials and plants which G.S. 58-7-182
- 13 expressly authorizes the insurer to invest in, and except, in the case of
- 14 any insurer, any personal property that the insurer is permitted to hold
- 15 under this Chapter, or that is acquired through foreclosure of chattel
- 16 mortgages acquired under G.S. 58-7-180, or that is reasonably
- 17 necessary for the maintenance and operation of real estate that the
- 18 insurer uses for a home office, branch office, and similar purposes.
- 19 (5) The amount, if any, by which the aggregate book value of investments
- 20 as carried in the ledger assets of the insurer exceeds the aggregate
- 21 value of the investments as determined under this Chapter.
- 22 (6) Bonds, notes, or other evidences of indebtedness that are secured by
- 23 mortgages or deeds of trust that are in default, to the extent of the cost
- 24 of carrying value that is in excess of the value as determined pursuant
- 25 to other provisions of this Chapter.
- 26 (7) Prepaid and deferred expenses.
- 27 (8) Certificates of contribution or other similar evidences of indebtedness.
- 28 (9) Any asset that is encumbered in any manner unless the asset is
- 29 authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

30 Sec. 10. G.S. 58-7-170(c) reads as rewritten:

31 "(c) The cost of investments made by insurers in ~~a mortgage loan~~ loans, authorized

32 ~~by G.S. 58-7-179~~ G.S. 58-7-179, with any one person shall not exceed the lesser of five

33 percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital

34 and surplus. An insurer shall not invest in additional mortgage loans with that person

35 without the Commissioner's consent if the admitted value of all mortgage loans held by

36 the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the

37 insurer, if (i) the admitted value of all mortgage pass-through securities permitted by

38 G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of

39 the insurer and (ii) the admitted value of other mortgage loans permitted by G.S. 58-7-

40 179 does not exceed forty percent (40%) of the admitted assets of the insurer.

41 An insurer that, as of October 1, 1991, has mortgage investments with any one

42 person that exceed the aggregate limitation specified in this subsection shall submit to

43 the Commissioner no later than January 31, 1992, a plan to bring the amount of

1 mortgage investments with that person into compliance with the limitations by January  
2 1, 2001."

3 Sec. 11. G.S. 58-7-170(d) reads as rewritten:

4 "(d) Without the Commissioner's prior written approval, the cost of investments in  
5 bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed,  
6 or guaranteed by any solvent United States institution, any state, Canada, or any  
7 Canadian province, and that are classified as medium to lower quality obligations, other  
8 than obligations of subsidiaries or affiliated corporations as that term is defined in G.S.  
9 58-7-177, shall be limited to:

- 10 (1) No more than twenty percent (20%) of an insurer's admitted assets;
- 11 (2) No more than ten percent (10%) of an insurer's admitted assets in  
12 obligations that have been given a rating of 4, 5, or 6 by the Securities  
13 Valuation Office of the ~~NAIC~~; NAIC;
- 14 (3) No more than three percent (3%) of an insurer's admitted assets in  
15 obligations that have been given a rating of 5 or 6 by the Securities  
16 Valuation Office of the NAIC; and
- 17 (4) No more than one percent (1%) of an insurer's admitted assets in  
18 obligations that have been given a rating of 6 by the Securities  
19 Valuation Office of the ~~NAIC~~; NAIC.
- 20 (5) ~~No more than ten percent (10%) of an insurer's admitted assets, if the~~  
21 ~~investments are in issuers from any one industry; and~~
- 22 (6) ~~No more than two percent (2%) of an insurer's admitted assets or ten~~  
23 ~~percent (10%) of an insurer's capital and surplus, whichever is greater,~~  
24 ~~if the investment is in any one issuer."~~

25 Sec. 12. G.S. 58-7-170(e) reads as rewritten:

26 "(e) As used in subsections (d), (f), (g), and (h) of this section, 'medium to lower  
27 quality obligations' means obligations that have been given a rating of 3, 4, 5, or 6 by  
28 the Securities Valuation Office of the NAIC. ~~As used in subsection (d) of this section,~~  
29 ~~"industry" means a distinct and recognized area of economic activity that consists of the~~  
30 ~~production, manufacture, or distribution of common goods, products, commodities, or~~  
31 ~~services."~~

32 Sec. 13. G.S. 58-7-170(j) reads as rewritten:

33 "(j) The Commissioner may limit the extent of an insurer's deposits with any  
34 financial institution ~~that does not meet its regulatory capital requirement~~ if the  
35 Commissioner determines that the financial solvency of the insurer is threatened by a  
36 deposit in excess of insured limits."

37 Sec. 14. G.S. 58-7-173 reads as rewritten:

38 "**§ 58-7-173. Permitted insurer investments.**

39 An insurer may invest in:

- 40 (1) Bonds, notes, warrants, and other evidences of indebtedness that are  
41 direct obligations of the U.S. Government or for which the full faith  
42 and credit of the U.S. Government is pledged for the payment of  
43 principal and interest.

- 1           (2)    Loans insured or guaranteed as to principal and interest by the U.S.  
2           Government or by any agency or instrumentality of the U.S.  
3           Government to the extent of the insurance or guaranty.
- 4           (3)    Student loans insured or guaranteed as to principal by the U.S.  
5           Government or by any agency or instrumentality of the U.S.  
6           Government to the extent of the insurance or guaranty.
- 7           (4)    Bonds, notes, warrants, and other securities not in default that are the  
8           direct obligations of any state or United States territory or the  
9           government of Canada or any Canadian province, or for which the full  
10          faith and credit of such state, government, or province has been  
11          pledged for the payment of principal and interest.
- 12          (5)    Bonds, notes, warrants, and other securities not in default of any  
13          county, district, incorporated city, or school district in any state of the  
14          United States, or the District of Columbia, or in any Canadian  
15          province, that are the direct obligations of the county, district, city, or  
16          school district and for payment of the principal and interest of which  
17          the county, district, city, or school district has lawful authority to levy  
18          taxes or make assessments.
- 19          (6)    Bonds, notes, certificates of indebtedness, warranties, or other  
20          evidences of indebtedness that are payable from revenues or earnings  
21          specifically pledged therefor of any public toll bridge, structure, or  
22          improvement owned by any state, incorporated city, or legally  
23          constituted public corporation or commission, all within the United  
24          States or Canada, for the payment of the principal and interest of  
25          which a lawful sinking fund has been established and is being  
26          maintained and if no default by the issuer in payment of principal or  
27          interest has occurred on any of its bonds, notes, warrants, or other  
28          securities within five years prior to the date of investment therein.
- 29          (7)    Bonds, notes, certificates of indebtedness, warrants, or other evidences  
30          of indebtedness that are valid obligations issued, assumed, or  
31          guaranteed by the United States, any state, any county, city, district,  
32          political subdivision, civil division, or public instrumentality of any  
33          such government or unit thereof, or in any province of Canada; if by  
34          statute or other legal requirements the obligations are payable as to  
35          both principal and interest from revenues or earnings from the whole  
36          or any part of any utility supplying water, gas, a sewage disposal  
37          facility, electricity, or any other public service, including but not  
38          limited to a toll road or toll bridge.
- 39          (8)    Bonds, debentures, or other securities of the following agencies,  
40          whether or not those obligations are guaranteed by the U.S.  
41          Government:
- 42              a.    The Federal National Mortgage Association, and stock thereof  
43                  when acquired in connection with the sale of mortgage loans to  
44                  the Association.



- 1                   b.     Any federal land bank, when the securities are issued under the  
2                   Farm Loan Act;
- 3                   c.     Any federal home loan bank, when the securities are issued  
4                   under the Home Loan Bank Act;
- 5                   d.     The Home Owners' Loan Corporation, created by the Home  
6                   Owners' Loan Act of 1933;
- 7                   e.     Any federal intermediate credit bank, created by the  
8                   Agricultural Credits Act;
- 9                   f.     The Central Bank for Cooperatives and regional banks for  
10                  cooperatives organized under the Farm Credit Act of 1933, or  
11                  by any of such banks; and any notes, bonds, debentures, or  
12                  other similar obligations, consolidated or otherwise, issued by  
13                  farm credit institutions under the Farm Credit Act of 1971;
- 14                  g.     Any other similar agency of the U.S. Government that is of  
15                  similar financial quality.
- 16           (9)     Bonds, debentures, or other securities of public housing authorities,  
17                  issued under the Housing Act, of 1949, the Municipal Housing  
18                  Commission Act, or the Rural Housing Commission Act, or issued by  
19                  any public housing authority or agency in the United States, if the  
20                  bonds, debentures, or other securities are secured by a pledge of annual  
21                  contributions to be paid by the United States or any United States  
22                  agency; and the cost of investments made under this subdivision shall  
23                  not exceed the lesser of three percent (3%) of the insurer's admitted  
24                  assets or ten percent (10%) of the insurer's capital and surplus.
- 25           (10)    Obligations issued, assumed, or guaranteed by the International Bank  
26                  for Reconstruction and Development, the Inter-American  
27                  Development Bank, the Asian Development Bank, or the African  
28                  Development Bank; and the cost of investments made under this  
29                  subdivision shall not exceed the lesser of three percent (3%) of the  
30                  insurer admitted assets or ten percent (10%) of the insurer's capital and  
31                  surplus.
- 32           (11)    Bonds, notes, or other interest-bearing or interest-accruing obligations  
33                  of any solvent institution organized under the laws of the United  
34                  States, of any state, Canada or any Canadian province; provided such  
35                  instruments are rated and ~~approved~~-valued by the Securities Valuation  
36                  Office of the NAIC. The cost of investments made under this  
37                  subdivision in issuers from any one industry shall not exceed ten  
38                  percent (10%) of an insurer's admitted assets, and the cost of  
39                  investments made in any one issuer shall not exceed two percent (2%)  
40                  of an insurer's admitted assets or ten percent (10%) of an insurer's  
41                  capital and surplus, whichever is greater. As used in this subdivision,  
42                  'industry' means a distinct and recognized area of economic activity  
43                  that consists of the production, manufacture, or distribution of  
44                  common goods, products, commodities, or services.

- 1 (12) Secured obligations of duly constituted churches and of church-  
2 holding companies; and the cost of investments made under this  
3 subdivision shall not exceed the lesser of one percent (1%) of the  
4 insurer's admitted assets or five percent (5%) of the insurer's capital  
5 and surplus.
- 6 (13) Equipment trust obligations or certificates adequately secured and  
7 evidencing an interest in transportation equipment, wholly or in part  
8 within the United States, and the right to receive determined portions  
9 of rental, purchase, or other fixed obligatory payments for the use or  
10 purchase of that transportation equipment; and the cost of investments  
11 made under this subdivision shall not exceed twenty percent (20%) of  
12 the insurer's admitted assets.
- 13 (14) Share or savings accounts of savings and loan associations or building  
14 and loan associations; and the cost of investments made under this  
15 subdivision shall not exceed the lesser of three percent (3%) of the  
16 insurer's admitted assets or five percent (5%) of the insurer's capital  
17 and surplus.
- 18 (15) Loans with a maturity not in excess of 12 years from the date thereof  
19 that are secured by the pledge of securities eligible for investment  
20 under this Chapter or by the pledge or assignment of life insurance  
21 policies issued by other insurers authorized to transact insurance in this  
22 State. On the date made, no such loan shall exceed in amount seventy-  
23 five percent (75%) of the market value of the collateral pledged,  
24 except that loans upon the pledge of U.S. Government bonds and loans  
25 upon the pledge or assignment of life insurance policies shall not  
26 exceed ninety-five percent (95%) of the market value of the bonds or  
27 the cash surrender value of the policies pledged. The market value of  
28 the collateral pledge shall at all times during the continuance of the  
29 loans meet or exceed the minimum percentages herein. Loans made  
30 under this section shall not be renewable beyond a period of 12 years  
31 from the date of the loan.
- 32 (16) Stocks, common or preferred, of any corporation created or existing  
33 under the laws of the United States, any U.S. territory, Canada or any  
34 Canadian province, or of any state. An insurer may invest in stocks,  
35 common or preferred, of any corporation created or existing under the  
36 laws of any foreign country other than Canada if the stocks are listed  
37 and traded on a national securities exchange in the United States or if  
38 the investment in stocks of any corporation created or existing under  
39 the laws of any foreign country are first approved by the  
40 Commissioner. Nothing in this section applies to qualifying  
41 investments made by an insurer in a foreign country under authority of  
42 G.S. 58-7-178.
- 43 (17) Mortgage pass-through securities and derivatives thereof, that have  
44 been rated as investment grade by the Securities Valuation Office of

1 the NAIC and considered by the Federal Financial Institutions  
2 Examination Council or its successor to be nonhigh risk mortgage  
3 securities, including, without limitation, collateral mortgage  
4 obligations backed by a pool of mortgages of the kind, class, and  
5 investment quality as those eligible for investment under G.S. 58-7-  
6 179, but not including investments permitted under G.S. 58-7-173(2), (8), or  
7 (11), 58-7-179."

8 Sec. 15. The catch line of G.S. 58-7-192 reads as rewritten:

9 **"§ 58-7-192. Valuation of ~~other securities and investments.~~"**

10 Sec. 16. G.S. 58-7-192 is amended by adding a new subsection to read:

11 "(e) All bonds or fully secured indebtedness having a stated term and a rate of  
12 interest that are held by an insurer shall be valued in accordance with the procedures  
13 and instructions contained in the NAIC publication entitled 'Valuations of Securities,'  
14 unless the Commissioner determines that a more conservative valuation is appropriate."

15 Sec. 17. G.S. 58-8-20 reads as rewritten:

16 **"§ 58-8-20. Mutual companies with a guaranty capital.**

17 (a) A mutual insurance company formed as provided in Articles 1 through 64 of  
18 this Chapter, in lieu of the contributed surplus required for the organization of mutual  
19 companies under the provisions of G.S. 58-7-75, or a mutual insurance company now  
20 existing, ~~may may,~~ with the prior approval of the Commissioner, establish a guaranty  
21 capital ~~or surplus~~ of not less than ~~twenty five thousand dollars (\$25,000),~~ fifty thousand  
22 dollars (\$50,000), divided into shares of one hundred dollars (\$100.00) each, which  
23 shall be invested in the same manner as is provided in this Chapter for the investment of  
24 the capital stock of insurance companies.

25 (b) The board of directors of a company may declare and pay dividends to the  
26 stockholders of the guaranty capital of a ~~company or owners of guaranty surplus~~ if the  
27 ~~net profits or unused premiums left after all expenses, losses, and liabilities then~~  
28 ~~incurred, together with the reserve as provided for, are sufficient to pay the same,~~  
29 company, subject to the notification requirements of G.S. 58-19-25(d) and the prior  
30 approval requirements of G.S. 58-19-30(c).

31 (c) The guaranty capital ~~or surplus~~ shall be applied to the payment of losses only  
32 when the company has exhausted its cash in hand and the invested assets, exclusive of  
33 uncollected premiums, and when thus impaired, the directors may make good the whole  
34 or any part of it by assessments upon the contingent funds of the company at the date of  
35 such impairment. In the event of a merger, demutualization, or other event where the  
36 entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate  
37 holders to the extent that the guaranty capital had been contributed together with  
38 accrued income as specified in the certificate. Any amounts in excess shall be for the  
39 benefit of the policyholders.

40 (d) Shareholders and members of such companies are subject to the same  
41 provisions of law in respect to their right to vote as apply respectively to shareholders in  
42 stock companies and policyholders in ~~purely~~-mutual companies.

43 (e) This guaranty capital ~~or surplus~~ may be reduced or retired by vote of the  
44 policyholders of the company and the assent of the ~~Commissioner of Insurance,~~

1 Commissioner, if the net assets of the company above its reserve and all other claims  
2 and obligations, exclusive of guaranty ~~capital or surplus, capital,~~ for two years  
3 immediately preceding and including the date of its last annual statement, is not less  
4 than twenty-five ~~per centum~~ percent (25%) of the guaranty ~~capital or surplus, capital.~~ Due  
5 notice of such proposed action on the part of the company must be mailed to each  
6 policyholder of the company not less than 30 days before the meeting when the action  
7 may be taken, and must also be advertised in two papers of general circulation,  
8 approved by the ~~Commissioner of Insurance,~~ Commissioner, not less than three times a  
9 week for a period of not less than four weeks before such meeting. No insurance  
10 company with a guaranty capital ~~or surplus,~~ which has ceased to do new business, shall  
11 divide to its stockholders any part of its assets or guaranty ~~capital or surplus, capital,~~  
12 except income from investments, until it has performed or canceled its policy  
13 obligations. In the event of a merger, demutualization, or other event where the entity  
14 ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders  
15 to the extent that the guaranty capital had been contributed together with accrued  
16 income as specified in the certificate. Any amounts in excess shall be for the benefit of  
17 the policyholders."

18 Sec. 18. The catch line of Article 9 of Chapter 58 of the General Statutes  
19 reads as rewritten:

20 **"ARTICLE 9.**

21 **"EXCHANGE OF STOCK, REINSURANCE INTERMEDIARIES."**

22 Sec. 19. Article 9 of Chapter 58 of the General Statutes is amended by  
23 adding a new section to read:

24 **"§ 58-9-2. Reinsurance intermediaries.**

25 (a) As used in this Article:

- 26 (1) 'Actuary' means a person who meets the standards of a qualified  
27 actuary, as specified in the NAIC Annual Statement Instructions, as  
28 amended or clarified by rule or order of the Commissioner, for the type  
29 of insurer for which an intermediary is establishing loss reserves.  
30 (2) 'Broker' means any person, other than an officer or employee of a  
31 ceding insurer, who solicits, negotiates, or places reinsurance cessions  
32 or retrocessions on behalf of a ceding insurer without the authority or  
33 power to bind reinsurance on behalf of the ceding insurer.  
34 (3) 'Commissioner' includes the Commissioner's authorized deputies and  
35 employees.  
36 (4) 'Controlling person' means any person who directly or indirectly has  
37 the power to direct or cause to be directed the management, control, or  
38 activities of an intermediary.  
39 (5) 'Intermediary' means any person who acts as a broker, as defined in  
40 G.S. 58-33-10(c), in soliciting, negotiating, or procuring the making of  
41 any reinsurance contract or binder on behalf of a ceding insurer; or  
42 acts as a broker, as defined in G.S. 58-33-10(c), in accepting any  
43 reinsurance contract on behalf of an assuming insurer. 'Intermediary'

- 1 includes a broker or a manager, as those terms are defined in this  
2 section.
- 3 (6) 'Manager' means any person who has authority to bind or manages all  
4 or part of the assumed reinsurance business of a reinsurer (including  
5 the management of a separate division, department, or underwriting  
6 office) and acts as an agent for the reinsurer. The following persons  
7 are not managers, with respect to a reinsurer:
- 8 a. An employee of a reinsurer;  
9 b. A United States manager of the United States branch of an alien  
10 reinsurer;  
11 c. An underwriting manager who, pursuant to contract, manages  
12 all the reinsurance operating of a reinsurer, is under common  
13 control with the reinsurer under Article 19 of this Chapter, and  
14 whose compensation is not based on the volume of premiums  
15 written;  
16 d. The manager of a group, association, pool, or organization of  
17 insurers that engages in joint underwriting or joint reinsurance  
18 and that is subject to examination by the insurance regulator of  
19 the state in which the manager's principal business office is  
20 located.
- 21 (7) 'Producer' means an insurance agent or insurance broker licensed  
22 under Article 33 of this Chapter or an intermediary licensed under this  
23 Article.
- 24 (8) 'Qualified United States financial institution' means a bank that:
- 25 a. Is organized, or in the case of a United States office of a foreign  
26 banking organization is licensed, under the laws of the United  
27 States or any state;  
28 b. Is regulated, supervised, and examined by federal or state  
29 authorities having regulatory authority over banks and trust  
30 companies; and  
31 c. Has been determined by the Securities Valuation Office of the  
32 NAIC to meet its standards of financial condition and standing  
33 in order to issue letters of credit.
- 34 (9) 'Reinsurer' means any licensed insurer that is authorized to assume  
35 reinsurance.
- 36 (b) No person shall act as a broker in this State if the broker maintains an office  
37 either directly, as a member or employee of a noncorporate entity, or as an officer,  
38 director, or employee of a corporation:
- 39 (1) In this State, unless the broker is a producer in this State; or  
40 (2) In another state, unless the broker is a producer in this State or another  
41 state having a law or rule substantially similar to this Article or unless  
42 the broker is licensed under this Article as a nonresident intermediary.
- 43 (c) No person shall act as a manager:

- 1           (1) For a reinsurer domiciled in this State, unless the manager is a  
2 producer in this State;  
3           (2) In this State, if the manager maintains an office directly, as a member  
4 or employee of a noncorporate entity, or as an officer, director, or  
5 employee of a corporation in this State, unless the manager is a  
6 producer in this State;  
7           (3) In another state for a foreign insurer, unless the manager is a producer  
8 in this State or another state having a law or rule substantially similar  
9 to this Article, or the manager is licensed in this State as a nonresident  
10 intermediary.

11           (d) Every manager subject to subsection (c) of this section shall demonstrate to  
12 the Commissioner that he has evidence of financial responsibility in the form of fidelity  
13 bonds or liability insurance to cover the manager's contractual obligations. If any  
14 manager cannot demonstrate this evidence, the Commissioner shall require the manager  
15 to:

- 16           (1) Maintain a separate fidelity bond in favor of each reinsurer represented  
17 in an amount that will cover those obligations and which bond is  
18 issued by an authorized insurer; or  
19           (2) Maintain an errors and omissions liability insurance policy in an  
20 amount that will cover those obligations and which policy is issued by  
21 a licensed insurer."

22           Sec. 20. Article 9 of Chapter 58 of the General Statutes is amended by  
23 adding a new section to read:

24 **"§ 58-9-6. Licensing.**

25           (a) The Commissioner shall issue an intermediary license to any person who has  
26 complied with the requirements of this Article. A license issued to a noncorporate  
27 entity authorizes all of the members of the entity and any designated employees to act as  
28 intermediaries under the license, and those persons shall be named in the application  
29 and any supplements. A license issued to a corporation authorizes all of the officers and  
30 any designated employees and directors of the corporation to act as intermediaries on  
31 behalf of the corporation, and those persons shall be named in the application and any  
32 supplements.

33           (b) If an applicant for an intermediary license is a nonresident, the applicant,  
34 before receiving a license, shall designate the Commissioner as his agent for service of  
35 legal process; and shall furnish the Commissioner with the name and address of a  
36 resident of this State upon whom notices or orders of the Commissioner or process  
37 affecting the nonresident intermediary may be served. The licensee shall notify the  
38 Commissioner in writing of every change in his designated agent for service of process  
39 within five business days after the change; and the change shall not become effective  
40 until acknowledged by the Commissioner.

41           (c) The Commissioner shall refuse to issue an intermediary license if:

- 42           (1) The applicant, anyone named on the application, or any member,  
43 principal, officer, or director of the applicant, is not trustworthy; or

- 1           (2) Any controlling person of the applicant is not trustworthy to act as an  
2 intermediary; or  
3           (3) Any of the persons in subdivisions (1) and (2) of this subsection has  
4 given cause for revocation or suspension of the license or has failed to  
5 comply with any prerequisite for the issuance of the license.

6 Upon written request, the Commissioner shall furnish a summary of the basis for refusal  
7 to issue a license.

- 8           (d) Attorneys-at-law licensed by this State are exempt from this section when  
9 they are acting in their professional capacities."

10           Sec. 21. Article 9 of Chapter 58 of the General Statutes is amended by  
11 adding a new section to read:

12 **"§ 58-9-11. Broker and insurer transactions.**

13           (a) Transactions between a broker and the insurer it represents as a broker shall  
14 only be entered into pursuant to a written authorization, specifying the responsibilities  
15 of each party. The authorization shall include provisions to the effect that:

- 16           (1) The insurer may terminate the broker's authority at any time.  
17           (2) The broker will render accounts to the insurer that accurately detail all  
18 material transactions, including information necessary to support all  
19 commissions, charges, and other fees received by or owing to the  
20 broker; and will remit all funds due to the insurer within 30 days after  
21 receipt by the broker.  
22           (3) All funds collected for the insurer's account will be held by the broker  
23 in a fiduciary capacity in a qualified United States financial institution.  
24           (4) The broker will comply with this Article.  
25           (5) The broker will comply with the written standards established by the  
26 insurer for the cession or retrocession of all risks.  
27           (6) The broker will disclose to the insurer any relationship with any  
28 reinsurer to which business will be ceded or retroceded.  
29           (7) The broker will annually provide the insurer with an audited statement  
30 of the broker's financial condition, which statement will be prepared  
31 by an independent certified public accountant.  
32           (8) The insurer will have access and the right to copy and audit all  
33 accounts and records maintained by the broker related to its business,  
34 in a form usable by the insurer.  
35           (9) For at least 10 years after the expiration of each contract of reinsurance  
36 transacted by the broker, the broker will keep a complete record for  
37 each transaction showing:  
38           a. The type of contract, limits, underwriting restrictions, classes or  
39 risks, and territory;  
40           b. Period of coverage, including effective and expiration dates,  
41 cancellation provisions, and notice required of cancellation;  
42           c. Reporting and settlement requirements of balances;  
43           d. Rate or rates used to compute the reinsurance premium;  
44           e. Names and addresses of assuming reinsurers;

- 1           f. Rates of all reinsurance commissions, including the  
2           commissions on any retrocession handled by the broker;  
3           g. Related correspondence and memoranda;  
4           h. Proof of placement;  
5           i. Details regarding retrocessions handled by the broker, including  
6           the identity of retrocessionaires and percentage of each contract  
7           assumed or ceded;  
8           j. Financial records, including premium and loss accounts; and  
9           k. When the broker procures a reinsurance contract on behalf of a  
10           licensed ceding insurer;  
11           1. Directly from any assuming reinsurer, written evidence  
12           that the assuming reinsurer has agreed to assume the  
13           risk; or  
14           2. If placed through a representative of the assuming  
15           reinsurer, other than an employee, written evidence that  
16           the reinsurer has delegated binding authority to the  
17           representative.

18       (b) An insurer shall not engage the services of any person to act as a broker on its  
19 behalf unless the person is licensed under G.S. 58-9-6. An insurer shall not employ an  
20 individual who is employed by a broker with which it transacts business, unless the  
21 broker is under common control with the insurer under Article 19 of this Chapter."

22       Sec. 22. Article 9 of Chapter 58 of the General Statutes is amended by  
23 adding a new section to read:

24 **"§ 58-9-16. Manager and reinsurer transactions.**

25       (a) Transactions between a manager and the reinsurer it represents as a manager  
26 shall only be entered into pursuant to a written contract, specifying the responsibilities  
27 of each party, which shall be approved by the reinsurer's board of directors. At least 30  
28 days before the reinsurer assumes or cedes business through the manager, a certified  
29 copy of the approved contract shall be filed with the Commissioner for approval. The  
30 contract shall include provisions to the effect that:

- 31           (1) The reinsurer may terminate the contract for cause upon written notice  
32 to the manager. The reinsurer may immediately suspend the authority  
33 of the manager to assume or cede business during the pendency of any  
34 dispute regarding the cause for termination.  
35           (2) The manager will render accounts to the reinsurer accurately detailing  
36 all material transactions, including information necessary to support all  
37 commissions, charges, and other fees received by or owing to the  
38 manager; and will remit all funds due under the contract to the  
39 reinsurer at least once every month.  
40           (3) All funds collected for the reinsurer's account will be held by the  
41 manager in a fiduciary capacity in a qualified U.S. financial institution.  
42 The manager may retain no more than three months' estimated claims  
43 payments and allocated loss adjustment expenses. The manager shall  
44 maintain a separate bank account for each reinsurer that it represents.



- 1           (4)   For at least 10 years after the expiration of each contract of reinsurance  
2           transacted by the manager, the manager will keep a complete record  
3           for each transaction showing:  
4           a.     The type of contract, limits, underwriting restrictions, classes or  
5           risks and territory;  
6           b.     Period of coverage, including effective and expiration dates,  
7           cancellation provisions and notice required of cancellation, and  
8           disposition of outstanding reserves on covered risk;  
9           c.     Reporting and settlement requirements of balances;  
10          d.     Rate used to compute the reinsurance premium;  
11          e.     Names and addresses of reinsurers;  
12          f.     Rates of all reinsurance commissions, including the  
13          commissions on any retrocessions handled by the manager;  
14          g.     Related correspondence and memoranda;  
15          h.     Proof of placement;  
16          i.     Details regarding retrocessions handled by the manager, as  
17          permitted by G.S. 58-9-21, including the identity of  
18          retrocessionaires and percentage of each contract assumed or  
19          ceded;  
20          j.     Financial records, including, but not limited to, premium and  
21          loss accounts; and  
22          k.     When the manager places a reinsurance contract on behalf of a  
23          ceding insurer:  
24                1.     Directly from any assuming reinsurer, written evidence  
25                that the assuming reinsurer has agreed to assume the  
26                risk; or  
27                2.     If placed through a representative of the assuming  
28                reinsurer, other than an employee, written evidence that  
29                the reinsurer has delegated binding authority to the  
30                representative.  
31          (5)   The reinsurer will have access and the right to copy all accounts and  
32          records maintained by the manager related to its business in a form  
33          usable by the reinsurer.  
34          (6)   The contract cannot be assigned in whole or in part by the manager.  
35          (7)   The manager will comply with the written underwriting and rating  
36          standards established by the insurer for the acceptance, rejection, or  
37          cession of all risks.  
38          (8)   The rates, terms, and purposes of commissions, charges, and other fees  
39          that the manager may levy against the reinsurer shall be set forth.  
40          (9)   If the contract permits the manager to settle claims on behalf of the  
41          reinsurer:  
42                a.     All claims will be reported to the reinsurer in a timely manner;  
43                b.     A copy of the claim file will be sent to the reinsurer at its  
44                request or as soon as it becomes known that the claim:

- 1                   1.     Has the potential to exceed an amount set by the
- 2                   reinsurer and approved by the Commissioner;
- 3                   2.     Involves a coverage dispute;
- 4                   3.     May exceed the manager's claims settlement authority;
- 5                   4.     Is open for more than six months; or
- 6                   5.     Is closed by payment of an amount set by the reinsurer
- 7                   and approved by the Commissioner.
- 8                   c.     All claim files will be the joint property of the reinsurer and
- 9                   manager. However, upon an order of liquidation of the
- 10                  reinsurer, the files shall become the sole property of the
- 11                  reinsurer or its estate; the manager shall have reasonable access
- 12                  to and the right to copy the files on a timely basis;
- 13                  d.     Any settlement authority granted to the manager may be
- 14                  terminated for cause upon the reinsurer's written notice to the
- 15                  manager or upon the termination of the contract. The reinsurer
- 16                  may suspend the settlement authority during the pendency of
- 17                  the dispute regarding the cause of termination.
- 18                  (10) If the contract provides for a sharing of interim profits by the manager,
- 19                  the interim profits will not be paid until one year after the end of each
- 20                  underwriting period for property business and five years after the end
- 21                  of each underwriting period for casualty business and not until the
- 22                  adequacy of reserves on remaining claims has been verified pursuant
- 23                  to G.S. 58-9-21.
- 24                  (11) The manager will annually provide the reinsurer with an audited
- 25                  statement of its financial condition prepared by an independent
- 26                  certified public accountant.
- 27                  (12) The reinsurer shall at least semiannually conduct an on-site review of
- 28                  the underwriting and claims processing operations of the manager.
- 29                  (13) The manager will disclose to the reinsurer any relationship it has with
- 30                  any insurer before ceding or assuming any business with the insurer
- 31                  pursuant to this contract.
- 32                  (14) Within the scope of its actual or apparent authority the acts of the
- 33                  manager shall be deemed to be the acts of the reinsurer on whose
- 34                  behalf it is acting.
- 35                  (b) A manager shall not:
- 36                    (1) Cede retrocessions on behalf of the reinsurer, except that the manager
- 37                    may cede facultative retrocessions pursuant to obligatory facultative
- 38                    agreements if the contract with the reinsurer contains reinsurance
- 39                    underwriting guidelines for the retrocessions. The guidelines shall
- 40                    include a list of reinsurers with which the automatic agreements are in
- 41                    effect, and for each reinsurer, the coverages and amounts or
- 42                    percentages that may be reinsured, and commission schedules.
- 43                    (2) Commit the reinsurer to participate in reinsurance syndicates.

- 1           (3) Appoint any producer without assuring that the producer is duly  
2 licensed to transact the type of reinsurance for which he is appointed.  
3           (4) Without prior approval of the reinsurer, pay or commit the reinsurer to  
4 pay a claim settlement with a retrocessionaire, without prior approval  
5 of the reinsurer. If prior approval is given, a report must be promptly  
6 forwarded to the reinsurer.  
7           (5) Collect any payment from a retrocessionaire or commit the reinsurer to  
8 any claim settlement with a retrocessionaire, without prior approval of  
9 the reinsurer. If prior approval is given, a report must be promptly  
10 forwarded to the reinsurer.  
11           (6) Jointly employ an individual who is employed by the reinsurer unless  
12 the manager is under common control with the reinsurer under Article  
13 19 of this Chapter.  
14           (7) Appoint a submanager."

15           Sec. 23. Article 9 of Chapter 58 of the General Statutes is amended by  
16 adding a new section to read:

17 **"§ 58-9-21. Miscellaneous provisions.**

18           (a) A reinsurer shall not engage the services of any person to act as a manager on  
19 its behalf unless the person is licensed under G.S. 58-9-6.

20           (b) If a manager establishes loss reserves, the reinsurer shall annually obtain the  
21 opinion of an actuary attesting to the adequacy of loss reserves established for losses  
22 incurred and outstanding on business produced by the manager. This opinion shall be in  
23 addition to any other required loss reserve certification.

24           (c) Binding authority for all retrocessional contracts or participation in  
25 reinsurance syndicates shall be given to an officer of the reinsurer who is not affiliated  
26 with the manager.

27           (d) Within 30 days after termination of a contract with a manager, the reinsurer  
28 shall provide written notification of the termination to the Commissioner.

29           (e) A reinsurer shall not appoint to its board of directors any officer, director,  
30 employee, controlling person, or subproducer of its manager. This Article does not  
31 apply to relationships governed by Article 19 of this Chapter or G.S. 58-3-165.

32           (f) An intermediary is subject to examination by the Commissioner. The  
33 Commissioner shall have access to all books, bank accounts, and records of an  
34 intermediary in a form usable to the Commissioner. A manager may be examined as if  
35 it were the reinsurer."

36           Sec. 24. Article 9 of Chapter 58 of the General Statutes is amended by  
37 adding a new section to read:

38 **"§ 58-9-26. Sanctions.**

39           (a) An intermediary, insurer, or reinsurer found by the Commissioner, after  
40 hearing, to be in violation of any provision of this Article shall:

- 41           (1) For each separate violation, pay a penalty of one thousand dollars  
42 (\$1,000), not to exceed a total penalty of five thousand dollars  
43 (\$5,000);  
44           (2) Be subject to revocation or suspension of its license; and

1           (3) If a violation was committed by the intermediary, the intermediary  
2           shall make restitution to the insurer or reinsurer or to the rehabilitator  
3           or liquidator of the insurer or reinsurer for any net losses incurred by  
4           the insurer or reinsurer that are caused by the violation.

5           (b) Any order of the Commissioner under this section is subject to judicial review  
6           under G.S. 58-2-75. Nothing in this section effects the right of the Commissioner to  
7           impose any other penalties provided in this Chapter. Nothing in this section limits or  
8           restricts the rights of policyholders, claimants, creditors, or other third parties, or  
9           confers any rights on those persons."

10           Sec. 25. G.S. 58-13-10 reads as rewritten:

11           "**§ 58-13-10. Scope.**

12           This Article applies to all domestic insurers and to all kinds of insurance written by  
13           those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to  
14           comply in substance with the requirements and limitations of this section. This Article  
15           does not apply to variable contracts for which separate accounts are required to be  
16           maintained nor to ~~county farm mutual companies.~~ statutory deposits that are required to  
17           be maintained by insurance regulator agencies as a requirement for doing business in  
18           such jurisdictions."

19           Sec. 26. G.S. 58-19-15(a) reads as rewritten:

20           "(a) No person other than the issuer shall make a tender offer for or a request or  
21           invitation for tenders of, or enter into any agreement to exchange securities, or seek to  
22           acquire, or acquire, in the open market or otherwise, any voting security of a domestic  
23           insurer, if, after the consummation thereof, such person would, directly or indirectly (or  
24           by conversion or by exercise of any right to acquire), be in control of such insurer,  
25           ~~unless,~~—and no person shall enter into an agreement to merge with or otherwise to  
26           acquire control of a domestic insurer or any person controlling a domestic insurer ~~unless,~~  
27           ~~at the time any such offer, request, or invitation is made, or any such agreement is entered into,~~  
28           ~~or prior to the acquisition of such securities, if no offer or agreement is involved, such person~~  
29           ~~has filed with the Commissioner and has simultaneously sent to such insurer, a statement~~  
30           ~~containing the information required by this section and such offer, request, invitation,~~  
31           ~~agreement or acquisition has been approved by the Commissioner in the manner hereinafter~~  
32           ~~prescribed. Provided, however, that the provisions of this paragraph do not apply to any~~  
33           ~~acquisition or proposed acquisition of a domestic insurer's voting securities acquired or sought~~  
34           ~~to be acquired that, when combined with all other voting securities of the domestic insurer~~  
35           ~~acquired directly or indirectly during the preceding 12 months by the person in control and all~~  
36           ~~affiliates of the person in control, do not exceed one percent (1%) of any class or series of the~~  
37           ~~domestic insurer's outstanding voting securities.~~

38           ~~Further, no person shall enter into an agreement to merge with or otherwise acquire~~  
39           ~~control of a domestic insurer unless such agreement is conditioned upon the approval of~~  
40           ~~the Commissioner pursuant to this section. No such merger or other acquisition of~~  
41           ~~control shall be effective until a statement containing the information required by this~~  
42           ~~section has been filed with the Commissioner and all other provisions of this section~~  
43           ~~have been complied with and the merger or acquisition of control has been approved by~~  
44           ~~the Commissioner pursuant to this section.~~ unless such offer, request, invitation,  
45           agreement, or acquisition is conditioned upon the approval of the Commissioner

1 pursuant to this section. No such merger or other acquisition of control shall be  
2 effective until a statement containing the information required by this section has been  
3 filed with the Commissioner and all other provisions of this section have been complied  
4 with and the merger or acquisition of control has been approved by the Commissioner  
5 pursuant to this section. The statement containing the information required by this  
6 section shall also be filed with the domestic insurer at the time it is filed with the  
7 Commissioner.

8 For the purposes of this section a 'domestic insurer' includes any person controlling a  
9 domestic insurer. Further, for the purposes of this section, 'person' does not include any  
10 securities broker holding, in the usual and customary broker's function, less than twenty  
11 percent (20%) of the voting securities of an insurance company or of any person that  
12 controls an insurance company."

13 Sec. 27. G.S. 58-19-15(b) reads as rewritten:

14 "(b) The statement to be filed with the Commissioner under subsection (a) of this  
15 section shall be made under oath or affirmation and shall contain the following  
16 information:

- 17 (1) The name and address of each person by whom or on whose behalf the  
18 merger or other acquisition of control referred to in subsection (a) of  
19 this section is to be effected (hereinafter called 'acquiring party'), and:  
20 (i) if such person is an individual, his principal occupation and all  
21 offices and positions held during the past five years, and any  
22 conviction of crimes other than minor traffic violations during the past  
23 10 years; (ii) if such person is not an individual, a report of the nature  
24 of its business operations during the past five years or for such lesser  
25 period as such person and any predecessors thereof shall have been in  
26 existence; an informative description of the business intended to be  
27 done by such person and such person's subsidiaries; and a list of all  
28 individuals who are or who have been selected to become directors or  
29 executive officers of such person, or who perform or will perform  
30 functions appropriate to such positions. Such list shall include for  
31 each such individual the information required by sub-subdivision (1)(i)  
32 of this subsection.
- 33 (2) The source, nature, and amount of the consideration used or to be used  
34 in effecting the merger or other acquisition of control; a description of  
35 any transaction wherein funds were or are to be obtained for any such  
36 purpose, including any pledge of the insurer's stock, or the stock of any  
37 of its subsidiaries or controlling affiliates; and the identity of persons  
38 furnishing such ~~consideration~~ consideration; provided, however, that  
39 where a source of such consideration is a loan made in the lender's  
40 ordinary course of business, the identity of the lender shall remain  
41 confidential, if the person filing such statement so requests.
- 42 (3) Fully audited financial information as to the earnings and financial  
43 condition of each acquiring party for the preceding five fiscal years of  
44 each such acquiring party, or for such lesser period as such acquiring

- 1 party and any predecessors thereof have been in existence; and similar  
2 unaudited information as of a date not earlier than 90 days prior to the  
3 filing of the statement.
- 4 (4) Any plans or proposals that each acquiring party may have to liquidate  
5 such insurer, to sell its assets or merge or consolidate it with any  
6 person, or to make any other material change in its business or  
7 corporate structure or management.
- 8 (5) The number of shares of any security referred to in subsection (a) of  
9 this section that each acquiring party proposes to acquire; the terms of  
10 the offer, request, invitation, agreement, or acquisition referred to in  
11 subsection (a) of this section; and a statement as to the method by  
12 which the fairness of the proposal was arrived at.
- 13 (6) The amount of each class of any security referred to in subsection (a)  
14 of this section that is beneficially owned or concerning which there is a  
15 right to acquire beneficial ownership by each acquiring party.
- 16 (7) A full description of any contracts, arrangements, or understandings  
17 with respect to any security referred to in subsection (a) of this section  
18 in which any acquiring party is involved, including transfer of any of  
19 the securities, joint ventures, loan or option arrangements, puts or  
20 calls, guarantees of loans, guarantees against loss or guarantees of  
21 profits, division of losses or profits, or the giving or withholding of  
22 proxies. Such description shall identify the persons with whom such  
23 contracts, arrangements, or understandings have been entered into.
- 24 (8) A description of the purchase of any security referred to in subsection  
25 (a) of this section during the 12 calendar months preceding the filing  
26 of the statement, by any acquiring party, including the dates of  
27 purchase, names of the purchasers, and consideration paid or agreed to  
28 be paid therefor.
- 29 (9) A description of any recommendations to purchase any security  
30 referred to in subsection (a) of this section made during the 12  
31 calendar months preceding the filing of the statement, by any acquiring  
32 party, or by anyone based upon interviews or at the suggestion of such  
33 acquiring party.
- 34 (10) Copies of all tender offers for, requests, or invitations for tenders of,  
35 exchange offers for, and agreements to acquire or exchange any  
36 securities referred to in subsection (a) of this section, and any related  
37 additional soliciting material that has been distributed.
- 38 (11) The term of any agreement, contract, or understanding made with or  
39 proposed to be made with any third party in connection with any  
40 acquisition of control of or merger with a domestic insurer, and the  
41 amount of any fees, commissions, or other compensation to be paid to  
42 the third party with regard thereto.

1           (12) Such additional information as the Commissioner may by rule  
2           prescribe as necessary or appropriate for the protection of  
3           policyholders of the insurer or in the public interest.

4           If the person required to file the statement referred to in subsection (a) of this  
5           section is a partnership, limited partnership, syndicate, or other group, the  
6           Commissioner shall require that the information called for by subdivisions (1) through  
7           (12) of this subsection be given with respect to each partner of such partnership or  
8           limited partnership, each member of such syndicate or group, and each person who  
9           controls such partner or member. If any such partner, member, or person is a  
10          corporation or the person required to file the statement referred to in subsection (a) of  
11          this section is a corporation, the Commissioner shall require that the information called  
12          for by subdivisions (1) through (12) of this subsection be given with respect to such  
13          corporation, each officer and director of such corporation, and each person who is,  
14          directly or indirectly, the beneficial owner of more than ten percent (10%) of the  
15          outstanding voting securities of such corporation.

16          If any material change occurs in the facts set forth in the statement filed with the  
17          Commissioner and sent to such insurer pursuant to this section, an amendment setting  
18          forth such change, together with copies of all documents and other material relevant to  
19          such change, shall be filed with the Commissioner and sent to such insurer by the filer  
20          within two business days after the person learns of such change."

21          Sec. 28. G.S. 58-19-15(d)(6) reads as rewritten:

22          "(d) The Commissioner shall approve any merger or other acquisition of control  
23          referred to in subsection (a) of this section unless, after a public hearing thereon, he  
24          finds any of the following:

- 25          (1) After the change of control, the domestic insurer referred to in  
26          subsection (a) of this section would not be able to satisfy the  
27          requirements for the issuance of a license to write the kind or kinds of  
28          insurance for which it is presently licensed.
- 29          (2) The effect of the merger or other acquisition of control would be  
30          substantially to lessen competition in insurance or tend to create a  
31          monopoly in this State.
- 32          (3) The financial condition of any acquiring party might jeopardize the  
33          financial stability of the insurer or prejudice the interest of its  
34          policyholders.
- 35          (4) Any plans or proposals that the acquiring party has to liquidate the  
36          insurer, sell its assets or consolidate or merge it with any person, or to  
37          make any other material change in its business or corporate structure  
38          or management, are unfair and unreasonable to policyholders of the  
39          insurer and not in the public interest.
- 40          (5) The competence, experience, and integrity of those persons who would  
41          control the operation of the insurer are such that it would not be in the  
42          interests of policyholders of the insurer and of the public to permit the  
43          merger or other acquisition of control.

1 (6) The acquisition is likely to be ~~detrimental~~ hazardous or prejudicial to  
2 the insurance-buying public."

3 Sec. 29. G.S. 58-19-15(h) reads as rewritten:

4 "(h) The provisions of this section do not apply to any offer, request, invitation,  
5 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not  
6 having been made or entered into for the purpose and not having the effect of changing  
7 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended  
8 within the purposes of this section. ~~Nor does this section apply to any transaction that is~~  
9 ~~subject to the provisions of G.S. 58-7-150."~~

10 Sec. 30. G.S. 58-19-25(a) reads as rewritten:

11 "(a) Every insurer that is licensed to do business in this State and that is a member  
12 of an insurance holding company system shall register with the Commissioner, except a  
13 foreign insurer subject to the registration requirements and standards adopted by statute  
14 or regulation in the jurisdiction of its domicile that are substantially similar to those  
15 contained in this section ~~and G.S. 58-19-30(a), and, 58-19-30(c), 58-19-30(d), and 58-19-~~  
16 ~~30(b), or a provision such as the following:~~ Each registered insurer shall keep current  
17 the information required to be disclosed in its registration statement by reporting all  
18 material changes or additions within 15 days after the end of the month in which it  
19 learns of each change or addition. The insurer shall also file a copy of its registration  
20 statement and any amendments to the statement in each state in which that insurer is  
21 authorized to do business if requested by the insurance regulator of that state. Any  
22 insurer that is subject to registration under this section shall register within 30 days after  
23 it becomes subject to registration, and an amendment to the registration statement shall  
24 be filed by March ~~31~~1 of each year for ~~any changes that may have occurred during the~~  
25 ~~previous calendar year; unless the Commissioner for good cause shown extends the time~~  
26 ~~for registration or filing, and then within the extended time.~~ All registration statements  
27 shall contain a summary, on a form prescribed by the Commissioner, outlining all items  
28 in the current registration statement representing changes from the prior registration  
29 statement. The Commissioner may require any insurer that is a member of a holding  
30 company system that is not subject to registration under this section to furnish a copy of  
31 the registration statement or other information filed by such insurance company with the  
32 insurance regulator of its domiciliary jurisdiction."

33 Sec. 31. G.S. 58-19-25(b) reads as rewritten:

34 "(b) Every insurer subject to registration shall file the registration statement on a  
35 form prescribed by the Commissioner, which shall contain the following current  
36 information:

- 37 (1) The bylaws, capital structure, general financial condition, ownership,  
38 and management of the insurer and any person controlling the insurer.  
39 (2) The identity and relationship of every member of the insurance  
40 holding company system.  
41 (3) The following agreements in force, and transactions currently  
42 outstanding or that have occurred during the last calendar year  
43 between such insurer and its affiliates ~~or other third parties where~~  
44 ~~indicated:~~



- 1 a. Loans, other investments, or purchases, sales or exchanges of  
2 securities of the affiliates by the insurer or of the insurer by its  
3 affiliates.
- 4 b. Purchases, sales, or exchange of assets.
- 5 c. Transactions not in the ordinary course of business.
- 6 d. Guarantees or undertakings for the benefit of an affiliate that  
7 result in an actual contingent exposure of the insurer's assets to  
8 liability, other than insurance contracts entered into in the  
9 ordinary course of the insurer's business.
- 10 e. All management agreements, service contracts, and cost-sharing  
11 arrangements.
- 12 f. Reinsurance agreements.
- 13 g. Dividends and other distributions to shareholders.
- 14 h. Consolidated tax allocation agreements.
- 15 (4) Any pledge of the insurer's stock, including stock of any subsidiary or  
16 controlling affiliate, for a loan made to any member of the insurance  
17 holding company system.
- 18 (5) Other matters concerning transactions between registered insurers and  
19 any affiliates as may be included from time to time in any registration  
20 forms adopted or approved by the Commissioner."
- 21 Sec. 32. G.S. 58-19-25(d) reads as rewritten:
- 22 "(d) Subject to G.S. 58-19-30(c), each ~~registered-domestic~~ insurer shall report to  
23 the Commissioner all dividends and other distributions to shareholders within 15  
24 business days following the declaration thereof. The Commissioner may prescribe the  
25 form to be used to report that information."
- 26 Sec. 33. G.S. 58-19-30(b) reads as rewritten:
- 27 "(b) The following transactions involving a domestic insurer and any person in its  
28 holding company system may not be entered into unless the insurer has notified the  
29 Commissioner in writing of its intention to enter into the transaction at least 30 days  
30 before the transaction, or such shorter period as the Commissioner permits, and the  
31 Commissioner has not disapproved it within that period:
- 32 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,  
33 or investments, provided the transactions equal or exceed: (i) with  
34 respect to nonlife insurers, the lesser of three percent (3%) of the  
35 insurer's admitted assets or twenty-five percent (25%) of surplus as  
36 regards policyholders; (ii) with respect to life insurers, three percent  
37 (3%) of the insurer's admitted assets; each as of the preceding  
38 December 31.
- 39 (2) Loans or extensions of credit to any person who is not affiliated, where  
40 the insurer makes the loans or extensions of credit with the agreement  
41 or understanding that the proceeds of the transactions, in whole or in  
42 substantial part, are to be used to make loans or extensions of credit to,  
43 to purchase assets of, or to make investments in, any affiliate of the  
44 insurer making the loans or extensions of credit provided the

1 transactions equal or exceed: (i) with respect to nonlife insurers, the  
2 lesser of three percent (3%) of the insurer's admitted assets or twenty-  
3 five percent (25%) of surplus as regards policyholders; (ii) with  
4 respect to life insurers, three percent (3%) of the insurer's admitted  
5 assets; each as of the preceding December 31.

6 (3) Reinsurance agreements or modifications to the agreements in which  
7 the reinsurance premium or a change in the insurer's liabilities equals  
8 or exceeds five percent (5%) of the insurer's surplus as regards  
9 policyholders, as of the preceding December 31, including those  
10 agreements that may require as consideration the transfer of assets  
11 from an insurer to a nonaffiliate, if an agreement or understanding  
12 exists between the insurer and nonaffiliate that any portion of the  
13 assets will be transferred to one or more affiliates of the insurer.

14 (4) All management agreements, service contracts, or cost-sharing  
15 arrangements ~~wherein the annual aggregate cost to the insurer would~~  
16 ~~equal or exceed the amounts specified in subdivision (1) of this~~  
17 ~~subsection.~~

18 (5) Any material transactions, specified by rule, that the Commissioner  
19 determines may adversely affect the interests of the insurer's  
20 policyholders.

21 Nothing in this section authorizes or permits any transactions that, in the case of an  
22 insurer, not a member of the same holding company system, would be otherwise  
23 contrary to law. A domestic insurer may not enter into transactions that are part of a  
24 plan or series of like transactions with persons within the holding company system if the  
25 purpose of those separate transactions is to avoid the statutory threshold amount and  
26 thus avoid the review that would otherwise occur. If the Commissioner determines that  
27 such separate transactions were entered into over any 12-month period for that purpose,  
28 the Commissioner may exercise the Commissioner's authority under G.S. 58-19-50.  
29 The Commissioner, in reviewing transactions pursuant to this subsection, shall consider  
30 whether the transactions comply with the standards set forth in subsection (a) of  
31 this section and whether they may adversely affect the interests of policyholders. The  
32 Commissioner shall be notified within 30 days after any investment of a domestic  
33 insurer in any one corporation if, as a result of the investment, the total investment in  
34 the corporation by the insurance holding company system exceeds ten percent (10%) of  
35 the corporation's voting securities."

36 Sec. 34. G.S. 58-19-45(c) reads as rewritten:

37 "(c) In any case where a person has acquired or is proposing to acquire any voting  
38 securities in violation of this Article or any rule or order of the Commissioner under this  
39 Article, the Superior Court of Wake County may, on such notice as the court considers  
40 appropriate and upon the application of the insurer or the Commissioner, seize or  
41 sequester any voting securities of the insurer owned directly or indirectly by the person,  
42 and issue an order with respect thereto as may be appropriate to effectuate the  
43 provisions of this Article. Notwithstanding any other provision of law, for the purposes

1 of this Article the sites of the ownership of the securities of domestic insurers are in this  
2 State.

3 ~~Notwithstanding any other provisions of law, for the purposes of this Article the~~  
4 ~~sites of the ownership of the securities of domestic insurers are in this State."~~

5 Sec. 35. G.S. 58-22-10 reads as rewritten:

6 **"§ 58-22-10. Definitions.**

7 As used in this Article:

- 8 (1) 'Completed operations liability' means liability arising out of the  
9 installation, maintenance, or repair of any product at a site that is not  
10 owned or controlled by:  
11 a. Any person who performs that work; or  
12 b. Any person who hires an independent contractor to perform that  
13 work;  
14 but includes liability for activities that are completed or abandoned  
15 before the date of the occurrence giving rise to the liability.
- 16 (2) 'Domicile', for purposes of determining the state in which a purchasing  
17 group is domiciled, means:  
18 a. For a corporation, the state in which the purchasing group is  
19 incorporated; and  
20 b. For an unincorporated entity, the state of its principal place of  
21 business.
- 22 (3) 'Hazardous financial condition' means that, based on its present or  
23 reasonably anticipated financial condition, a risk retention group,  
24 although not yet financially impaired or insolvent, is unlikely to be  
25 able:  
26 a. To meet obligations to policyholders with respect to known  
27 claims and reasonably anticipated claims; or  
28 b. To pay other obligations in the normal course of business.
- 29 (4) 'Insurance' means primary insurance, excess insurance, reinsurance,  
30 surplus lines insurance, and any other arrangement for shifting and  
31 distributing risk that is determined to be insurance under the laws of  
32 this State.
- 33 (5) 'Liability' means legal liability for damages, including costs of defense,  
34 legal costs and fees, and other claims expenses, because of injuries to  
35 other persons, damage to their property, or other damage or loss to  
36 such other persons resulting from or arising out of any profit or  
37 nonprofit business, trade, product, professional or other services,  
38 premises, or operations; or any activity of any state or local  
39 government, or any agency or political subdivision thereof. Liability  
40 does not include personal risk liability or an employer's liability with  
41 respect to its employees other than legal liability under the Federal  
42 Employers' Liability Act (45 U.S.C. § 51 **et seq.**).
- 43 (6) 'Personal risk liability' means liability for damage because of injury to  
44 any person, damage to property, or other loss or damage resulting from

- 1 any personal, familial, or household responsibilities or activities.  
2 Personal risk liability does not include liability as defined in  
3 subdivision (5) of this section.
- 4 (7) 'Plan of operation' or 'feasibility study' means an analysis that presents  
5 the expected activities and results of a risk retention group including,  
6 at a minimum:
- 7 a. ~~The~~ For each state in which the group intends to do business,  
8 the coverages, deductibles, coverage limits, rates, and rating  
9 classification systems for each kind of insurance the group  
10 intends to offer;
- 11 b. Historical and expected loss experience of the proposed  
12 members and national experience of similar exposures;
- 13 c. ~~Pre-forma~~ Prospective financial statements and projections;
- 14 d. Appropriate opinions by a qualified, independent casualty  
15 actuary, including a determination of minimum premium or  
16 participation levels required to commence operations and to  
17 prevent a hazardous financial condition;
- 18 e. Identification of management, underwriting and claim  
19 procedures, marketing methods, managerial oversight methods,  
20 reinsurance agreements, and investment policies; and
- 21 f. ~~Such other matters as may be prescribed by the Commissioner~~  
22 ~~for liability insurance companies authorized by Articles 1~~  
23 ~~through 64 of this Chapter.~~ Identification of each state in which  
24 the group has obtained, or sought to obtain, a charter and  
25 license, and a description of its status in each such state;
- 26 g. Information sufficient to verify that the group's members are  
27 engaged in businesses or activities similar or related with  
28 respect to the liability to which those members are exposed by  
29 virtue of any related, similar, or common business, trade,  
30 product, services, premises, or operations; and
- 31 h. Such other matters that are prescribed by the Commissioner for  
32 liability insurance companies authorized by this Chapter.
- 33 (8) 'Product liability' means liability for damages because of any personal  
34 injury, death, emotional harm, consequential economic damage, or  
35 property damage, including damages resulting from the loss of use of  
36 property, arising out of the manufacture, design, importation,  
37 distribution, packaging, labeling, lease, or sale of a product; but does  
38 not include the liability of any person for those damages if the product  
39 involved was in the possession of such person when the incident  
40 giving rise to the claim occurred.
- 41 (9) 'Purchasing group' means any group that:
- 42 a. Has as one of its purposes the purchase of liability insurance on  
43 a group basis;

- 1                   b.     Purchases such insurance only for its group members and only  
2                   to cover their similar or related liability exposure, as described  
3                   in sub-subdivision c. of this subdivision;  
4                   c.     Is composed of members whose businesses or activities are  
5                   similar or related with respect to the liability to which the  
6                   members are exposed by virtue of any related, similar, or  
7                   common business, trade, product, services, premises, or  
8                   operations; and  
9                   d.     Is domiciled in any state.
- 10           (10) 'Risk retention group' means any corporation or other limited liability  
11           association ~~formed under the laws of any state, Bermuda, or the Cayman~~  
12           ~~Islands;~~ association:  
13           a.     Whose primary activity consists of assuming and spreading all  
14           or any portion of the liability exposure of its group members;  
15           b.     That is organized for the primary purpose of conducting the  
16           activity described under sub-subdivision a. of this subdivision;  
17           c.     That  
18                   (i)    Is chartered and licensed as a liability insurance  
19                   company and authorized to engage in the business of  
20                   insurance under the laws of any state; or  
21                   (ii)   Before January 1, 1985, was chartered or licensed and  
22                   authorized to engage in the business of insurance under  
23                   the laws of Bermuda or the Cayman Islands and, before  
24                   that date, had certified to the insurance regulator of at  
25                   least one state that it satisfied the capitalization  
26                   requirements of such state; except that any such group  
27                   shall be considered to be a risk retention group only if it  
28                   has been engaged in business continuously since that  
29                   date and only for the purpose of continuing to provide  
30                   insurance to cover product liability or completed  
31                   operations liability, as such terms were defined in the  
32                   Product Liability Risk Retention Act of 1981 before the  
33                   effective date of the Risk Retention Act of 1986;  
34           d.     That does not exclude any person from membership in the  
35           group solely to provide for members of such a group a  
36           competitive advantage over such person;  
37           e.     That  
38                   (i)    Has as its members only persons who have an ownership  
39                   interest in the group and that has as its owners only  
40                   persons who are members who are provided insurance  
41                   by the risk retention group; or  
42                   (ii)   Has as its sole member and sole owner an organization  
43                   that is owned by persons who are provided insurance by  
44                   the risk retention group;

- 1 f. Whose members are engaged in businesses or activities similar  
2 or related with respect to the liability of which such members  
3 are exposed by virtue of any related, similar, or common  
4 business trade, product, services, premises, or operations;
- 5 g. Whose activities do not include the provision of insurance other  
6 than:
- 7 (i) Liability insurance for assuming and spreading all or any  
8 portion of the liability of its group members; and
- 9 (ii) Reinsurance with respect to the liability of any other risk  
10 retention group, or any members of such other group,  
11 that is engaged in businesses or activities so that such  
12 group or member meets the requirement described in  
13 sub-subdivision f. of this subdivision from membership  
14 in the risk retention group that provides such  
15 reinsurance; and
- 16 h. The name of which includes the phrase 'Risk Retention Group'."

17 Sec. 36. G.S. 58-22-15 reads as rewritten:

18 **"§ 58-22-15. Risk retention groups chartered in this State.**

19 (a) A risk retention group seeking to be chartered in this State must be chartered  
20 and licensed as a liability insurance company under Article 7 of this Chapter and, except  
21 as provided elsewhere in this Article, must comply with all of the laws and rules  
22 applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20  
23 to the extent such requirements are not a limitation on laws, administrative rules, or  
24 requirements of this State. ~~Before it may offer insurance in any State, each risk retention~~  
25 ~~group shall also submit to the Commissioner, for his approval, a plan of operation or a~~  
26 ~~feasibility study and revisions of such plan or study if the group intends to offer any additional~~  
27 ~~lines of liability insurance.~~

28 (b) Before it may offer insurance in any state, each risk retention group shall also  
29 submit for approval to the Commissioner of this State a plan of operation or feasibility  
30 study. The risk retention group shall submit an appropriate revision in the event of any  
31 subsequent material change in any item of the plan of operation or feasibility study,  
32 within 10 days after any such change. The group shall not offer any additional kinds of  
33 liability insurance, in this State or in any other state, until a revision of such plan or  
34 study is approved by the Commissioner.

35 (c) At the time of filing its application for a charter, the risk retention group shall  
36 provide to the Commissioner in summary form the following information: the identity  
37 of the initial members of the group, the identity of those individuals who organized the  
38 group or who will provide administrative services or otherwise influence or control the  
39 activities of the group, the amount and nature of initial capitalization, the coverages to  
40 be afforded, and the states in which the group intends to operate. Upon receipt of this  
41 information, the Commissioner shall forward such information to the NAIC. Providing  
42 notification to the NAIC is in addition to and shall not be sufficient to satisfy the  
43 requirements of G.S. 58-22-20 or any other sections of this Article."

44 Sec. 37. G.S. 58-22-20 reads as rewritten:

1 **"§ 58-22-20. Risk retention groups not chartered in this State.**

2 Risk retention groups that have been chartered in states other than this State and that  
3 seek to do business as risk retention groups in this state must observe and abide by the  
4 laws of this State as follows:

5 (1) Notice of Operations and Designation of Commissioner as Agent. –  
6 Before offering insurance in this State, a risk retention group shall  
7 submit to the Commissioner:

8 a. A statement identifying the state or states in which the risk  
9 retention group is chartered and licensed as a liability insurance  
10 company, date of chartering, its principal place of business, and  
11 such other information including information on its  
12 membership, as the Commissioner may require to verify that  
13 the risk retention group is qualified under G.S. 58-22-10(10);

14 b. A copy of its plan of operations or a feasibility study and  
15 revisions of such plan or study submitted to its state of  
16 domicile; provided, however, that the provision relating to the  
17 submission of a plan of operation or a feasibility study shall not  
18 apply with respect to any line or classification of liability  
19 insurance that (i) was defined in the Product Liability Risk  
20 Retention Act of 1981 before October 27, 1986, and (ii) was  
21 offered before that date by any risk retention group that had  
22 been chartered and operating for not less than three years before  
23 that date;

24 c. ~~A statement of registration that designates the Commissioner as~~  
25 ~~its agent for the purpose of receiving service of legal process.~~  
26 The risk retention group shall submit a copy of any revision to  
27 its plan of operation or feasibility study required by G.S. 58-22-  
28 15(b) at the same time that such revision is submitted to the  
29 Commissioner of its chartering state; and

30 d. A statement of registration that designates the Commissioner as  
31 its agent for the purpose of receiving service of legal process.

32 (2) Financial Condition. – A risk retention group doing business in this  
33 State shall file with the Commissioner:

34 a. A copy of the group's financial statement submitted to its state  
35 of domicile, which shall be certified by an independent public  
36 accountant and contain a statement of opinion on loss and loss  
37 adjustment expense reserves made by a member of the  
38 American Academy of Actuaries or a qualified loss reserve  
39 specialist, under criteria established by the NAIC or by the  
40 Commissioner;

41 b. A copy of each examination of the risk retention group as  
42 certified by the State insurance regulator or public official  
43 conducting the examination;

- 1 c. Upon request by the Commissioner, a copy of any audit  
2 performed with respect to the risk retention group; and  
3 d. Such information as may be required to verify its continuing  
4 qualification as a risk retention group under G.S. 58-22-10(10).
- 5 (3) Taxation.
- 6 a. All premiums paid for coverages within this State to risk  
7 retention groups shall be subject to taxation at the same rate and  
8 subject to the same payment procedures and to the same  
9 interest, fines, and penalties for nonpayment as those applicable  
10 to surplus lines insurance under Article 21 of this Chapter.
- 11 b. To the extent licensed agents or brokers are utilized, pursuant to  
12 G.S. 58-22-60, they shall report and pay the taxes for the  
13 premiums for ~~risk~~-risks that they have placed with or on behalf  
14 of a risk retention group not chartered in this State. Such agent  
15 or broker shall keep a complete and separate record of all  
16 policies procured from each such risk retention group, which  
17 record shall be open to examination by the Commissioner, as  
18 provided in G.S. 58-2-185. These records shall, for each policy  
19 and each kind of insurance provided thereunder, include the  
20 following:
- 21 1. The limit of liability;  
22 2. The time period covered;  
23 3. The effective date;  
24 4. The name of the risk retention group that issued the  
25 policy;  
26 5. The gross premium charged; and  
27 6. The amount of return premiums, if any.
- 28 c. To the ~~extent~~-extent that insurance agents or brokers are not  
29 utilized or fail to pay the tax, each risk retention group shall pay  
30 the tax for risks insured within the State. Each risk retention  
31 group shall report to the Commissioner all premiums paid to it  
32 for risks insured within the State.
- 33 (4) Compliance With Unfair Claims Settlement Practices Law. – A risk  
34 retention group and its agents and representatives shall comply with  
35 G.S. 58-3-100(5) and G.S. 58-63-15(11).
- 36 (5) Deceptive, False, or Fraudulent Practices. – A risk retention group  
37 shall comply with the provisions of Article 63 of this Chapter and  
38 Chapter 75 of the General Statutes regarding deceptive, false, or  
39 fraudulent acts or practices.
- 40 (6) Examination Regarding Financial Condition. – A risk retention group  
41 must submit to an examination by the Commissioner to determine its  
42 financial condition if the insurance regulator of the jurisdiction in  
43 which the group is chartered has not initiated an examination or does  
44 not initiate an examination within 60 days after a request by the



Commissioner. This examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the NAIC.

- (7) Notice to Purchasers. – Any policy issued by a risk retention group shall contain in 10 point type and contrasting color on the front page and the declaration page, the following notice:

**'NOTICE**

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. In the event of the insolvency of your risk retention group, losses under this policy will not be paid by any insurance insolvency or guaranty fund in this State.'

- (8) Prohibited Acts Regarding Solicitation or Sale. – The following acts by a risk retention group are prohibited:

- a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and
- b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

- (9) Prohibition of Ownership By An Insurance Company. – No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

- (10) Prohibited Coverage. – No risk retention group may offer insurance policy coverage prohibited or not authorized by this Chapter or declared unlawful by the appellate courts of this State.

- (11) Delinquency Proceedings. – A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under ~~G.S. 58-22-20.~~ G.S. 58-22-20(6).

- (12) Penalties. – A risk retention group that violates any provision of this Article is subject to G.S. 58-2-70."

Sec. 38. G.S. 58-22-40 reads as rewritten:

**"§ 58-22-40. Notice and registration requirements of purchasing groups.**

(a) A purchasing group that intends to do business in this State ~~shall~~ shall, before doing business, furnish notice to the Commissioner that shall:

- (1) Identify the state in which the group is domiciled;

- 1 (2) Specify the lines and classifications of liability insurance that the  
2 purchasing group intends to purchase;
- 3 (3) Identify the insurer from which the group intends to purchase its  
4 insurance and the domicile of such insurer;
- 5 (4) Identify the principal place of business of the group;
- 6 (5) Provide such other information as may be required by the  
7 Commissioner to verify that the purchasing group is qualified under  
8 G.S. 58-22-10(9); ~~and~~
- 9 (6) Specify the method by which and the person or persons, if any,  
10 through whom insurance will be offered to its members whose risks  
11 are resident or located in this State; and furnish such information as  
12 may be required by the Commissioner to determine the appropriate  
13 premium tax ~~treatment.~~ treatment; and
- 14 (7) Identify all other states in which the group intends to do business.
- 15 (b) The purchasing group shall register with and designate the Commissioner as  
16 its agent solely for the purpose of receiving service of legal documents or process,  
17 except that such requirement does not apply in the case of a purchasing group:
- 18 (1) That
- 19 a. Was domiciled before April 2, 1986, in any state of the United  
20 States; and
- 21 b. Is domiciled on and after October 27, 1986, in any state of the  
22 United States;
- 23 (2) That before October 27, 1986, purchased insurance from an insurer  
24 licensed in any state; and since October 27, 1986, purchased its  
25 insurance from an insurer licensed in any state;
- 26 (3) That was a purchasing group under the requirements of the Product  
27 Liability Retention Act of 1981 before October 27, 1986; and
- 28 (4) That does not purchase insurance that was not authorized for purposes  
29 of an exemption under that act, as in effect before October 27, 1986.
- 30 (c) A purchasing group shall notify the Commissioner of any changes in any of  
31 the items in subsection (a) of this section within 10 days after those changes.
- 32 (d) Each purchasing group that is required to give notice under subsection (a) of  
33 this section shall also furnish such information as may be required by the Commissioner  
34 to:
- 35 (1) Verify that the entity qualifies as a purchasing group;  
36 (2) Determine where the purchasing group is located; and  
37 (3) Determine appropriate tax treatment."

38 Sec. 39. Article 23 of Chapter 58 of the General Statutes is amended by  
39 adding a new section to read:

40 "**§ 58-23-26. Financial monitoring and evaluation of pools.**

41 (a) Each pool shall have an annual audit by an independent certified public  
42 accountant, at the expense of the pool, and shall make a copy of the audit available to  
43 the governing body or chief executive officer of each member of the pool. A copy of  
44 the audit shall be filed with the Commissioner within 130 days after the end of the

1 pool's fiscal year, unless that time is extended by the Commissioner. The annual audit  
2 shall report the financial position of the pool in conformity with statutory accounting  
3 practices prescribed or permitted by the Commissioner.

4 (b) Each pool shall have an actuarial evaluation of its loss and loss adjustment  
5 expense reserves, including reserves for loss and loss adjustment expenses incurred but  
6 not reported, performed annually by a qualified actuary. A copy of the evaluation shall  
7 be filed with the Commissioner along with the annual audit submitted pursuant to  
8 subsection (a) of this section. A 'qualified actuary' shall be as defined or prescribed by  
9 the Commissioner.

10 (c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-  
11 155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-70, 58-3-75, 58-3-80, 58-  
12 3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-32, 58-7-50, 58-7-55, 58-7-140, 58-7-  
13 160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173,  
14 58-7-175, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-  
15 7-190, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34  
16 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by  
17 each pool within 60 days after the end of the pool's fiscal year, subject to extension by  
18 the Commissioner."

19 Sec. 40. A new section is added to Article 30 of Chapter 58 of the General  
20 Statutes to read:

21 "**§ 58-30-71. Immunity and indemnification of the receiver and employees.**

22 (a) For the purposes of this section, the persons entitled to protection under this  
23 section are:

- 24 (1) All receivers responsible for the conduct of a delinquency proceeding  
25 under this Article, including present and former receivers: and  
26 (2) Their employees meaning all present and former special deputies and  
27 assistant special deputies appointed by the Commissioner, staff  
28 assigned to the delinquency proceeding employed by the Attorney  
29 General's Office, and all persons whom the Commissioner, special  
30 deputies, or assistant special deputies have employed to assist in a  
31 delinquency proceeding under this Article. Attorneys, accountants,  
32 auditors, and other professional persons or firms, who are retained by  
33 the receiver as independent contractors and their employees are not  
34 employees of the receiver for purposes of this section.

35 (b) The receiver and his employees have official immunity and are immune from  
36 suit and liability, both personally and in their official capacities, for any claim for  
37 damage to or loss of property or personal injury or other civil liability caused by or  
38 resulting from any alleged act, error, or omission of the receiver or any employee  
39 arising out of or by reason of their duties or employment; provided that nothing in this  
40 section holds the receiver or any employee immune from suit or liability for any  
41 damage, loss, injury, or liability caused by the intentional or willful and wanton  
42 misconduct of the receiver or any employee.

43 (c) If any legal action is commenced against the receiver or any employee,  
44 whether against him personally or in his official capacity, alleging property damage,

1 property loss, personal injury, or other civil liability caused by or resulting from any  
2 alleged act, error, or omission of the receiver or any employee arising out of or by  
3 reason of their duties or employment, the receiver and any employee shall be  
4 indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments,  
5 settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in  
6 the defense of such legal action; unless it is determined upon a final adjudication on the  
7 merits that the alleged act, error, or omission of the receiver or employee giving rise to  
8 the claim did not arise out of or by reason of his duties or employment, or was caused  
9 by intentional or willful and wanton misconduct.

10 (d) Attorneys' fees and all related expenses incurred in defending a legal action  
11 for which immunity or indemnity is available under this section shall be paid from the  
12 assets of the insurer, as they are incurred, before the final disposition of the action, upon  
13 receipt of any agreement by or on behalf of the receiver or employee to repay the  
14 attorneys' fees and expenses if it is ultimately determined upon a final adjudication on  
15 the merits that the receiver or employee is not entitled to immunity or indemnity under  
16 this section.

17 (e) Any indemnification for expense payments, judgments, settlements, decrees,  
18 attorneys' fees, surety bond premiums, or other amounts paid or to be paid from the  
19 insurer's assets under this section shall be an administrative expense of the insurer.

20 (f) In the event of any actual or threatened litigation against a receiver or any  
21 employee for which immunity or indemnity may be available under this section, a  
22 reasonable amount of funds, that in the judgment of the Commissioner may be needed  
23 to provide immunity or indemnity, shall be segregated and reserved from the assets of  
24 the insurer as security for the payment of indemnity until all applicable statutes of  
25 limitation have run, all actual or threatened actions against the receiver or any employee  
26 have been completely and finally resolved, and all obligations of the insurer and the  
27 Commissioner under this section have been satisfied.

28 (g) In lieu of segregation and reserving of funds, the Commissioner may, in his  
29 discretion, obtain a surety bond or make other arrangements that will enable the  
30 Commissioner to fully secure the payment of all obligations under this section.

31 (h) If any legal action against an employee for which indemnity may be available  
32 under this section is settled before final adjudication on the merits, the insurer must pay  
33 the settlement amount on behalf of the employee, or indemnify the employee for the  
34 settlement amount, unless the Commissioner determines:

35 (1) That the claim did not arise out of or by reason of the employee's  
36 duties or employment; or

37 (2) That the claims were caused by the intentional or willful and wanton  
38 misconduct of the employee.

39 (i) In any legal action in which the receiver is a defendant, that portion of any  
40 settlement relating to the alleged act, error, or omission of the receiver is subject to the  
41 approval of the court before which the delinquency proceeding is pending. The court  
42 shall not approve that portion of the settlement if it determines:

43 (1) That the claim did not arise out of or by reason of the receiver's duties  
44 or employment; or

1           (2) That the claim was caused by the intentional or willful and wanton  
2           misconduct of the receiver.

3           (j) Nothing in this section deprives the receiver or any employee of any  
4 immunity, indemnity, benefits of law, rights, or any defense otherwise available.

5           (k) Subsection (b) of this section applies to any suit based in whole or in part on  
6 any alleged act, error, or omission that occurs on or after October 1, 1993.

7           (l) No legal action shall lie against the receiver or any employee based in whole  
8 or in part on any alleged act, error, or omission that occurred before October 1, 1993,  
9 unless suit is filed and valid service of process is obtained within 12 months after  
10 October 1, 1993.

11           (m) Subsections (c), (h), and (i) of this section apply to any suit that is pending on  
12 or filed after October 1, 1993 without regard to when the alleged act, error, or omission  
13 took place."

14           Sec. 41. G.S. 58-30-95 reads as rewritten:

15 **"§ 58-30-95. Termination of rehabilitation.**

16           (a) Whenever the rehabilitator believes further attempts to rehabilitate an insurer  
17 would substantially increase the risk of loss to creditors, policyholders or the public, or  
18 would be futile, the rehabilitator may petition the Court for an order of liquidation. A  
19 petition under this subsection shall have the same effect as a petition under G.S. 58-30-  
20 100. The Court may make such findings and issue such orders at any time upon its own  
21 motion. The Court shall permit the directors of the insurer to take such actions as are  
22 reasonably necessary to defend against the petition and may order payment from the  
23 estate of the insurer of such costs and other expenses of defense as justice may ~~require~~.  
24 require; provided the directors have a good faith belief in opposing insurer's liquidation  
25 on grounds of insolvency. The directors have the burden of proving good faith. Good  
26 faith must be manifested in two ways: opposition efforts, attorneys' fees and resulting  
27 fees, must be based upon reasonable grounds and probable cause for an honest belief  
28 that the company is actually solvent and that continued operations of the business are  
29 for the best interest of the policyholders, stockholders, and creditors.

30           (b) The rehabilitator may at any time petition the Court for an order terminating  
31 rehabilitation of an insurer. The Court shall also permit the directors of the insurer to  
32 petition the Court for an order terminating rehabilitation of the insurer and may order  
33 payment from the estate of the insurer of such costs and other expenses of such petition  
34 as justice may ~~require~~. require; provided the directors have a good faith belief in  
35 opposing insurer's liquidation on grounds of insolvency. The directors have the burden  
36 of proving good faith. Good faith must be manifested in two ways: opposition efforts,  
37 attorneys' fees and resulting fees, must be based upon reasonable grounds and probable  
38 cause for an honest belief that the company is actually solvent and that continued  
39 operations of the business is for the best interest of the policyholders, stockholders, and  
40 creditors. If the Court finds that rehabilitation has been accomplished and that grounds  
41 for rehabilitation under G.S. 58-30-75 no longer exist, it shall order that the insurer be  
42 restored to possession of its property and the control of the business. The Court may  
43 also make that finding and issue that order at any time upon its own motion."

44           Sec. 42. G.S. 58-30-220 reads as rewritten:

1 **"§ 58-30-220. Priority of distribution.**

2 The priority of distribution of claims from the insurer's estate shall be in accordance  
3 with the order in which each class of claims is set forth in this section. Every claim in  
4 each class shall be paid in full or adequate funds shall be retained for such payment  
5 before the members of the next class receive any payment. No subcategories shall be  
6 established within the categories in any class. The order of distribution of claims shall  
7 be:

- 8 (1) ~~Claims for cost of administration and conservation of assets of the insurer.~~  
9 Claims of the receiver for costs incurred for the administration and  
10 conservation of assets of the insurer.
- 11 (2) Compensation actually owing to employees other than officers of the  
12 insurer for services rendered within three months prior to the  
13 commencement of a delinquency proceeding against the insurer under  
14 this Article, but not exceeding one thousand dollars (\$1,000) for each  
15 employee. In the discretion of the Commissioner, this compensation  
16 may be paid as soon as practicable after the proceeding has been  
17 commenced. This priority is in lieu of any other similar priority that  
18 may be authorized by law as to wages or compensation of those  
19 employees.
- 20 (3) ~~Claims or portions of claims—~~Any unpaid claim or portion of claim not  
21 covered by a foreign or domestic guaranty association for benefits  
22 under policies and for losses incurred, including claims of third parties  
23 under liability policies, up to an amount of three hundred thousand  
24 dollars (\$300,000) per claim and claims of domestic and foreign guaranty  
25 associations; claim; but excluding (i) claims of insureds or third-party  
26 claimants if the insured had coverage at the time of the loss with a  
27 solvent insurer equal to or greater than three hundred thousand dollars  
28 (\$300,000) and applicable to the claimant's loss, or if the insured has  
29 coverage applicable to the loss that is written subject to a self-insured  
30 retention equal to or greater than three hundred thousand dollars  
31 (\$300,000); and (ii) claims of domestic and foreign guaranty  
32 associations, insurance pools, underwriting associations, or those  
33 arising out of reinsurance agreements, claims of other insurers for  
34 subrogation, and claims of insurers for payments and settlements under  
35 uninsured and underinsured motorist coverages.
- 36 (4) ~~Claims for unearned premiums.~~not covered by a foreign or domestic  
37 guaranty association.
- 38 (5) ~~Claims of general creditors, including claims of insurance pools,~~  
39 ~~underwriting associations, or those arising out of reinsurance~~  
40 ~~agreements; claims of other insurers for subrogation; those portions of~~  
41 ~~claims for benefits under policies and for losses incurred, including~~  
42 ~~claims of third parties under liability policies, in excess of three~~  
43 ~~hundred thousand dollars (\$300,000) per claim; and claims of insurers~~  
44 ~~for payments and settlements under uninsured and underinsured~~

1 ~~motorist coverages.—Claims of any type made by foreign or domestic~~  
 2 ~~guaranty associations.~~

- 3 (6) Claims of general creditors, including claims of insurance pools,  
 4 underwriting associations, or those arising out of reinsurance  
 5 agreements; claims of other insurers for subrogation; those portions of  
 6 claims for benefits under policies and for losses incurred, including  
 7 claims of third parties under liability policies, in excess of three  
 8 hundred thousand dollars (\$300,000) per claim; and claims of insurers  
 9 for payments and settlements under uninsured and underinsured  
 10 motorist coverages."

11 Sec. 43. G.S. 58-34-2(a) reads as rewritten:

12 "(a) As used in this Article:

- 13 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under  
 14 common control', means the direct or indirect possession of the power  
 15 to direct or cause the direction of the management and policies of a  
 16 person, whether through the ownership of voting securities, by contract  
 17 other than a commercial contract for goods or nonmanagement  
 18 services, or otherwise, unless the power is the result of an official  
 19 position with or corporate office held by the person.
- 20 (2) 'Insurer' means a domestic insurer but does not mean a reciprocal  
 21 regulated under Article 15 of this Chapter.
- 22 (3) 'Managing general agent' or 'MGA' means any person who ~~negotiates~~  
 23 ~~and binds ceding reinsurance contracts on behalf of an insurer or manages~~  
 24 all or part of the insurance business of an insurer (including the  
 25 management of a separate division, department, or underwriting  
 26 office) and acts as an agent for the insurer, whether known as a  
 27 managing general agent, manager, or other similar term, who, with or  
 28 without the authority, either separately or together with persons under  
 29 common control, produces, directly or indirectly, and underwrites an  
 30 amount of gross direct written premium equal to or more than five  
 31 percent (5%) of the policyholder surplus as reported in the last annual  
 32 statement of the insurer in any one quarter or year together with one or  
 33 more of the following activities related to the business produced: (i)  
 34 adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of  
 35 the insurer. 'MGA' does not mean an employee of the insurer; an  
 36 underwriting manager who, pursuant to contract, manages all or part of  
 37 the insurance operations of the insurer, is under common control with  
 38 the insurer, is subject to Article 19 of this Chapter, and whose  
 39 compensation is not based on the volume of premiums written; ~~or~~ a  
 40 person who, under Article 15 of this Chapter, is designated and  
 41 authorized by subscribers as the attorney-in-fact for a reciprocal  
 42 having authority to obligate them on reciprocal and other insurance  
 43 contracts; or a U.S. Manager of the United States branch of an alien  
 44 insurer.

1 (4) 'Qualified actuary' means a person who meets the standards of a  
2 qualified actuary as specified in the NAIC Annual Statement  
3 Instructions, as amended or clarified by rule, order, directive, or  
4 bulletin of the Department, for the type of insurer for which the MGA  
5 is establishing loss reserves.

6 (5) 'Underwrite' means the authority to accept or reject risk on behalf of  
7 the insurer."

8 Sec. 44. G.S. 58-34-2(d) reads as rewritten:

9 "(d) No person acting as an MGA shall place business with an insurer unless there  
10 is in force a written contract between the MGA and the insurer that sets forth the  
11 responsibilities of each party and, where both parties share responsibility for a particular  
12 function, specifies the division of such responsibilities, and that contains the following  
13 minimum provisions:

14 (1) The insurer may terminate the contract for cause upon written notice to  
15 the MGA. The insurer may suspend the underwriting authority of the  
16 MGA during the pendency of any dispute regarding the cause for  
17 termination.

18 (2) The MGA will render accounts to the insurer detailing all transactions  
19 and remit all funds due under the contract to the insurer on not less  
20 than a monthly basis.

21 (3) All funds collected for the account of an insurer will be held by the  
22 MGA in a fiduciary capacity in a bank that is a member of the Federal  
23 Reserve System. This account shall be used for all payments on behalf  
24 of the insurer. The MGA may retain no more than three months  
25 estimated claims payments and allocated loss adjustment expenses.

26 (4) Separate records of business written by the MGA will be maintained.  
27 The insurer shall have access to and right to copy all accounts related  
28 to its business in a form usable by the insurer, and the Commissioner  
29 shall have access to all books, bank accounts, and records of the MGA  
30 in a form usable to the Commissioner. The records shall be retained  
31 according to the provisions of 11 NCAC 11C.0105.

32 (5) The contract may not be assigned in whole or part by the MGA.

33 (6) Appropriate underwriting guidelines, including: the maximum annual  
34 premium volume; the basis of the rates to be charged; the types of risks  
35 that may be written; maximum limits of liability; applicable  
36 exclusions; territorial limitations; policy cancellation provisions; and  
37 the maximum policy period. The insurer shall have the right to cancel  
38 or nonrenew any policy of insurance subject to applicable laws and  
39 rules.

40 (7) If the contract permits the MGA to settle claims on behalf of the  
41 insurer:

42 a. All claims must be reported to the ~~MGA~~insurer in a timely  
43 manner.



- 1                   b.     A copy of the claim file will be sent to the insurer at its request  
2                   or as soon as it becomes known that the claim: has the potential  
3                   to exceed an amount determined by the insurer and approved by  
4                   the Commissioner; involves a coverage dispute; may exceed the  
5                   MGA's claims settlement authority; is open for more than six  
6                   months; or is closed by payment of an amount set by the insurer  
7                   and approved by the Commissioner.  
8                   c.     All claim files will be the joint property of the insurer and  
9                   MGA. However, upon an order of liquidation of the insurer the  
10                  files shall become the sole property of the insurer or its estate;  
11                  the MGA shall have reasonable access to and the right to copy  
12                  the files on a timely basis.  
13                  d.     Any settlement authority granted to the MGA may be  
14                  terminated for cause upon the insurer's written notice to the  
15                  MGA or upon the termination of the contract. The insurer may  
16                  suspend the settlement authority during the pendency of any  
17                  dispute regarding the cause for termination.  
18           (8)     Where electronic claims files are in existence, the contract must  
19                  address the timely transmission of the data.  
20           (9)     If the contract provides for a sharing of interim profits by the MGA,  
21                  and the MGA has the authority to determine the amount of the interim  
22                  profits by establishing loss reserves, controlling claim payments, or by  
23                  any other manner, interim profits will not be paid to the MGA until  
24                  one year after they are earned for property insurance business and five  
25                  years after they are earned on casualty business and not until the  
26                  profits have been verified under subsection (m) of this section.  
27           (10)    The MGA shall not:  
28                  a.     Bind reinsurance or retrocessions on behalf of the insurer,  
29                  except that the MGA may bind facultative reinsurance contracts  
30                  pursuant to obligatory facultative agreements if the contract  
31                  with the insurer contains reinsurance underwriting guidelines  
32                  including, for both reinsurance assumed and ceded, a list of  
33                  reinsurers with which such automatic agreements are in effect,  
34                  the coverages and amounts or percentages that may be  
35                  reinsured, and commission schedules;  
36                  b.     Commit the insurer to participate in insurance or reinsurance  
37                  syndicates;  
38                  c.     Appoint any producer without assuring that the producer is  
39                  lawfully licensed to transact the type of insurance for which the  
40                  producer is appointed;  
41                  d.     Without prior approval of the insurer, pay or commit the insurer  
42                  to pay a claim over a specified amount, net of reinsurance,  
43                  which shall not exceed one percent (1%) of the insurer's

1 policyholder's surplus as of the preceding December 31 ~~of the~~  
2 ~~last completed calendar year;~~

- 3 e. Collect any payment from a reinsurer or commit the insurer to  
4 any claim settlement with a reinsurer, without the insurer's prior  
5 approval. If prior approval is given, a report must be promptly  
6 forwarded to the insurer;  
7 f. Permit its subproducer to serve on the insurer's board of  
8 directors;  
9 g. Jointly employ an individual who is employed with the insurer;  
10 or  
11 h. Appoint a sub-MGA."

12 Sec. 45. G.S. 58-34-2(i) reads as rewritten:

13 "(i) Within 15 days after entering into or termination of a contract with an MGA,  
14 the insurer shall provide written notification of the appointment or termination to the  
15 Commission. Notices of appointment of an MGA shall include a copy of the contract, a  
16 statement of duties that the MGA is expected to perform on behalf of the insurer, the  
17 ~~kinds-lines~~ of insurance for which the MGA is to be authorized to act, whether any  
18 affiliation exists between the insurer and the MGA and the basis for the affiliation,  
19 NAIC biographical affidavit for each officer, director, and each person who owns ten  
20 percent (10%) or more of the outstanding voting stock of the MGA, and any other  
21 information the Commissioner may request. The Commissioner may prescribe the form  
22 to be used for notification of the information required by this item."

23 Sec. 46. G.S. 58-34-2(l) reads as rewritten:

24 "(l) An insurer shall not appoint to its board of directors an officer, director,  
25 employee, subagent, or controlling shareholder of its MGAs. This subsection does not  
26 apply to relationships governed by Article 19 of this Chapter or, if applicable, ~~G.S. 58-~~  
27 ~~7-157. G.S. 58-3-165."~~

28 Sec. 47. G.S. 58-34-2(n) reads as rewritten:

29 "(n) ~~If the Commissioner finds after a hearing conducted in accordance with G.S. 58-2-~~  
30 ~~50 that any person has violated any provision of this Article, determines that an MGA or any~~  
31 ~~other person has not materially complied with this section or with any rule adopted or~~  
32 ~~order issued under this section, after notice and opportunity to be heard, the~~  
33 ~~Commissioner may order:~~

- 34 (1) For each separate violation, a civil penalty ~~of one thousand dollars~~  
35 ~~(\$1,000) to be credited to the General Fund; under the procedures in G.S.~~  
36 ~~58-2-70(d); or~~  
37 (2) Revocation or suspension of the ~~agent's license, or person's license.~~  
38 (3) ~~The MGA to reimburse the insurer or the rehabilitator or liquidator of~~  
39 ~~the insurer for any losses incurred by the insurer caused by a violation~~  
40 ~~of this Article committed by the MGA.~~

41 If the Commissioner finds that because of a material noncompliance that an insurer has  
42 suffered any loss or damage, the Commissioner may maintain a civil action brought by  
43 or on behalf of the insurer and its policyholders and creditors for recovery of

1 compensatory damages for the benefit of the insurer and its policyholders and creditors  
2 or for other appropriate relief."

3 Sec. 48. G.S. 58-34-2 is amended by adding a new subsection to read:

4 "(p) If an order of rehabilitation or liquidation of the insurer has been entered  
5 under Article 30 of this Chapter, and the receiver appointed under that order determines  
6 that the MGA or any other person has not materially complied with this section, or any  
7 regulation or order promulgated thereunder, and the insurer suffered any loss or damage  
8 therefrom, the receiver may maintain a civil action for recovery of damages or other  
9 appropriate sanctions for the benefit of the insurer."

10 Sec. 49. G.S. 58-34-10 reads as rewritten:

11 **"§ 58-34-10. Management contracts.**

12 ~~(a) All agreements or contracts under which any person is delegated management~~  
13 ~~duties or control of a domestic insurer, or which transfer a substantial part of any major~~  
14 ~~function of a domestic insurer such as adjustment of losses, production of business,~~  
15 ~~investment of assets, or general servicing of the insurer's business must be filed with the~~  
16 ~~Commissioner on or before the effective date of such contract or agreement. Subject to~~  
17 ~~G.S. 58-19-30(b)(4), any domestic insurer that enters into a management contract must~~  
18 ~~file that contract with the Commissioner on or before its effective date. As used in this~~  
19 ~~section, 'management contract' means any agreement or contract under which any~~  
20 ~~person is delegated management duties or control of an insurer, or transfers a substantial~~  
21 ~~part of any major function of an insurer, such as adjustment of losses, production of~~  
22 ~~business, investment of assets, or general servicing of the insurer's business.~~

23 ~~(b) There shall be exempted from the filing requirement of this section contracts~~  
24 ~~by groups of affiliated insurers on a pooled funds basis or service company management~~  
25 ~~basis, where costs to the individual member insurers are charged on an actually incurred~~  
26 ~~or closely estimated basis. However, these contracts must be reduced to written form.~~  
27 ~~Any domestic insurer that has a management contract shall file a statement with the~~  
28 ~~initial filing of that contract that discloses (i) criteria on which charges to the insurer are~~  
29 ~~based for that contract; (ii) whether management personnel or other employees of the~~  
30 ~~insurer are to be performing management functions and receiving any remuneration~~  
31 ~~therefor through that contract in addition to the compensation by way of salary received~~  
32 ~~directly from the insurer for their services; (iii) whether the contract transfers substantial~~  
33 ~~control of the insurer or any of the powers vested in the board of directors, by statute,~~  
34 ~~articles of incorporation, or bylaws, or substantially all of the basic functions of the~~  
35 ~~insurer's management; (iv) biographical information for each officer and director of the~~  
36 ~~management firm; and (v) other information concerning the contract or the management~~  
37 ~~firm as may be included from time to time in any registration forms adopted or~~  
38 ~~approved by the Commissioner. Such statement shall be filed on a form prescribed by~~  
39 ~~the Commissioner.~~

40 ~~(c) Any domestic insurer that amends or cancels a management contract filed~~  
41 ~~pursuant to subsection (a) of this section shall notify the Commissioner thereof within~~  
42 ~~15 business days after the amendment or cancellation. If the contract is amended, the~~  
43 ~~notice shall provide a copy of the amended contract and shall disclose if the amendment~~

1 affects any of the items in subsection (b) of this section. The Commissioner may  
2 prescribe a form to be used to provide notice under this subsection.

3 (d) Any domestic insurer that has a management contract shall file a statement on  
4 or before March 1 of each year, for the preceding calendar year, disclosing (i) total  
5 charges incurred by the insurer under the contract; (ii) any salaries, commissions, or  
6 other valuable consideration paid by the insurer directly to any officer, director, or  
7 shareholder of the management firm; and (iii) other information concerning the contract  
8 or the management firm as may be included from time to time in any registration forms  
9 adopted or approved by the Commissioner. The Commissioner may prescribe a form to  
10 be used to provide the information required by this subsection.

11 (e) Any domestic insurer that has a management contract may request an  
12 exemption from the filing requirements of this section if the contract is for a group of  
13 affiliated insurers on a pooled funds basis or service company management basis, where  
14 costs to the individual member insurers are charged on an actually incurred or closely  
15 estimated basis. The request for an exemption must be in writing, must explain the  
16 basis for the exemption, and must be received by the Commissioner on or before the  
17 effective date of the contract. As used in this subsection, 'affiliated' has the same  
18 meaning as in G.S. 58-19-5(1). Management contracts exempted under this subsection  
19 must still be reduced to written form."

20 Sec. 50. G.S. 58-34-15 reads as rewritten:

21 **"§ 58-34-15. Grounds for disapproval.**

22 (a) The Commissioner must disapprove any management contract ~~or service~~  
23 ~~agreement~~ filed under G.S. 58-34-10 if, at any time, the Commissioner finds:

- 24 (1) That the service or management charges are based upon criteria  
25 unrelated either to the managed insurer's profits or to the reasonable  
26 customary and usual charges for such services or are based on factors  
27 unrelated to the value of such services to the insurer; or
- 28 (2) That management personnel or other employees of the insurer are to be  
29 performing management functions and receiving any remuneration  
30 therefor through the management or service contract in addition to the  
31 compensation by way of salary received directly from the insurer for  
32 their services; or
- 33 (3) That the contract would transfer substantial control of the insurer or  
34 any of the powers vested in the board of directors, by statute, articles  
35 of incorporation, or bylaws, or substantially all of the basic functions  
36 of the insurance company management; or
- 37 (4) That the contract contains provisions that would be clearly detrimental  
38 to the best interest of policyholders, stockholders, or members of the  
39 insurer; or
- 40 (5) That the officers and directors of the management firm are of known  
41 bad character or have been affiliated, directly or indirectly, through  
42 ownership, control, management, reinsurance transactions, or other  
43 insurance or business relations with any person known to have been

1 involved in the improper manipulation of assets, accounts, or  
2 reinsurance.

3 (b) If the Commissioner disapproves ~~of any management contract or service~~  
4 ~~agreement, contract,~~ notice of such action shall be given to the insurer assigning the  
5 reasons therefor in writing. The Commissioner shall grant any party to the contract a  
6 hearing upon request according to G.S. 58-2-50."

7 Sec. 51. G.S. 58-48-20 reads as rewritten:

8 **"§ 58-48-20. Definitions.**

9 As used in this Article:

- 10 (1) 'Account' means any one of the three accounts created by G.S. 58-48-  
11 25.
- 12 (1a) 'Affiliate' means a person who directly, or indirectly, through one or  
13 more intermediaries, controls, is controlled by, or is under common  
14 control with an insolvent insurer on December 31 of the year next  
15 preceding the date the insurer becomes an insolvent insurer.
- 16 (2) 'Association' means the North Carolina Insurance Guaranty  
17 Association created under G.S. 58-48-25.
- 18 (2a) 'Claimant' means any insured making a first party claim or any person  
19 instituting a liability claim; provided that no person who is an affiliate  
20 of the insolvent insurer may be a claimant.
- 21 (3) Repealed by Session Laws 1991, c. 720, s. 6.
- 22 (3a) 'Control' means the possession, direct or indirect, of the power to direct  
23 or cause the direction of the management and policies of a person,  
24 whether through the ownership of voting securities, by contract other  
25 than a commercial contract for goods or nonmanagement services, or  
26 otherwise, unless the power is the result of an official position with or  
27 corporate office held by the person. Control shall be presumed to exist  
28 if any person, directly or indirectly owns, controls, holds with the  
29 power to vote, or holds proxies representing ten percent (10%) or more  
30 of the voting securities of any other person. This presumption may be  
31 rebutted by a showing that control does not exist in fact.
- 32 (4) 'Covered claim' means an unpaid claim, including one of unearned  
33 premiums, which is in excess of fifty dollars (\$50.00) and arises out of  
34 and is within the coverage and not in excess of the applicable limits of  
35 an insurance policy to which this Article applies as issued by an  
36 insurer, if such insurer becomes an insolvent insurer after the effective  
37 date of this Article and (i) the claimant or insured is a resident of this  
38 State at the time of the insured ~~event; event;~~ (ii) the claimant or  
39 insured was a resident of this State at the time the applicable policy  
40 was issued or renewed, the term of such policy had not expired at the  
41 time of the insured event, and no other guaranty association provides  
42 coverage for the insured event; provided that for entities other than an  
43 individual, the residence of a claimant or insured is the state in which  
44 its principal place of business is located at the time of the insured

1 event; or ~~(ii)~~–(iii) the property from which the claim arises is  
2 permanently located in this State. 'Covered claim' includes a claim  
3 under a policy issued by a member insurer, which policy is later  
4 transferred to an unlicensed insurer through merger, consolidation, or  
5 assumption reinsurance agreement, and such insurer subsequently  
6 becomes an insolvent insurer, except for the fact that such insurer is  
7 not licensed in this State, and the policy is not covered under the  
8 insolvent insurer's domiciliary state's applicable insurance guaranty  
9 association. 'Covered claim' shall not include any amount awarded as  
10 punitive or exemplary damages; sought as a return of premium under  
11 any retrospective rating plan; or due any reinsurer, insurer, insurance  
12 pool, or underwriting association, as subrogation or contribution  
13 recoveries or otherwise.

14 (5) 'Insolvent insurer' means (i) an insurer licensed and authorized to  
15 transact insurance in this State either at the time the policy was issued  
16 or when the insured event occurred and (ii) against whom an order of  
17 liquidation with a finding of insolvency has been entered after the  
18 effective date of this Article by a court of competent jurisdiction in the  
19 insurer's state of domicile or of this State under the provisions of  
20 Article 30 of this Chapter, and which order of liquidation has not been  
21 stayed or been the subject of a **writ of supersedeas** or other  
22 comparable order.

23 (6) 'Member insurer' means any person who (i) writes any kind of  
24 insurance to which this Article applies under G.S. 58-48-10, including  
25 the exchange of reciprocal or interinsurance contracts, and (ii) is  
26 licensed and authorized to transact insurance in this State.

27 (7) 'Net direct written premiums' means direct gross premiums written in  
28 this State on insurance policies to which this Article applies, less  
29 return premiums thereon and dividends paid or credited to  
30 policyholders on such direct business. 'Net direct written premiums'  
31 does not include premiums on contracts between insurers or reinsurers.

32 (8) 'Person' means any individual, corporation, partnership, association or  
33 voluntary organization.

34 (9) 'Policyholder' means the person to whom an insurance policy to which  
35 this Article applies was issued by an insurer which has become an  
36 insolvent insurer."

37 Sec. 52. G.S. 58-58-50 is amended by adding the following new subsections:

38 "(i) Every life insurance company doing business in this State shall annually  
39 submit the opinion of a qualified actuary as to whether the reserves and related actuarial  
40 items held in support of the policies and contracts specified by the Commissioner by  
41 rule are computed appropriately, are based on assumptions that satisfy contractual  
42 provisions, are consistent with previously reported amounts, and comply with applicable  
43 laws of this State. The Commissioner by rule shall define the specifics of this opinion  
44 and add any other items deemed to be necessary to its scope. Every life insurance

1 company, except as exempted by or pursuant to rule, shall also annually include in the  
2 opinion required by this subsection, an opinion of the same qualified actuary as to  
3 whether the reserves and related actuarial items held in support of the policies and  
4 contracts specified by the Commissioner by rule, when considered in light of the assets  
5 held by the company with respect to the reserves and related actuarial items, including  
6 but not limited to the investment earnings on the assets and the considerations  
7 anticipated to be received and retained under the policies and contracts, make adequate  
8 provision for the company's obligations under the policies and contracts, including but  
9 not limited to the benefits under and expenses associated with the policies and contracts.  
10 The Commissioner may provide by rule for a transition period for establishing any  
11 higher reserves that the qualified actuary may deem to be necessary in order to render  
12 the opinion required by this subsection.

13 (j) Each opinion required by subsection (i) of this section shall be governed by  
14 the following provisions:

15 (1) A memorandum, in form and substance acceptable to the  
16 Commissioner as specified by rule, shall be prepared to support each  
17 actuarial opinion.

18 (2) If the insurance company fails to provide a supporting memorandum at  
19 the request of the Commissioner within a period specified by rule or  
20 the Commissioner determines that the supporting memorandum  
21 provided by the insurance company fails to meet the standards  
22 prescribed by the rules or is otherwise unacceptable to the  
23 Commissioner, the Commissioner may engage a qualified actuary at  
24 the expense of the company to review the opinion and the basis for the  
25 opinion and prepare such supporting memorandum as is required by  
26 the Commissioner.

27 (3) The opinion shall be submitted with the annual statement reflecting the  
28 valuation of such reserve liabilities for each year ending on or after  
29 December 31, 1994.

30 (4) The opinion shall apply to all business in force including individual  
31 and group health insurance plans, in form and substance acceptable to  
32 the commissioner as specified by rule.

33 (5) The opinion shall be based on standards adopted from time to time by  
34 the actuarial standards board and on such additional standards as the  
35 Commissioner may by rule prescribe.

36 (6) In the case of an opinion required to be submitted by a foreign or alien  
37 company, the commissioner may accept the opinion filed by that  
38 company with the insurance supervisory official of another state if the  
39 Commissioner determines that the opinion reasonably meets the  
40 requirements applicable to a company domiciled in this State.

41 (7) For the purposes of this section, 'qualified actuary' means a member in  
42 good standing of the American Academy of Actuaries who meets the  
43 requirement set forth in such rules.

- 1           (8) Except in cases of fraud or willful misconduct, the qualified actuary  
2 shall not be liable for damages to any person (other than the insurance  
3 company and the Commissioner) for any act, error, omission, decision,  
4 or conduct with respect to the actuary's opinion.
- 5           (9) Disciplinary action by the Commissioner against the company or the  
6 qualified actuary shall be defined in rules by the Commissioner.
- 7           (10) Any memorandum in support of the opinion, and any other material  
8 provided by the company to the Commissioner in connection  
9 therewith, shall be kept confidential by the Commissioner and shall not  
10 be made public and shall not be subject to subpoena, other than for the  
11 purpose of defending an action seeking damages from any person by  
12 reason of any action required by this section or by rules adopted under  
13 this section; provided, however, that the memorandum or other  
14 material may otherwise be released by the Commissioner (i) with the  
15 written consent of the company or (ii) to the American Academy of  
16 Actuaries upon request stating the memorandum or other material is  
17 required for the purpose of professional disciplinary proceedings and  
18 setting forth procedures satisfactory to the Commissioner for  
19 preserving the confidentiality of the memorandum or other material.  
20 Once any portion of the confidential memorandum is cited by the  
21 company in its marketing or is cited before any governmental agency  
22 other than a state insurance department or is released by the company  
23 to the news media, all portions of the confidential memorandum shall  
24 be no longer confidential.

25       (k) The Commissioner shall adopt rules containing the minimum standards  
26 applicable to the valuation of health plans."

27       Sec. 53. G.S. 58-58-50(c)(1) reads as rewritten:

28       "(1) Except as otherwise provided in subdivisions (3) and (4) of this  
29 subsection, the minimum standard for the valuation of all such policies  
30 and contracts issued ~~prior to~~ before the operative-effective date of G.S.  
31 ~~58-58-55~~ this section shall be that provided by the laws in effect  
32 immediately ~~prior to such~~ before that date, except that the minimum  
33 standard for the valuation of annuities and pure endowments purchased  
34 under group annuity and pure endowment contracts issued ~~prior to such~~  
35 ~~effective~~ before that date shall be that provided by the laws in effect  
36 immediately ~~prior to such~~ before that date but replacing the interest  
37 rates specified in such laws by an interest rate of five percent (5%) per  
38 annum, and five and one-half percent (5 1/2%) interest for single  
39 premium life insurance policies."

40       Sec. 54. G.S. 58-58-50(c)(2) reads as rewritten:

41       "(2) Except as otherwise provided in subdivisions (3) and (4) of this  
42 subsection, the minimum standards for the valuation of all such  
43 policies and contracts issued on or after the ~~operative date of G.S. 58-58-~~  
44 ~~55~~ effective date of this section shall be the Commissioner's reserve



1 valuation methods defined in subsections (d), (d-1) and (g), five  
2 percent (5%) interest for group annuity and pure endowment contracts  
3 and three and one-half percent (3 1/2%) interest for all other policies  
4 and contracts, or, in the case of policies and contracts other than  
5 annuity and pure endowment contracts, issued on or after July 1, 1975,  
6 four percent (4%) interest for such policies issued prior to April 19,  
7 1979, and four and one-half percent (4 1/2%) interest for such policies  
8 issued on or after April 19, 1979, and the following tables:

9 a. For all ordinary policies of life insurance issued on the standard  
10 basis, excluding any disability and accidental death benefits in  
11 such policies – the Commissioner's 1941 Standard Ordinary  
12 Mortality Table for such policies issued prior to the operative  
13 date of subdivision (e)(2) of G.S. 58-58-55, the Commissioner's  
14 1958 Standard Ordinary Mortality Table for such policies  
15 issued on or after the operative date of subdivision (e)(2) of  
16 G.S. 58-58-55 prior to the operative date of subdivision (e)(4)  
17 of G.S. 58-58-55, provided that for any category of such  
18 policies issued on female risks, all modified net premiums and  
19 present values referred to in this section may be calculated  
20 according to an age not more than six years younger than the  
21 actual age of the insured; and, for such policies issued on or  
22 after the operative date of subdivision (e)(4) of G.S. 58-58-55,  
23 (i) the Commissioner's 1980 Standard Ordinary Mortality  
24 Table, or (ii) at the election of the company for any one or more  
25 specified plans of life insurance, the Commissioner's 1980  
26 Standard Ordinary Mortality Table with Ten-Year Select  
27 Mortality Factors, or (iii) any ordinary mortality table, adopted  
28 after 1980 by the NAIC, that is approved by regulation  
29 promulgated by the Commissioner for use in determining the  
30 minimum standard of valuation for such policies;

31 b. For all industrial life insurance policies issued on the standard  
32 basis, excluding any disability and accidental death benefits in  
33 such policies – the 1941 Standard Industrial Mortality Table for  
34 such policies issued prior to the operative date of subdivision  
35 (e)(3) of G.S. 58-58-55 and for such policies issued on or after  
36 such operative date the Commissioner's 1961 Standard  
37 Industrial Mortality Table or any industrial mortality table,  
38 adopted after 1980 by the NAIC, that is approved by regulation  
39 promulgated by the Commissioner for use in determining the  
40 minimum standard of valuation for such policies;

41 c. For individual annuity and pure endowment contracts,  
42 excluding any disability and accidental death benefits in such  
43 policies – the 1937 Standard Annuity Mortality Table or, at the  
44 option of the company, the Annuity Mortality Table for 1949,

- 1 Ultimate, or any modification of either of these tables approved  
2 by the Commissioner;
- 3 d. For group annuity and pure endowment contracts, excluding  
4 any disability and accidental death benefits in such policies –  
5 the Group Annuity Mortality Table for 1951, any modification  
6 of such table approved by the Commissioner, or, at the option  
7 of the company, any of the tables or modifications of tables  
8 specified for individual annuity and pure endowment contracts;
- 9 e. For total and permanent disability benefits in or supplementary  
10 to ordinary policies or contracts – for policies or contracts  
11 issued on or after January 1, 1966, the tables of Period 2  
12 disablement rates and the 1930 to 1950 termination rates of the  
13 1952 Disability Study of the Society of Actuaries, with due  
14 regard to the type of benefit or any tables of disablement rates  
15 and termination rates, adopted after 1980 by the NAIC, that are  
16 approved by regulation promulgated by the Commissioner for  
17 use in determining the minimum standard of valuation for such  
18 policies; for policies or contracts issued on or after January 1,  
19 1961, and prior to January 1, 1966, either such tables or, at the  
20 option of the company, the Class (3) Disability Table (1926);  
21 and for policies issued prior to January 1, 1961, the Class (3)  
22 Disability Table (1926). Any such table shall, for active lives,  
23 be combined with a mortality table permitted for calculating the  
24 reserves for life insurance policies;
- 25 f. For accidental death benefits in or supplementary to policies –  
26 for policies issued on or after January 1, 1966, the 1959  
27 Accidental Death Benefits Table or any accidental death  
28 benefits table, adopted after 1980 by the NAIC, that is approved  
29 by regulation promulgated by the Commissioner for use in  
30 determining the minimum standard of valuation for such  
31 policies; for policies issued on or after January 1, 1961, and  
32 prior to January 1, 1966, either such table or, at the option of  
33 the company, the Inter-Company Double Indemnity Mortality  
34 Table; and for policies issued prior to January 1, 1961, the  
35 Inter-Company Double Indemnity Mortality Table. Either table  
36 shall be combined with a mortality table permitted for  
37 calculating the reserves for life insurance policies;
- 38 g. For group life insurance, life insurance issued on the  
39 substandard basis and other special benefits – such tables as  
40 may be approved by the Commissioner."

41 Sec. 55. G.S. 58-58-50(e) reads as rewritten:

- 42 "(e) In no event shall a company's aggregate reserves for all life insurance  
43 policies, excluding disability and accidental death benefits, issued on or after the  
44 effective date of ~~G.S. 58-58-55~~, this section, be less than the aggregate reserves

1 calculated in accordance with the methods set forth in subsections (d), (d-1), (g) and (h)  
2 of this section and the mortality table or tables and rate or rates of interest used in  
3 calculating nonforfeiture benefits for such policies. In no event shall the aggregate  
4 reserves for all policies, contracts, and benefits be less than the aggregate reserves  
5 determined by the qualified actuary to be necessary to render the opinion required by  
6 subsection (i) of this section."

7 Sec. 56. G.S. 58-58-50(f) reads as rewritten:

8 "(f) Reserves for all policies and contracts issued ~~prior to the operative date of G.S.~~  
9 ~~58-58-55 before the effective date of this section~~ may be calculated, at the option of the  
10 company, according to any standards ~~which that~~ produce greater aggregate reserves for  
11 ~~all such those~~ policies and contracts than the minimum reserves required by the laws in  
12 effect immediately ~~prior to such before that~~ date.

13 Reserves for any category of policies, contracts or benefits as established by the  
14 Commissioner, issued on or after ~~the operative date of G.S. 58-58-55,~~ the effective date of  
15 this section may be calculated, at the option of the company, according to any standards  
16 ~~which that~~ produce greater aggregate reserves for such category than those calculated  
17 according to the minimum standard herein provided, but the rate or rates of interest used  
18 for policies and contracts, other than annuity and pure endowment contracts, shall not  
19 be higher than the corresponding rate or rates of interest used in calculating any  
20 nonforfeiture benefits provided for therein.

21 Any such company ~~which at any time shall have adopted that~~ adopts any standard of  
22 valuation producing greater aggregate reserves than those calculated according to the  
23 minimum standard herein provided may, with the approval of the Commissioner, adopt  
24 any lower standard of valuation, but not lower than the minimum herein provided.  
25 Provided, however, that for the purposes of this section, the holding of additional  
26 reserves previously determined by a qualified actuary to be necessary to render the  
27 opinion required by subsection (c) of this section shall not be deemed to be the adoption  
28 of a higher standard of valuation."

29 Sec. 57. G.S. 58-58-55(b) reads as rewritten:

30 "(b) In the case of policies issued on or after the operative date of this section, as  
31 defined in subsection (h), no policy of life insurance, except as stated in subsection (g),  
32 shall be delivered or issued for delivery in this State unless it shall contain in substance  
33 the following provisions, or corresponding provisions which in the opinion of the  
34 Commissioner are at least as favorable to the defaulting or surrendering policyholder as  
35 are the minimum requirements hereinafter specified and are essentially in compliance  
36 with subsection (f1) of this section:

37 (1) That, in the event of default in any premium payment after premiums  
38 have been paid for at least one full year in the case of ordinary  
39 insurance or three full years in the case of industrial insurance, the  
40 company will grant, upon proper request not later than 60 days after  
41 the due date of the premium in default, a paid-up nonforfeiture benefit  
42 on a plan stipulated in the policy, effective as of such due date, of such  
43 amount as may be hereinafter specified. In lieu of such stipulated paid-  
44 up nonforfeiture benefit, the company may substitute, upon proper

1 request not later than 60 days after the due date of the premium in  
2 default, an actuarially equivalent alternative paid-up nonforfeiture  
3 benefit which provides a greater amount or longer period of death  
4 benefits or, if applicable, a greater amount or earlier payment of  
5 endowment benefits.

6 (2) That, upon surrender of the policy within 60 days after the due date of  
7 any premium payment in default after premiums have been paid for at  
8 least three full years in the case of ordinary insurance or five full years  
9 in the case of industrial insurance, the company will pay, in lieu of any  
10 paid-up nonforfeiture benefit, a cash surrender value of such amount as  
11 may be hereinafter specified.

12 (3) That a specified paid-up nonforfeiture benefit shall become effective  
13 as specified in the policy unless the person entitled to make such  
14 election elects another available option not later than 60 days after the  
15 due date of the premium in default. Nothing herein shall prevent the  
16 use of an automatic premium loan provision.

17 (4) That, if the policy shall have become paid up by completion of all  
18 premium payments or if it is continued under any paid-up  
19 nonforfeiture benefit which became effective on or after the third  
20 policy anniversary in the case of ordinary insurance or the fifth policy  
21 anniversary in the case of industrial insurance, the company will pay,  
22 upon surrender of the policy within 30 days after any policy  
23 anniversary, a cash surrender value of such amount as may be  
24 hereinafter specified.

25 (5) In the case of policies which cause on a basis guaranteed in the policy  
26 unscheduled changes in benefits or premiums, or which provide an  
27 option for changes in benefits or premiums other than a change to a  
28 new policy, a statement of the mortality table, interest rate, and method  
29 used in calculating cash surrender values and the paid-up nonforfeiture  
30 benefits available under the policy. In the case of all other policies, a  
31 statement of the mortality table and interest rate used in calculating the  
32 cash surrender values and the paid-up nonforfeiture benefits available  
33 under the policy, together with a table showing the cash surrender  
34 value, if any, and paid-up nonforfeiture benefit, if any available under  
35 the policy on each policy anniversary either during the first 20 policy  
36 years or during the term of the policy, whichever is shorter, such  
37 values and benefits to be calculated upon the assumption that there are  
38 no dividends or paid-up additions credited to the policy and that there  
39 is no indebtedness to the company on the policy.

40 (6) ~~A brief and general statement of the method to be used in calculating~~  
41 ~~the cash surrender value and the paid-up nonforfeiture benefit~~  
42 ~~available under the policy on any policy anniversary with an~~  
43 ~~explanation of the manner in which the cash surrender values and the~~  
44 ~~paid-up nonforfeiture benefits are altered by the existence of any paid-~~

1 ~~up additions credited to the policy or any indebtedness to the company~~  
 2 ~~on the policy.~~ A statement that the cash surrender values and the paid-  
 3 up nonforfeiture benefits available under the policy are not less than  
 4 the minimum values and benefits required by or pursuant to the  
 5 insurance law of the state in which the policy is delivered; an  
 6 explanation of the manner in which the cash surrender values and the  
 7 paid-up nonforfeiture benefits are altered by the existence of any paid-  
 8 up additions credited to the policy or any indebtedness to the company  
 9 on the policy; if a detailed statement of the method of computation of  
 10 the values and benefits shown in the policy is not stated therein, a  
 11 statement that such method of computation has been filed with the  
 12 Commissioner in which the policy is delivered; and a statement of the  
 13 method to be used in calculating the cash surrender value and paid-up  
 14 nonforfeiture benefit available under the policy on any policy  
 15 anniversary beyond the last anniversary for which such values and  
 16 benefits are consecutively shown in the policy.

17 Any of the foregoing provisions or portions thereof not applicable by reason of the  
 18 plan of insurance may, to the extent inapplicable, be omitted from the policy.

19 The company shall reserve the right to defer the payment of any cash surrender  
 20 value for a period of six months after demand therefor with surrender of the policy."

21 Sec. 58. G.S. 58-58-55(e1) reads as rewritten:

22 "(e1) In the case of any plan of life insurance which provides for future premium  
 23 determination, the amounts of which are to be determined by the insurance company  
 24 based on then estimates of future experience, or in the case of any plan of life insurance  
 25 which is of such a nature that minimum values cannot be determined by the methods  
 26 described in subsections (b), (c), (d), or (e) herein, then:

- 27 (1) The Commissioner must be satisfied that the benefits provided under  
 28 the plan are substantially as favorable to policyholders and insureds as  
 29 the minimum benefits otherwise required by subsections (b), (c), (d),  
 30 or (e) herein;
- 31 (2) The Commissioner must be satisfied that the benefits and the pattern of  
 32 premiums of that plan are not such as to mislead prospective  
 33 policyholders or insureds;
- 34 (3) The cash surrender values and paid-up nonforfeiture benefits provided  
 35 by such plan must not be less than the minimum values and benefits  
 36 required for the plan computed by a method consistent with the  
 37 principles of this Standard Nonforfeiture Law, as determined by  
 38 regulations promulgated by the ~~Commissioner~~ Commissioner;
- 39 (4) Notwithstanding any other provision in the laws of this State, any  
 40 policy, contract, or certificate providing life insurance under any such  
 41 plan must be affirmatively approved by the Commissioner before it  
 42 can be marketed, issued, delivered, or used in this State."

43 Sec. 59. G.S. 58-58-55 is amended by adding a new subsection to read:

1       "(i) For any single premium whole life or endowment insurance policy subject to  
2 subdivisions (e)(2) and (e)(3) of this section, a rate of interest not exceeding six and  
3 one-half percent (6 1/2%) per annum may be used."

4               Sec. 60. G.S. 58-62-16 reads as rewritten:

5       "**§ 58-62-16. Definitions.**

6       As used in this Article:

- 7           (1) 'Account' means any of the two accounts created under G.S. 58-62-26.
- 8           (2) 'Association' means the North Carolina Life and Health Insurance  
9           Guaranty Association created under G.S. 58-62-26.
- 10          (3) 'Board' means the board of directors of the Association established  
11          under G.S. 58-62-31.
- 12          (4) 'Contractual obligation' means any obligation under a policy or  
13          certificate under a group policy, or part thereof, for which coverage is  
14          provided under G.S. 58-62-21.
- 15          (5) 'Covered policy' means any policy within the scope of this Article  
16          under G.S. 58-62-21. 'Covered policy' includes a policy issued by a  
17          member insurer, which policy is transferred to an unlicensed insurer  
18          through merger, consolidation, or assumption reinsurance agreement,  
19          and such insurer subsequently becomes an insolvent insurer, except for  
20          the fact that such insurer is not licensed in this State, and the policy is  
21          not covered under the insolvent insurer's domiciliary state's applicable  
22          insurance guaranty association.
- 23          (6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer;  
24          and 'delinquency' means an insurer impairment or insolvency.
- 25          (7) 'Health insurance' includes accident and health insurance, accident  
26          insurance, and disability insurance.
- 27          (8) 'Impaired insurer' means a member insurer that, after the effective date  
28          of this Article, is not an insolvent insurer, and (i) is deemed by the  
29          Commissioner to be potentially unable to fulfill its contractual  
30          obligations or (ii) is placed under an order of rehabilitation or  
31          conservation by a court of competent jurisdiction.
- 32          (9) 'Insolvent insurer' means a member insurer that, after the effective date  
33          of this Article, is placed under an order of liquidation with a finding of  
34          insolvency by a court of competent jurisdiction.
- 35          (10) 'Insurance regulator' means the official or agency of another state that  
36          is responsible for the regulation of a foreign insurer.
- 37          (11) 'Member insurer' means any insurer licensed or that holds a license to  
38          transact in this State any kind of insurance for which coverage is  
39          provided under G.S. 58-62-21; and includes any insurer whose license  
40          in this State may have been suspended, revoked, not renewed or  
41          voluntarily withdrawn, but does not include an entity governed by  
42          Articles 65 through 67 of this Chapter; fraternal order or fraternal  
43          benefit society; mandatory State pooling plan; mutual assessment

1 company or any entity that operates on an assessment basis; insurance  
2 exchange; or any entity similar to any of the foregoing.

3 (12) 'Moody's Corporate Bond Yield Average' means the Monthly Average  
4 Corporates as published by Moody's Investors Service, Inc., or any  
5 successor thereto.

6 (13) 'Person' includes an individual, corporation, company, partnership,  
7 association, or aggregation of individuals.

8 (14) 'Plan' means the plan of operation established under G.S. 58-62-46.

9 (15) 'Policy' includes a contract of insurance and an annuity contract.

10 (16) 'Premiums' means amounts received in any calendar year on covered  
11 policies less premiums, considerations, and deposits returned thereon,  
12 and less dividends and experience credits thereon. 'Premiums' does  
13 not include any amounts received for any policies or for the parts of  
14 any policies for which coverage is not provided under G.S. 58-62-  
15 21(b); except that assessable premium shall not be reduced on account  
16 of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-  
17 21(d)(2) relating to limitations with respect to any one individual, any  
18 one participant, and any one contract holder.

19 (17) 'Resident' means any person who resides in this State when a member  
20 insurer is determined to be a delinquent insurer and to whom a  
21 contractual obligation is owed. A person may be a resident of only  
22 one state, which in the case of a person other than a natural person  
23 shall be its principal place of business.

24 (18) 'Unallocated annuity contract' means any annuity contract or group  
25 annuity certificate that is not issued to and owned by an individual,  
26 except to the extent of any annuity benefits guaranteed to an individual  
27 by an insurer under the contract or certificate."

28 Sec. 61. G.S. 58-62-21(a) reads as rewritten:

29 "(a) This Article provides coverage for the policies and contracts specified in  
30 subsection (b) of this section:

31 (1) To persons who, regardless of where they reside (except for  
32 nonresident certificate holders under group policies), are the  
33 beneficiaries, assignees, or payees of the persons covered under  
34 subdivision (2) of this subsection, and

35 (2) To persons who are owners or certificate holders under the policies, or  
36 in the case of unallocated annuity contracts to the persons who are the  
37 contract holders, and who are residents of this State, or who are not  
38 residents of this State, but only under all of the following conditions:  
39 (i) the insurers that issued the policies are domiciled in this State; (ii)  
40 the insurers never held a license in the states in which the persons  
41 reside; (iii) the states have associations similar to the association  
42 created by this Article; and (iv) the persons are not eligible for  
43 coverage by the associations or to persons who are not residents of this  
44 State, but only under all of the following conditions: (i) the persons

1                    were residents of this State when the policies were issued, (ii) the  
2                    insurer that issued the policies was domiciled in this State when the  
3                    policies were issued, and (iii) the persons are residents of a jurisdiction  
4                    that does not have a guaranty association similar to the association  
5                    provided by this Article or are not eligible for coverage by the  
6                    association in the jurisdiction where they reside."

7                    Sec. 62. G.S. 58-62-41(l) reads as rewritten:

8                    "(l) The Association shall issue to each insurer paying an assessment under this  
9 Article, other than a Class A assessment, a certificate of contribution, in a form  
10 prescribed by the Commissioner, for the amount of the assessment so paid. All  
11 outstanding certificates shall be of equal dignity and priority without reference to  
12 amounts or dates of issue. ~~A certificate of contribution may be shown by the insurer in its~~  
13 ~~financial statement as an asset in the form and for the amount, if any, and period of time as the~~  
14 ~~Commissioner approves."~~

15                    Sec. 63. G.S. 58-64-20(a) reads as rewritten:

16                    "(a) At the time of, or prior to, the execution of a contract to provide continuing  
17 care, or at the time of, or prior to, the transfer of any money or other property to a  
18 provider by or on behalf of a prospective resident, whichever occurs first, the provider  
19 shall deliver a current disclosure statement to the person with whom the contract is to be  
20 entered into, the text of which shall contain at least:

- 21                    (1) The name and business address of the provider and a statement of  
22 whether the provider is a partnership, corporation, or other type of  
23 legal entity.
- 24                    (2) The names and business addresses of the officers, directors, trustees,  
25 managing or general partners, any person having a ten percent (10%)  
26 or greater equity or beneficial interest in the provider, and any person  
27 who will be managing the facility on a day-to-day basis, and a  
28 description of these persons' interests in or occupations with the  
29 provider.
- 30                    (3) The following information on all persons named in response to  
31 subdivision (2) of this section:
- 32                    a. A description of the business experience of this person, if any,  
33 in the operation or management of similar facilities;
- 34                    b. The name and address of any professional service firm,  
35 association, trust, partnership, or corporation in which this  
36 person has, or which has in this person, a ten percent (10%)  
37 or greater interest and which it is presently intended shall currently  
38 or in the future provide goods, leases, or services to the facility,  
39 or to residents of the facility, of an aggregate value of five  
40 hundred dollars (\$500.00) or more within any year, including a  
41 description of the goods, leases, or services and the probable or  
42 anticipated cost thereof to the facility, provider, or residents or a  
43 statement that this cost cannot presently be estimated; and



- 1 c. A description of any matter in which the person (i) has been  
2 convicted of a felony or pleaded **nolo contendere** to a felony  
3 charge, or been held liable or enjoined in a civil action by final  
4 judgment, if the felony or civil action involved fraud,  
5 embezzlement, fraudulent conversion, or misappropriation of  
6 property; or (ii) is subject to a currently effective injunctive or  
7 restrictive court order, or within the past five years, had any  
8 State or federal license or permit suspended or revoked as a  
9 result of an action brought by a governmental agency or  
10 department, if the order or action arose out of or related to  
11 business activity of health care, including actions affecting a  
12 license to operate a foster care facility, nursing home,  
13 retirement home, home for aged, or facility subject to this  
14 Article or a similar law in another state.
- 15 (4) A statement as to whether the provider is, or is not affiliated with, a  
16 religious, charitable, or other nonprofit organization, the extent of the  
17 affiliation, if any, the extent to which the affiliate organization will be  
18 responsible for the financial and contract obligations of the provider,  
19 and the provision of the Federal Internal Revenue Code, if any, under  
20 which the provider or affiliate is exempt from the payment of income  
21 tax.
- 22 (5) The location and description of the physical property or properties of  
23 the facility, existing or proposed, and to the extent proposed, the  
24 estimated completion date or dates, whether construction has begun,  
25 and the contingencies subject to which construction may be deferred.
- 26 (6) The services provided or proposed to be provided pursuant to contracts  
27 for continuing care at the facility, including the extent to which  
28 medical care is furnished, and a clear statement of which services are  
29 included for specified basic fees for continuing care and which  
30 services are made available at or by the facility at extra charge.
- 31 (7) A description of all fees required of residents, including the entrance  
32 fee and periodic charges, if any. The description shall include:
- 33 a. A statement of the fees that will be charged if the resident  
34 marries while at the facility, and a statement of the terms  
35 concerning the entry of a spouse to the facility and the  
36 consequences if the spouse does not meet the requirements for  
37 entry;
- 38 b. The circumstances under which the resident will be permitted to  
39 remain in the facility in the event of possible financial  
40 difficulties of the resident;
- 41 c. The terms and conditions under which a contract for continuing  
42 care at the facility may be canceled by the provider or by the  
43 resident, and the conditions, if any, under which all or any  
44 portion of the entrance fee or any other fee will be refunded in

- 1 the event of cancellation of the contract by the provider or by  
2 the resident or in the event of the death of the resident prior to  
3 or following occupancy of a living unit;
- 4 d. The conditions under which a living unit occupied by a resident  
5 may be made available by the facility to a different or new  
6 resident other than on the death of the prior resident; and
- 7 e. The manner by which the provider may adjust periodic charges  
8 or other recurring fees and the limitations on these adjustments,  
9 if any; and, if the facility is already in operation, or if the  
10 provider or manager operates one or more similar continuing  
11 care locations within this State, tables shall be included  
12 showing the frequency and average dollar amount of each  
13 increase in periodic charges, or other recurring fees at each  
14 facility or location for the previous five years, or such shorter  
15 period as the facility or location may have been operated by the  
16 provider or manager.
- 17 (8) The health and financial condition required for an individual to be  
18 accepted as a resident and to continue as a resident once accepted,  
19 including the effect of any change in the health or financial condition  
20 of a person between the date of entering into a contract for continuing  
21 care and the date of initial occupancy of a living unit by that person.
- 22 (9) The provisions that have been made or will be made, ~~if any,~~ including,  
23 but not limited to, the requirements of G.S. 58-64-33 and G.S. 58-64-  
24 35, to provide reserve funding or security to enable the provider to  
25 perform its obligations fully under contracts to provide continuing care  
26 at the facility, including the establishment of escrow accounts, trusts,  
27 or reserve funds, together with the manner in which these funds will be  
28 invested, and the names and experience of any individuals in the direct  
29 employment of the provider who will make the investment decisions.
- 30 (10) Financial statements of the provider certified to by an independent  
31 public accountant as of the end of the most recent fiscal year or such  
32 shorter period of time as the provider shall have been in existence. If  
33 the provider's fiscal year ended more than 120 days prior to the date  
34 the disclosure statement is recorded, interim financial statements as of  
35 a date not more than 90 days prior to the date of recording the  
36 statement shall also be included, but need not be certified to by an  
37 independent certified public accountant.
- 38 (11) In the event the facility has had an actuarial report prepared within the  
39 prior two years, the summary of a report of an actuary that estimates  
40 the capacity of the provider to meet its contractual obligations to the  
41 residents.
- 42 (12) Forecast financial statements for the facility of the next five years,  
43 including a balance sheet, a statement of operations, a statement of  
44 cash flows, and a statement detailing all significant assumptions,

1 compiled by an independent certified public accountant. Reporting  
2 routine, categories, and structure may be further defined by regulations  
3 or forms adopted by the Commissioner.

4 (13) The estimated number of residents of the facility to be provided  
5 services by the provider pursuant to the contract for continuing care.

6 (14) Proposed or development stage facilities shall additionally provide:

7 a. The summary of the report of an actuary estimating the capacity  
8 of the provider to meet its contractual obligation to the  
9 residents;

10 b. Narrative disclosure detailing all significant assumptions used  
11 in the preparation of the forecast financial statements,  
12 including:

13 1. Details of any long-term financing for the purchase or  
14 construction of the facility including interest rate,  
15 repayment terms, loan covenants, and assets pledged;

16 2. Details of any other funding sources that the provider  
17 anticipates using to fund any start-up losses or to provide  
18 reserve funds to assure full performance of the  
19 obligations of the provider under contracts for the  
20 provision of continuing care;

21 3. The total life occupancy fees to be received from or on  
22 behalf of, residents at, or prior to, commencement of  
23 operations along with anticipated accounting methods  
24 used in the recognition of revenues from and expected  
25 refunds of life occupancy fees;

26 4. A description of any equity capital to be received by the  
27 facility;

28 5. The cost of the acquisition of the facility or, if the  
29 facility is to be constructed, the estimated cost of the  
30 acquisition of the land and construction cost of the  
31 facility;

32 6. Related costs, such as financing any development costs  
33 that the provider expects to incur or become obligated  
34 for prior to the commencement of operations;

35 7. The marketing and resident acquisition costs to be  
36 incurred prior to commencement of operations; and

37 8. A description of the assumptions used for calculating the  
38 estimated occupancy rate of the facility and the effect on  
39 the income of the facility of government subsidies for  
40 health care services.

41 (15) Any other material information concerning the facility or the provider  
42 which, if omitted, would lead a reasonable person not to enter into this  
43 contract."

44 Sec. 64. G.S. 58-64-33(a) reads as rewritten:

1       "(a) All continuing care facilities shall maintain after opening: operating reserves  
2 equal to fifty percent (50%) of the total operating costs projected for the 12-month  
3 period following the period covered by the most recent annual statement filed with the  
4 Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as  
5 the basis for computing the operating reserve. In addition to total operating expenses,  
6 total operating costs will include debt service, consisting of principal and interest  
7 payments along with taxes and insurance on any mortgage loan or other long-term  
8 financing, but will exclude depreciation, amortized expenses, and extraordinary items as  
9 approved by the Commissioner. If the debt service portion is accounted for by way of  
10 another reserve account, the debt service portion may be excluded. Facilities that  
11 maintain an occupancy level in excess of ninety percent (90%) shall only be required to  
12 maintain twenty-five percent (25%) operating reserve upon approval of the  
13 Commissioner, unless otherwise instructed by the Commissioner. The operating  
14 reserves may be funded by ~~liquid, marketable investments, including invested cash, bonds,~~  
15 ~~stocks, commercial paper, U.S. Treasury obligations, other equivalents, or under G.S. 58-7-~~  
16 ~~85(a)(1) through (6), or by an unconditional, irrevocable letter of credit of a quality satisfactory~~  
17 ~~to the Commissioner~~ investment grade securities, including: cash, invested cash, bonds,  
18 stocks, U.S. Treasury obligations, or U.S. government agencies."

19       Sec. 65. G.S. 58-3-70, 58-3-80, 58-7-32, 58-7-135, 58-7-155, 58-7-190, 58-  
20 9-1, 58-9-5, 58-9-10, 58-9-20, 58-9-25, 58-9-30, 58-12-1, 58-12-5, 58-12-10, 58-12-15,  
21 58-12-20, 58-19-20, 58-23-25, and 58-34-20 are repealed.

22       Sec. 66. If any provision of this act is held to be invalid by any court of  
23 competent jurisdiction, the court's holding as to that provision shall not affect the  
24 validity or operation of other provisions of this act; and to that end the provisions of this  
25 act are severable.

26       Sec. 67. This act becomes effective October 1, 1993.