

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 345

Short Title: Insurance Omnibus Changes/AB.

(Public)

Sponsors: Senator Soles.

Referred to: Pensions and Retirement/Insurance/State Personnel

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-70 reads as rewritten:

"§ 58-2-70. Civil penalties or restitution for violations; summary suspension of license or certificate.

(a) This section applies to any person who is subject to licensure or certification under ~~the provisions of Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter.~~

(b) ~~Whenever the Commissioner has reason to believe that any person has violated any of the provisions of the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or whenever the Commissioner has reason to believe that any person has violated Article 63 of this Chapter,~~ this Chapter, any rules adopted under this Chapter, or any order of the Commissioner, the Commissioner may issue and serve upon that person a written statement of charges and a written notice of hearing, to be held at a time and place fixed in the notice. The date for the hearing shall not be less than 10 days after the date of service. It shall be sufficient to give such notice either by delivering it to the person charged or by sending the notice to the last known address of that person by certified mail, return receipt requested. At the time and place fixed for the hearing the person charged shall have an opportunity to answer the charges against him and present evidence

1 on his behalf. Upon good cause shown, the Commissioner may permit any adversely
2 affected person to intervene, appear, and be heard at the hearing by counsel or in person.
3 The Commissioner may consolidate a hearing under this section with a hearing allowed
4 under G.S. 58-63-25 where there is common subject matter involved and subject to
5 procedural requirements set out in both sections being followed.

6 (c) In any case where a hearing pursuant to subsection (b) of this section results in
7 the findings by the Commissioner of a violation of any ~~of the provisions of the statutes cited~~
8 ~~in subsection (a) of this section, and the violation subjects the license or certification of that~~
9 ~~person to suspension or revocation, or findings by the Commissioner of a violation of Article 63~~
10 ~~of this Chapter, statute, rule, or order specified in subsection (b) of this section, the~~
11 Commissioner may, in addition to or in lieu of suspending or revoking the license or
12 certification, order the payment of a monetary penalty as provided in subsection (d) of
13 this section or apply to the Superior Court of Wake County for an order directing
14 payment of restitution as provided in subsection (e) of this section, or both. Each day
15 during which a violation occurs shall constitute a separate offense.

16 (d) Upon a finding by the Commissioner of a violation as specified in subsection
17 (c) of this section, the Commissioner shall direct the payment of a penalty of not less than
18 one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In
19 determining the amount of the penalty, the Commissioner shall consider the degree and
20 extent of harm caused by the violation, the amount of money that inured to the benefit of
21 the violator as a result of the violation, whether the violation was committed willfully,
22 and the prior record of the violator in complying or failing to comply with ~~laws, statutes,~~
23 rules, or orders applicable to the violator. The penalty shall be payable to the
24 Commissioner, who shall then forward the clear proceeds of which to the State Treasurer
25 for deposit in the General Fund of the State. Payment of the civil penalty under this
26 section shall be in addition to payment of any other penalty for a violation of the criminal
27 laws of this State.

28 (e) Upon application of the Commissioner and a finding by the court of a violation
29 as specified in subsection (c) of this section, the court may order the person who
30 committed the violation to make restitution in an amount that would make whole any
31 person harmed by the violation.

32 (f) Restitution to any State agency for extraordinary administrative expenses
33 incurred in the investigation and hearing of the violation may also be ordered by the court
34 in such amount that would reimburse the agency for the expenses.

35 (g) Nothing in this section shall prevent the Commissioner from negotiating a
36 mutually acceptable agreement with any person as to the status of the person's license or
37 certificate or as to any civil penalty or restitution.

38 ~~(h) Notwithstanding subsection (b) of this section, if the Commissioner finds that~~
39 ~~the public health, safety, or welfare requires emergency action and incorporates this~~
40 ~~finding in his order, summary suspension of a license or certificate may be ordered~~
41 ~~effective on the date specified in the order or on service of the certified copy of the order~~
42 ~~at the last known address of the licensee, whichever is later, and effective during the~~

1 proceedings to suspend, revoke, or refuse renewal provided for in subsection (b) of this
2 section. The proceedings shall be promptly commenced and determined."

3 Sec. 2. G.S. 58-2-161(a) reads as rewritten:

4 "(a) For the purposes of this section 'insurer' includes an entity under Articles 49
5 and 65 through 67 of this Chapter and includes Chapter, the Teachers' and State
6 Employees' Comprehensive Major Medical Plan under Chapter 135 of the General
7 Statutes, and an employer or group of employers that insures its workers' compensation
8 liability under Chapter 97 of the General Statutes."

9 Sec. 3. Article 2 of Chapter 58 of the General Statutes is amended by adding a
10 new section to read:

11 "**§ 58-2-171. Qualifications of actuaries and accountants.**

12 The Commissioner may adopt rules setting forth the qualifications of actuaries and
13 accountants who may certify in financial statements filed by entities under this Chapter as
14 to the financial conditions of those entities. The qualifications shall be commensurate
15 with the degree of complexity of the actuarial or financial principles applicable to the
16 various statements required."

17 Sec. 4. G.S. 58-3-90 reads as rewritten:

18 "**§ 58-3-90. Revocation—Revocation, suspension, or restriction of license of foreign**
19 **company; publication of notice.**

20 (a) If the Commissioner is of the opinion, upon examination or other evidence,
21 that a foreign insurance company is in an unsound condition; or, if a life insurance
22 company, that its actual funds, exclusive of its capital, are less than its liabilities; or that
23 the company has failed to comply with the statutes, rules, or orders applicable to it; or if
24 the company, its officers, employees, agents, or other representatives refuse to submit to
25 examination or to perform any legal obligation in relation to an examination, he shall
26 revoke or suspend all licenses and authority to do business granted to the company or its
27 agents, and shall give written notification of the revocation or suspension to all of the
28 company's agents in this State; and no new business may thereafter be done by the
29 company or its agents in this State until the company's license and authority to do
30 business is restored by the Commissioner.

31 (b) The Commissioner may, after considering the standards under G.S. 58-30-
32 60(b), restrict a foreign insurer's license by prohibiting or limiting the kind or amount of
33 insurance written by that insurer in this State. The Commissioner shall remove any
34 restriction under this subsection once the Commissioner determines that the operations of
35 the insurer are no longer hazardous to the public or to the insurer's policyholders or
36 creditors."

37 Sec. 5. Article 7 of Chapter 58 of the General Statutes is amended by adding a
38 new section to read:

39 "**§ 58-7-22. Reinsurance agreements in writing.**

40 (a) Under G.S. 58-7-21 and G.S. 58-7-26, no reinsurance agreement or
41 amendment to any reinsurance agreement may be used to reduce any liability or to
42 establish any asset in any financial statement filed with the Commissioner, unless the
43 reinsurance agreement, amendment, or a binding letter of intent has been duly executed

1 by the parties to the reinsurance agreement no later than the 'as of date' of the financial
2 statement. In the case of a letter of intent, a reinsurance agreement or an amendment to a
3 reinsurance agreement must be executed within a reasonable period of time, but no later
4 than 90 days after the execution date of the letter of intent, in order for credit to be
5 granted for the reinsurance ceded.

6 (b) Every reinsurance agreement executed under G.S. 58-7-21 and G.S. 58-7-26
7 shall provide that:

8 (1) The reinsurance agreement constitutes the entire reinsurance agreement
9 between the parties with respect to the business being reinsured under
10 the agreement and that there are no understandings between or among
11 the parties other than those expressed in the reinsurance agreement; and

12 (2) Any change in or modification of the reinsurance agreement is not valid
13 and binding unless it is effected by a written amendment to the
14 reinsurance agreement that is executed and signed by each party to the
15 reinsurance agreement."

16 Sec. 6. G.S. 58-7-170(c) reads as rewritten:

17 "(c) The cost of investments made by insurers in mortgage loans, authorized by
18 G.S. 58-7-179, with any one person or in mortgage pass-through securities authorized by
19 G.S. 58-7-173(17) that are backed by a single mortgage pool shall not exceed the lesser
20 of five percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's
21 capital and surplus. An insurer shall not invest in additional mortgage loans or in any
22 mortgage pass-through securities without the Commissioner's consent if (i) the admitted
23 value of all ~~mortgage loans~~ the investments held by the insurer exceeds an aggregate of
24 sixty percent (60%) of the admitted assets of the insurer, or if (i)-(ii) the admitted value of
25 all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed
26 exceeds twenty-five percent (25%) of the admitted assets of the ~~insurer and (ii) insurer,~~ or
27 if (iii) the admitted value of other mortgage loans permitted by G.S. 58-7-179 does not
28 exceed-exceeds forty percent (40%) of the admitted assets of the insurer.

29 An insurer that, as of ~~October 1, 1993,~~ October 1, 1995, has mortgage investments that
30 exceed the aggregate limitation specified in this subsection shall submit to the
31 Commissioner no later than ~~January 31, 1994,~~ January 31, 1996, a plan to bring the
32 amount of mortgage investments into compliance with the limitations by January 1,
33 2001."

34 Sec. 7. G. S. 58-12-30 reads as rewritten:

35 "**§ 58-12-30. Hearings.**

36 Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based
37 capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-
38 based capital plan or revised risk-based capital plan is unsatisfactory, and the notification
39 constitutes a regulatory action level event with respect to the insurer; or (iii) notification
40 to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based
41 capital plan or revised risk-based capital plan and that the failure has a substantial adverse
42 effect on the ability of the insurer to eliminate the company action level event with
43 respect to the insurer in accordance with its risk-based capital plan or revised risk-based

1 capital plan; or (iv) notification to an insurer by the Commissioner of a ~~Corrective Order~~
2 corrective order with respect to the insurer, the insurer has a right to a confidential
3 hearing, at which the insurer may challenge any determination or action by the
4 Commissioner. The insurer shall notify the Commissioner of its request for a hearing
5 within five days after the notification by the Commissioner under this section. Upon
6 receipt of the insurer's request for a hearing, the Commissioner shall set a date for the
7 hearing, which date shall be no less than 10 days nor more than 30 days after the date of
8 the insurer's request."

9 Sec. 8. G.S. 58-16-5(3) is repealed.

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

12 **"§ 58-16-6. Conditions of continued licensure.**

13 In order for a foreign insurance company to continue to be licensed, it shall report any
14 changes in the documents filed under G.S. 58-16-5(1) or G.S. 58-16-5(5), maintain the
15 amounts of capital and surplus specified in G.S. 58-16-5(2), and remain in substantial
16 compliance with the statutes listed in G.S. 58-16-5(6) and G.S. 58-16-5(7)."

17 Sec. 10. G.S. 58-19-5(2) reads as rewritten:

18 "(2) 'Control', including the terms 'controlling', 'controlled by', and 'under
19 common control with', means the direct or indirect possession of the
20 power to direct or cause the direction of the management and policies of
21 a person, whether through the ownership of voting securities, by
22 contract other than a commercial contract for goods or nonmanagement
23 services, or ~~otherwise, unless the power is the result of an official position~~
24 ~~with or corporate office held by the person.~~ otherwise. Control is presumed
25 to exist if any person directly or indirectly owns, controls, holds with
26 the power to vote, or holds proxies representing, ten percent (10%) or
27 more of the voting securities of any other person. This presumption
28 may be rebutted by a showing made in the manner provided by G.S. 58-
29 19-25(j) that control does not exist in fact. The Commissioner may
30 determine, after furnishing all persons in interest notice and opportunity
31 to be heard and making specific findings of fact to support such
32 determination, that control exists in fact, notwithstanding the absence of
33 a presumption to that effect."

34 Sec. 11. G.S. 58-19-5(5) reads as rewritten:

35 "(5) 'Person' means an individual, corporation, partnership, association, joint
36 stock company, trust, unincorporated organization, or any similar entity
37 or any combination of the foregoing acting in concert. ~~'Person' does not~~
38 ~~include any joint venture partnership exclusively engaged in owning,~~
39 ~~managing, leasing, or developing real or tangible personal property."~~

40 Sec. 12. G.S. 58-30-180(b)(1) reads as rewritten:

41 "(1) Reserving amounts for the payment of expenses of administration and
42 the payment of claims of secured creditors, to the extent of the value of

1 the security held, and claims falling within the priorities established in
2 G.S. 58-30-220(1) and ~~(2); (6)~~."

3 Sec. 13. G.S 58-30-220 reads as rewritten:

4 **"§ 58-30-220. Priority of distribution.**

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

10 (1) ~~Claims for cost of administration and conservation of assets of the~~
11 ~~insurer.~~

12 (2) ~~Compensation actually owing to employees other than officers of the~~
13 ~~insurer for services rendered within three months prior to the~~
14 ~~commencement of a delinquency proceeding against the insurer under~~
15 ~~this Article, but not exceeding one thousand dollars (\$1,000) for each~~
16 ~~employee. In the discretion of the Commissioner, this compensation~~
17 ~~may be paid as soon as practicable after the proceeding has been~~
18 ~~commenced. This priority is in lieu of any other similar priority that~~
19 ~~may be authorized by law as to wages or compensation of those~~
20 ~~employees.~~

21 (3) ~~Claims or portions of claims for benefits under policies and for losses~~
22 ~~incurred, including claims of third parties under liability policies; claims~~
23 ~~for funds or consideration held under funding agreements, as defined in~~
24 ~~G.S. 58-7-16; claims under life insurance and annuity policies, whether~~
25 ~~for death proceeds, annuity proceeds, or investment values; and claims~~
26 ~~of domestic and foreign guaranty associations; but excluding claims of~~
27 ~~insurance pools, underwriting associations, or those arising out of~~
28 ~~reinsurance agreements, claims of other insurers for subrogation, and~~
29 ~~claims of insurers for payments and settlements under uninsured and~~
30 ~~underinsured motorist coverages.~~

31 (4) ~~Claims for unearned premiums.~~

32 (5) ~~Claims of general creditors, including claims of insurance pools,~~
33 ~~underwriting associations, or those arising out of reinsurance~~
34 ~~agreements; claims of other insurers for subrogation; and claims of~~
35 ~~insurers for payments and settlements under uninsured and underinsured~~
36 ~~motorist coverages.~~

37 The priority of distribution of claims from an insurer's estate shall be in accordance
38 with the order in which each class of claims is set forth in this section. Every claim in
39 each class shall be paid in full; or adequate funds shall be retained for payment before the
40 members of the next class receive any payment. No subclasses shall be established
41 within any class. The order of distribution of claims shall be:

42 (1) The receiver's costs and expenses of administration.

- 1 (2) All claims under policies for losses incurred, including claims of third
2 parties under liability policies, and all covered claims against the insurer
3 paid by a guaranty association or foreign guaranty association. All
4 claims under life insurance and annuity policies, whether for death
5 proceeds, annuity proceeds, or investment values, and all claims for
6 funds or consideration held under funding agreements, as defined in
7 G.S. 58-7-16, shall be treated as loss claims under policies.
- 8 (3) The reasonable expenses of a domestic or foreign guaranty association
9 in handling covered claims.
- 10 (4) Claims of insurance pools and underwriting associations; and claims of
11 reinsureds arising out of reinsurance agreements.
- 12 (5) Claims of the federal or any state or local government or taxing
13 authority, including claims for taxes incurred either before or after the
14 entry of an order of liquidation against the insurer.
- 15 (6) Debts due to employees for services performed while in the employ of
16 the insurer to the extent that they do not exceed one thousand dollars
17 (\$1,000) and represent payment for services performed within one year
18 of the date of the filing of a successful petition for an order of
19 liquidation against the insurer. Officers and directors are not entitled to
20 the benefit of this priority. This priority is in lieu of any other similar
21 priority that may be authorized by law as to wages or compensation of
22 employees.
- 23 (7) Claims of general creditors.
- 24 (8) Claims filed after the date set for the filing of claims by the liquidator or
25 by the court.
- 26 (9) Claims of shareholders or other owners."

27 Sec. 14. Article 31 of Chapter 58 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 58-31-52. State motor vehicle safety program.**

30 (a) Findings, Policy, and Purpose. – Motor vehicle accidents exact a terrible toll of
31 human tragedy and suffering as well as national resources within the United States. The
32 same is true, on a smaller scale, within North Carolina State government. Every year
33 State employees or members of the general public are killed or injured, and a significant
34 portion of the State's financial resources is expended as a direct result of accidents
35 involving State-owned vehicles. Accordingly, it is North Carolina policy that the State-
36 owned motor vehicle fleet and vehicles used on behalf of the State be operated and
37 maintained in such a manner as to minimize deaths, injuries, and costs. The purpose of
38 this section is to direct the Commissioner of Insurance to develop a program to provide
39 policy, requirements, procedures, technical information, and standards for administering
40 a State vehicle safety program, which will apply to all State personnel involved in the
41 administration and operation of vehicles on behalf of the State.

1 (b) The Commissioner shall develop and adopt a State Motor Vehicle Safety
2 Program to assure that State-owned motor vehicles are operated and maintained in a safe
3 manner.

4 (c) In developing the program, the Commissioner shall include the following:

5 (1) Basic criteria concerning qualifications, screening, and education of
6 drivers.

7 (2) Required and prohibited driving practices.

8 (3) Safety maintenance requirements.

9 (4) Accident reporting and review procedures.

10 (d) The requirements and procedures established under the program shall apply to
11 all agencies and persons operating vehicles on behalf of the State, unless specifically
12 exempted by the Commissioner. Agencies may adopt more stringent requirements and
13 procedures than those adopted by the Commissioner under this section. The
14 administration of the program in each agency shall be the responsibility of each agency
15 head or a designee of the agency head.

16 (e) The provisions of Chapter 150B of the General Statutes do not apply to the
17 program developed and adopted under this section."

18 Sec. 15. G.S. 58-33-25(e) reads as rewritten:

19 "(e) A limited representative may receive qualification for one or more licenses
20 without examination for the following kinds of insurance:

21 (1), (2) Repealed by Session Laws 1989, c. 485, s. 19.

22 (3) Credit Life, Accident and ~~Health~~-Health.

23 (4) Credit, as specified in ~~G.S. 58-7-15(17)~~-G.S. 58-7-15(17).

24 (5) Travel Accident and ~~Baggage~~-Baggage.

25 (6) Motor ~~Club~~-Club.

26 (7) Dental ~~Services~~-Services.

27 (8) Credit Property Insurance and Single Interest Automobile Physical
28 Damage Insurance when either is made in connection with a ~~loan~~-loan.

29 (9) Bail bonds executed or countersigned by surety bondsmen under Article
30 71 of this ~~Chapter~~-Chapter.

31 (10) Credit unemployment.

32 (11) Vehicle service agreements and mechanical breakdown insurance."

33 Sec. 16. Article 33 of Chapter 58 of the General Statutes is amended by
34 adding a new section to read:

35 **"§ 58-33-132. Qualifications of instructors.**

36 The Commissioner may adopt rules setting forth the requisite qualifications for
37 instructors of prelicensing and continuing education courses under this Article."

38 Sec. 17. G.S. 58-42-55 reads as rewritten:

39 **"§ 58-42-55. Expiration.**

40 This Article shall expire on ~~July 1, 1995~~-July 1, 1997."

41 Sec. 18. G.S. 58-45-35(b) reads as rewritten:

42 "(b) If the Association determines that the property is insurable and that there is no
43 unpaid premium due from the applicant for prior insurance on the property, the

1 Association, upon receipt of the premium, or part of the premium, as is prescribed in the
2 plan of operation, shall cause to be issued a policy of essential property insurance and
3 shall offer additional extended coverage, optional perils endorsements, crime insurance,
4 separate policies of windstorm and hail insurance, or their successor forms of coverage,
5 for a term of one ~~year~~-year or three years. Any policy issued under the provisions of this
6 section shall be ~~renewed annually~~, renewed, upon application, so as long as the property
7 meets the definition of "insurable property" set forth in G.S. 58-45-5(5). is insurable property."

8 Sec. 19. Article 45 of Chapter 58 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 58-45-95. Beach Plan reserve fund.**

11 (a) The Association shall administer a separate fund for the purpose of adjusting
12 and paying losses incurred under this Article. All Association member insurers shall
13 make contributions to the fund in accordance with rules and procedures adopted by the
14 Association and approved or modified by the Commissioner. The fund is for the purpose
15 of paying losses incurred by risks insured under policies issued by the Association. The
16 fund shall comprise investments of the same character and quality as those that are
17 eligible investments for fire and marine insurance companies.

18 (b) The fund shall be administered by the Association in accordance with the
19 provisions of G.S. 58-3-75. With respect to the reserving requirements of Association
20 member insurers, all contributions to the fund shall be credited to the reserves required by
21 G.S. 58-3-75.

22 (c) Neither the principal of the fund nor any investment income accruing to the
23 assets of the fund shall be subject to any tax.

24 (d) The principal and investment income of the fund specified in subsection (c) of
25 this section remain the property of the member insurers of the Association commensurate
26 with their respective contributions to the fund. The Association shall serve only as the
27 administrator of the fund."

28 Sec. 20. Article 46 of Chapter 58 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 58-46-65. FAIR Plan reserve fund.**

31 (a) The Association shall administer a separate fund for the purpose of adjusting
32 and paying losses incurred under this Article. All Association member insurers shall
33 make contributions to the fund in accordance with rules and procedures adopted by the
34 Association and approved or modified by the Commissioner. The fund is for the purpose
35 of paying losses incurred by risks insured under policies issued by the Association. The
36 fund shall comprise investments of the same character and quality as those that are
37 eligible investments for fire and marine insurance companies.

38 (b) The fund shall be administered by the Association in accordance with the
39 provisions of G.S. 58-3-75. With respect to the reserving requirements of Association
40 member insurers, all contributions to the fund shall be credited to the reserves required by
41 G.S. 58-3-75.

42 (c) Neither the principal of the fund nor any investment income accruing to the
43 assets of the fund shall be subject to any tax.

1 (d) The principal and investment income of the fund specified in subsection (c) of
2 this section remain the property of the member insurers of the Association commensurate
3 with their respective contributions to the fund. The Association shall serve only as the
4 administrator of the fund."

5 Sec. 21. Article 50 of Chapter 58 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 58-50-149. Limit on cessions to the Reinsurance Pool.**

8 In addition to any individual or group previously reinsured in accordance with G.S.
9 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or delivered for
10 original issue by a reinsuring carrier on or after October 1, 1995, if the health benefit plan
11 provides coverage to a small employer with no more than 25 eligible employees,
12 including self-employed individuals."

13 Sec. 22. G.S. 58-53-60 reads as rewritten:

14 **"§ 58-53-60. Premium.**

15 (a) The premium for the converted ~~policy~~ policy or group conversion trust
16 certificate shall be determined in accordance with the insurer's table of premium rates
17 applicable to the age and class of risk to be covered under that policy and to the type and
18 amount of insurance provided.

19 (b) All insurers licensed to do business in this State, who issue conversion ~~policies~~
20 policies or group conversion trust certificates under this Part, shall have the right to
21 increase that element of the premium that applies to hospital room and board benefit
22 increases provided for in G.S. 58-53-95(5) by an amount proportionate to the increase
23 promulgated by the Commissioner. Such premium increases shall be filed with the
24 Commissioner.

25 (c) All premium rates and adjustments to premium rates for converted ~~policies~~
26 policies or group conversion trust certificates shall be reasonable and must be filed ~~with~~
27 with and approved by the Commissioner prior to use. A premium rate shall be deemed to
28 be reasonable if it can be demonstrated by the insurer that the premium charged is
29 expected to produce an incurred loss ratio to earned premiums of not less than sixty
30 percent (60%) for all ~~individual~~ policies or group conversion trust certificates providing
31 similar benefits offered and issued by the insurer. If an insurer experiences an incurred
32 loss ratio of greater than eighty percent (80%) for all such policies, it shall be deemed
33 reasonable for that insurer to increase premium rates to a level that will produce a
34 prospective incurred loss ratio of no greater than eighty percent (80%), and the insurer
35 shall file such new rates with the Commissioner not more often than once a year."

36 Sec. 23. (a) Article 58 of Chapter 58 of the General Statutes is amended by
37 adding the following new sections to read:

38 **"§ 58-58-12. Universal life insurance defined.**

39 Universal life insurance means any individual or group life insurance policy under the
40 provisions of which separately identified interest credits, other than in connection with
41 dividend accumulations, premium deposit funds, or other supplementary accounts, and
42 mortality and expense charges are made to the policy. A universal life insurance policy

1 may provide for other credits and charges, such as charges for the cost of benefits
2 provided by rider.

3 **"§ 58-58-13. Variable life insurance defined.**

4 Variable life insurance means any individual or group policy or contract that provides
5 for life insurance, the amount or duration of which varies according to the investment
6 experience of any separate account or accounts established and maintained by the insurer
7 as to the policy or contract under G.S. 58-7-95 or under the corresponding law of the state
8 of domicile of a foreign or alien insurer."

9 (b) Article 58 of Chapter 58 of the General Statutes is further amended by adding
10 the following new sections to read:

11 **"§ 58-58-22. Individual policy standard provisions.**

12 No policy of individual life insurance shall be delivered in this State unless it contains
13 in substance the following provisions, or provisions that in the Commissioner's opinion
14 are more favorable to the person insured:

- 15 (1) Grace Period. – A provision that the insured is entitled to a grace period
16 of 31 days for the payment of any premium due except the first, during
17 which grace period the death benefit coverage shall continue in force.
18 The policy may provide that if a claim arises under the policy during the
19 grace period, the amount of any premium due or overdue may be
20 deducted from any amount payable under the policy in settlement.
- 21 (2) Incontestability. – A provision that the validity of the policy shall not be
22 contested, except for nonpayment of premium, once it has been in force
23 for two years after its date of issue; and that no statement made by any
24 person insured under the policy about that person's insurability shall be
25 used during the person's lifetime to contest the validity of the policy
26 after the insurance has been in force for two years.
- 27 (3) Misstatement of Age or Gender. – A provision specifying an equitable
28 adjustment of premiums or benefits, or both, to be made if the age or
29 gender of the person insured has been misstated; the provision to
30 contain a clear statement of the method of adjustment to be used.
- 31 (4) Suicide. – A provision that may not limit payment of benefits for a
32 period more than two years after the date of issue of the policy because
33 of suicide and that provides for at least the return of premiums paid on
34 the policy if there is suicide during the two-year period.
- 35 (5) Reinstatement. – A provision that, unless the policy has been
36 surrendered for its cash surrender value, or its cash surrender value has
37 been exhausted, the policy will be reinstated at any time within five
38 years after the date of premium default upon written application
39 therefor, the production of evidence of insurability satisfactory to the
40 insurer, the payment of all overdue premiums and the payment of
41 reinstatement of any other indebtedness to the insurer upon the policy,
42 all with interest at the rate specified.

43 **"§ 58-58-23. Standard provisions for annuity and pure endowment contracts.**

1 No annuity or pure endowment contract, except a reversionary or survivorship annuity
2 and except a group annuity contract, shall be delivered or issued for delivery in this State
3 unless it contains in substance the following provisions or provisions that in the opinion
4 of the Commissioner are more favorable to the holders of the contracts:

5 (1) Grace Period. – A provision for a grace period of not less than 31 days
6 within which any stipulated payment to the insurer falling due after the
7 first payment may be made. During the grace period the contract shall
8 continue in full force. If a claim arises under the contract because of
9 death before the expiration of the grace period and before the overdue
10 payment to the insurer is made, the amount of the payments, with
11 interest on any overdue payments, may be deducted from any amount
12 payable under the contract.

13 (2) Incontestability. – If any statements are required as a condition of issue,
14 there shall be a provision that the contract shall be incontestable during
15 the lifetime of the person or of each of the persons as to whom the
16 statements are required after it has been in force for a period of two
17 years after its date of issue; except for nonpayment of stipulated
18 payments to the insurer.

19 (3) Misstatements of Age or Gender. – A provision that if the age or gender
20 of any person upon whose life the contract is made has been misstated,
21 the amount payable or benefits accruing under the contract shall be such
22 as the stipulated payment or payments to the insurer would have been
23 according to the correct age or gender; and if the insurer makes an
24 overpayment because of the misstatement, that amount with interest at
25 the rate specified in the contract may be charged against any current or
26 subsequent payment by the insurer under the contract.

27 (4) Reinstatement. – A provision that the contract may be reinstated at any
28 time within one year after a default in making stipulated payments to the
29 insurer, unless the cash surrender value has been paid; but all overdue
30 stipulated payments and any indebtedness to the insurer on the contract
31 shall be paid or reinstated with interest at a rate specified in the contract.
32 When applicable, the insurer may also require evidence of insurability
33 satisfactory to the insurer."

34 (c) Article 58 of Chapter 58 of the General Statutes is further amended by adding a
35 new section to read:

36 **"§ 58-58-42. Viatical settlements.**

37 (a) Definitions. – As used in this section:

38 (1) 'Broker' means a person who, for consideration and on behalf of
39 another, offers or advertises the availability of viatical settlements,
40 introduces viators to providers, or offers or attempts to negotiate viatical
41 settlement contracts between a viator and one or more providers; but
42 does not mean an attorney, accountant, or financial planner retained to
43 represent a viator and whose compensation is not paid by a provider.

- 1 (2) 'Policy' means an individual life insurance policy or a certificate under a
2 group life insurance policy.
- 3 (3) 'Provider' means a person who enters into a viatical settlement contract
4 with a viator. 'Provider' does not mean:
- 5 a. A licensed lending institution that takes an assignment of a
6 policy as collateral for a loan.
- 7 b. The issuer of a policy providing accelerated benefits under 11
8 NCAC 12.1200.
- 9 c. A natural person who enters into no more than one agreement in
10 a calendar year for the transfer of a policy for any value less than
11 the expected death benefit.
- 12 (4) 'Viatical settlement contract' or 'contract' means a written agreement
13 entered into between a provider and a viator that establishes the terms
14 under which the provider will pay consideration that is less than the
15 expected death benefit of the viator's policy in return for the viator's
16 assignment, transfer, sale, devise, or bequest of the death benefit or
17 ownership of the policy to the provider.
- 18 (5) 'Viator' means the owner or holder of a policy who has a catastrophic or
19 life-threatening illness or condition and who enters into a viatical
20 settlement contract.

21 (b) Registration. – No person may act as a provider or enter into or solicit a
22 contract without first registering with the Commissioner. Registration shall be completed
23 by the applicant on a form prescribed by the Commissioner. The Commissioner may
24 require the applicant to fully disclose the identity of all stockholders, partners, officers,
25 and employees. The Commissioner may refuse registration of any partnership,
26 corporation, or other business entity if not satisfied that any officer, employee
27 stockholder, or partner who may materially influence the applicant's conduct meets the
28 standards of this section. Registration of a partnership, corporation, or other business
29 entity authorizes all members, officers, and designates employees to act as providers
30 under the registration; and all of those persons must be named in the application and any
31 supplements to the application. Before any registration is complete, the Commissioner
32 shall make an investigation of each applicant and may register the applicant if the
33 Commissioner finds that the applicant:

- 34 (1) Has provided a detailed plan of operation.
- 35 (2) Is competent and trustworthy and intends to act in good faith in the
36 capacity involved by the license applied for.
- 37 (3) Has a good business reputation and has had experience, training, or
38 education so as to be qualified in the business for which the license is
39 applied.
- 40 (4) If a corporation is incorporated under the laws of this State or a foreign
41 corporation authorized to transact business in this State.

42 No registration is complete for any nonresident applicant, unless a written designation of
43 an agent for service of process is filed and maintained with the Commissioner or the

1 applicant has filed with the Commissioner the applicant's written irrevocable consent that
2 any action against the applicant may be commenced against the applicant by service of
3 process on the Commissioner.

4 (c) Enforcement. – The Commissioner may issue a cease and desist order upon
5 any provider if the Commissioner finds that:

6 (1) There was any misrepresentation in the application for registration;

7 (2) The provider has been guilty of fraudulent or dishonest practices, is
8 subject to a final administrative action, or is otherwise shown to be
9 untrustworthy or incompetent to act as a provider;

10 (3) The provider demonstrates a pattern of unreasonable payments to
11 policyowners;

12 (4) The provider has been convicted of a felony or any misdemeanor of
13 which criminal fraud is an element; or

14 (5) The provider has violated a provision of this section.

15 (d) Approval of Contracts. – No provider may use any viatical settlement contract
16 in this State unless it has been filed with and approved by the Commissioner. Any
17 contract form filed with the Commissioner is deemed to be approved if it has not been
18 disapproved within 90 days after the filing. The Commissioner shall disapprove a
19 contract form if, in the Commissioner's opinion, any provision of the contract is
20 unreasonable, contrary to the interest of the public, or otherwise misleading or unfair to
21 the policy owner.

22 (e) Reporting Requirements. – Each provider shall file with the Commissioner on
23 or before March 1 of each year a statement containing the information required by the
24 rules adopted by the Commissioner.

25 (f) Examination. – The Commissioner may, when the Commissioner deems it to
26 be reasonably necessary to protect the interests of the public, examine the business and
27 affairs of any provider or applicant for registration. The Commissioner may order any
28 provider or applicant to produce records, books, files, or other information that is
29 necessary to ascertain whether or not the provider or applicant is acting or has acted in
30 violation of this section or otherwise contrary to the public interest. The expenses
31 incurred in conducting an examination shall be paid by the provider or applicant. Names
32 and individual identification data for all viators are confidential and shall not be disclosed
33 by the Commissioner. Records of all transactions of contracts shall be maintained by the
34 provider and shall be available to the Commissioner for inspection during reasonable
35 business hours.

36 (g) Disclosure. – A provider shall disclose the following information to the viator
37 no later than the date the contract is signed by all parties:

38 (1) Options other than the contract for a person with a catastrophic or life-
39 threatening illness, including, but not limited to, accelerated benefits
40 offered by the issuer of the policy.

41 (2) The fact that some or all of the contract consideration may be taxable,
42 and that assistance should be sought from a personal tax advisor.

- 1 (3) The fact that the contract consideration could be subject to the claims of
2 creditors.
- 3 (4) The fact that receipt of the contract consideration may adversely affect
4 the viator's eligibility for Medicaid or other government benefits or
5 entitlements; and that advice should be obtained from the appropriate
6 government agencies.
- 7 (5) The viator's right to rescind a contract within 30 days after the date it is
8 executed by all parties or within 15 days after the receipt of the contract
9 consideration by the viator, whichever is less, as provided in subsection
10 (h) of this section.
- 11 (6) The date by which the contract consideration will be available to the
12 viator and the source of the consideration.

13 (h) General Rules. – A provider entering into a contract with a viator shall first
14 obtain:

- 15 (1) A written statement from a licensed attending physician that the viator is
16 of sound mind and under no constraint or undue influence.
- 17 (2) A witnessed document in which the viator (i) consents to the contract,
18 (ii) acknowledges the catastrophic or life-threatening illness, (iii)
19 represents that the viator has a full and complete understanding of the
20 contract, (iv) represents that the viator has a full and complete
21 understanding of the benefits of the policy, and (v) releases the medical
22 records and acknowledges that the contract has been entered into freely
23 and voluntarily.

24 All medical information solicited or obtained by any provider is subject to all State laws
25 relating to confidentiality of medical information. All contracts entered into in this State
26 shall contain an unconditional refund provision for at least 30 days after the date of the
27 contract, or 15 days after the receipt of the viatical settlement proceeds, whichever is less.

28 (i) Contract Consideration. – Immediately upon receipt from the viator of
29 documents to effect the transfer of the policy, the provider shall direct the contract
30 consideration to an escrow or trust account managed by a trustee or escrow agent in a
31 bank approved by the Commissioner, pending acknowledgment of the transfer by the
32 issuer of the policy. The trustee or escrow agent shall transfer the proceeds that are due
33 to the viator immediately upon receipt of acknowledgment of the transfer from the
34 insurer. Failure to tender the contract consideration by the date disclosed to the viator
35 renders the contract null and void.

36 (j) Authority to Adopt Standards. – The Commissioner may:

- 37 (1) Adopt rules to implement this section.
- 38 (2) Establish standards for evaluating reasonableness of payments under
39 contracts. This authority includes regulation of discount rates used to
40 determine the amount paid in exchange for assignment, transfer, sale,
41 devise, or bequest of a benefit under a policy.
- 42 (3) Establish appropriate registration and other regulatory requirements for
43 brokers.

1 (4) Require a bond.

2 (k) Unfair Trade Practices. – A violation of this section shall be considered an
3 unfair trade practice under Article 63 of this Chapter."

4 Sec. 24. G.S. 90-21.20 reads as rewritten:

5 **"§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.**

6 (a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b)
7 shall be reported as soon as it becomes practicable before, during or after completion of
8 treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated
9 in a hospital, sanitarium or other medical institution or facility, such report shall be made
10 by the Director, Administrator, or other person designated by the Director or
11 Administrator, or if such case is treated elsewhere, such report shall be made by the
12 physician or surgeon treating the case, to the chief of police or the police authorities of
13 the city or town of this State in which the hospital or other institution, or place of
14 treatment is located. If such hospital or other institution or place of treatment is located
15 outside the corporate limits of a city or town, then the report shall be made by the proper
16 person in the manner set forth above to the sheriff of the respective county or to one of
17 his deputies.

18 (b) Cases of wounds, injuries or illnesses which shall be reported by physicians,
19 and hospitals include every case of a bullet wound, gunshot wound, powder burn or any
20 other injury arising from or caused by, or appearing to arise from or be caused by, the
21 discharge of a gun or firearm, every case of illness apparently caused by poisoning, every
22 case of a burn-related injury from fire, every case of a wound or injury caused, or
23 apparently caused, by a knife or sharp or pointed instrument if it appears to the physician
24 or surgeon treating the case that a criminal act was involved, and every case of a wound,
25 injury or illness in which there is grave bodily harm or grave illness if it appears to the
26 physician or surgeon treating the case that the wound, injury or illness resulted from a
27 criminal act of violence. As used in this section, 'burn-related injury from fire' means,
28 regardless of the degree of burn, a burn injury to five percent (5%) or more of the body or
29 any burn to the upper respiratory tract.

30 (c) Each report made pursuant to subsections (a) and (b) ~~above of this section~~ shall
31 state the name of the wounded, ill or injured person, if known, and the age, sex, race,
32 residence or present location, if known, and the character and extent of his injuries. In
33 cases of burn-related injuries from fires, the law enforcement authorities to whom reports
34 are made under subsection (a) of this section shall, within five working days after
35 receiving those reports, forward copies of those reports to the Attorney General, who may
36 investigate the injuries under Article 1 of Chapter 69 of the General Statutes.

37 (d) Any hospital, sanitarium, or other like institution or Director, Administrator, or
38 other designated person, or physician or surgeon participating in good faith in the making
39 of a report pursuant to this section shall have immunity from any liability, civil or
40 criminal, that might otherwise be incurred or imposed as the result of the making of such
41 report."

42 Sec. 25. Section 208(d) of Chapter 757 of the 1985 Session Laws, as amended
43 by Section 1 of Chapter 480 of the 1991 Session Laws, is repealed.

1 Sec. 26. If any section or provision of this act is declared unconstitutional or
2 invalid by the courts, it does not affect the validity of the act as a whole or any part other
3 than the part so declared to be unconstitutional or invalid.

4 Sec. 27. Sections 1, 2, 5, 8 through 12, 18 through 20, 23, and 24 become
5 effective October 1, 1995, and apply to claims submitted, agreements and settlements
6 entered into, and actions occurring on or after that date. The remainder of this act is
7 effective upon ratification.