

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 738\*

Senate Commerce, Small Business and Entrepreneurship Committee Substitute  
Adopted 6/25/08

Short Title: Insurance Changes-AB.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST  
2 COVERAGE; MAKE TECHNICAL CHANGES TO INSURANCE FINANCIAL  
3 PROVISIONS; AMEND THE UNAUTHORIZED INSURER LAWS; MAKE  
4 TECHNICAL CHANGES TO THE RATE EVASION LAW TO CLARIFY THAT  
5 IT APPLIES ONLY TO PRIVATE PASSENGER VEHICLES AND TO ADD A  
6 TERMINATION RESTRICTION CONSISTENT WITH G.S. 58-37-50 TO  
7 CLARIFY THAT THE RATE EVASION LAW APPLIES TO CEDED AND  
8 UNCEDED POLICIES; REVISE MANAGED CARE AND HMO RECORD  
9 RETENTION LAWS; MAKE CHANGES TO THE HEALTH INSURANCE RISK  
10 POOL LAWS; STRENGTHEN PROFESSIONAL EMPLOYER ORGANIZATION  
11 PROTECTIONS; MAKE CHANGES TO THE LAW GOVERNING THE CODE  
12 OFFICIALS QUALIFICATION BOARD; PROHIBIT FREE INSURANCE; AND  
13 TO MAKE OTHER MISCELLANEOUS CHANGES.  
14

15 The General Assembly of North Carolina enacts:

16 **PART I. UNINSURED AND UNDERINSURED MOTORIST COVERAGE.**

17 **SECTION 1.1.** G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:

18 "(b) Such owner's policy of liability insurance:

19 ...

20 (3) No policy of bodily injury liability insurance, covering liability arising  
21 out of the ownership, maintenance, or use of any motor vehicle, shall  
22 be delivered or issued for delivery in this State with respect to any  
23 motor vehicle registered or principally garaged in this State unless  
24 coverage is provided therein or supplemental thereto, under provisions  
25 filed with and approved by the Commissioner of Insurance, for the  
26 protection of persons insured thereunder who are legally entitled to  
27 recover damages from owners or operators of uninsured motor  
28 vehicles and hit-and-run motor vehicles because of bodily injury,

1 sickness or disease, including death, resulting therefrom, ~~in an amount~~  
2 ~~not to be less than the financial responsibility amounts for bodily~~  
3 ~~injury liability as set forth in G.S. 20 279.5 nor greater than one~~  
4 ~~million dollars (\$1,000,000), as selected by the policy owner. with~~  
5 ~~limits equal to the highest limits of bodily injury liability coverage for~~  
6 ~~any one vehicle insured under the policy. The named insured may~~  
7 ~~purchase uninsured motorist bodily injury coverage with greater limits,~~  
8 ~~subject to the limitation that in no event shall uninsured motorist~~  
9 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000)~~  
10 ~~per person and one million dollars (\$1,000,000) per accident. The~~  
11 ~~insurer shall notify the named insured of his or her right to purchase~~  
12 ~~uninsured motorist bodily injury coverage with greater limits, when~~  
13 ~~the policy is issued and renewed, as provided in subsection (m) of this~~  
14 ~~section. The provisions shall include coverage for the protection of~~  
15 ~~persons insured thereunder who are legally entitled to recover damages~~  
16 ~~from owners or operators of uninsured motor vehicles because of~~  
17 ~~injury to or destruction of the property of such insured, with a limit in~~  
18 ~~the aggregate for all insureds in any one accident ~~of up equal~~ to the~~  
19 ~~highest limits of property damage liability coverage for any one~~  
20 ~~vehicle insured in the owner's policy of liability insurance, and subject,~~  
21 ~~for each insured, to an exclusion of the first one hundred dollars~~  
22 ~~(\$100.00) of such damages. The provision shall further provide that a~~  
23 ~~written statement by the liability insurer, whose name appears on the~~  
24 ~~certification of financial responsibility made by the owner of any~~  
25 ~~vehicle involved in an accident with the insured, that the other motor~~  
26 ~~vehicle was not covered by insurance at the time of the accident with~~  
27 ~~the insured shall operate as a prima facie presumption that the operator~~  
28 ~~of the other motor vehicle was uninsured at the time of the accident~~  
29 ~~with the insured for the purposes of recovery under this provision of~~  
30 ~~the insured's liability insurance policy. ~~The coverage required under~~~~  
31 ~~this subdivision is not applicable where any insured named in the~~  
32 ~~policy rejects the coverage. An insured named in the policy may select~~  
33 ~~different coverage limits as provided in this subdivision. If the named~~  
34 ~~insured in the policy does not reject uninsured motorist coverage and~~  
35 ~~does not select different coverage limits, the amount of uninsured~~  
36 ~~motorist coverage shall be equal to the highest limit of bodily injury~~  
37 ~~and property damage liability coverage for any one vehicle in the~~  
38 ~~policy. Once the option to reject the uninsured motorist coverage or to~~  
39 ~~select different coverage limits is offered by the insurer, the insurer is~~  
40 ~~not required to offer the option in any renewal, reinstatement,~~  
41 ~~substitute, amended, altered, modified, transfer, or replacement policy~~  
42 ~~unless the named insured makes a written request to exercise a~~  
43 ~~different option. The selection or rejection of uninsured motorist~~  
44 ~~coverage or the failure to select or reject by a named insured is valid~~

1                   ~~and binding on all insureds and vehicles under the policy. Rejection of~~  
2                   ~~or selection of different coverage limits for uninsured motorist~~  
3                   ~~coverage for policies under the jurisdiction of the North Carolina Rate~~  
4                   ~~Bureau shall be made in writing by a named insured on a form~~  
5                   ~~promulgated by the Bureau and approved by the Commissioner of~~  
6                   ~~Insurance.~~

7                   If a person who is legally entitled to recover damages from the  
8                   owner or operator of an uninsured motor vehicle is an insured under  
9                   the uninsured motorist coverage of a policy that insures more than one  
10                  motor vehicle, that person shall not be permitted to combine the  
11                  uninsured motorist limit applicable to any one motor vehicle with the  
12                  uninsured motorist limit applicable to any other motor vehicle to  
13                  determine the total amount of uninsured motorist coverage available to  
14                  that person. If a person who is legally entitled to recover damages from  
15                  the owner or operator of an uninsured motor vehicle is an insured  
16                  under the uninsured motorist coverage of more than one policy, that  
17                  person may combine the highest applicable uninsured motorist limit  
18                  available under each policy to determine the total amount of uninsured  
19                  motorist coverage available to that person. The previous sentence shall  
20                  apply only to insurance on nonfleet private passenger motor vehicles  
21                  as described in G.S. 58-40-10(1) and (2).

22                  In addition to the above requirements relating to uninsured motorist  
23                  insurance, every policy of bodily injury liability insurance covering  
24                  liability arising out of the ownership, maintenance or use of any motor  
25                  vehicle, which policy is delivered or issued for delivery in this State,  
26                  shall be subject to the following provisions which need not be  
27                  contained therein.

28                  a.       A provision that the insurer shall be bound by a final judgment  
29                  taken by the insured against an uninsured motorist if the insurer  
30                  has been served with copy of summons, complaint or other  
31                  process in the action against the uninsured motorist by  
32                  registered or certified mail, return receipt requested, or in any  
33                  manner provided by law; provided however, that the  
34                  determination of whether a motorist is uninsured may be  
35                  decided only by an action against the insurer alone. The insurer,  
36                  upon being served as herein provided, shall be a party to the  
37                  action between the insured and the uninsured motorist though  
38                  not named in the caption of the pleadings and may defend the  
39                  suit in the name of the uninsured motorist or in its own name.  
40                  The insurer, upon being served with copy of summons,  
41                  complaint or other pleading, shall have the time allowed by  
42                  statute in which to answer, demur or otherwise plead (whether  
43                  the pleading is verified or not) to the summons, complaint or  
44                  other process served upon it. The consent of the insurer shall

1 not be required for the initiation of suit by the insured against  
2 the uninsured motorist: Provided, however, no action shall be  
3 initiated by the insured until 60 days following the posting of  
4 notice to the insurer at the address shown on the policy or after  
5 personal delivery of the notice to the insurer or its agent setting  
6 forth the belief of the insured that the prospective defendant or  
7 defendants are uninsured motorists. No default judgment shall  
8 be entered when the insurer has timely filed an answer or other  
9 pleading as required by law. The failure to post notice to the  
10 insurer 60 days in advance of the initiation of suit shall not be  
11 grounds for dismissal of the action, but shall automatically  
12 extend the time for the filing of an answer or other pleadings to  
13 60 days after the time of service of the summons, complaint, or  
14 other process on the insurer.

15 b. Where the insured, under the uninsured motorist coverage,  
16 claims that he has sustained bodily injury as the result of  
17 collision between motor vehicles and asserts that the identity of  
18 the operator or owner of a vehicle (other than a vehicle in which  
19 the insured is a passenger) cannot be ascertained, the insured  
20 may institute an action directly against the insurer: Provided, in  
21 that event, the insured, or someone in his behalf, shall report the  
22 accident within 24 hours or as soon thereafter as may be  
23 practicable, to a police officer, peace officer, other judicial  
24 officer, or to the Commissioner of Motor Vehicles. The insured  
25 shall also within a reasonable time give notice to the insurer of  
26 his injury, the extent thereof, and shall set forth in the notice the  
27 time, date and place of the injury. Thereafter, on forms to be  
28 mailed by the insurer within 15 days following receipt of the  
29 notice of the accident to the insurer, the insured shall furnish to  
30 insurer any further reasonable information concerning the  
31 accident and the injury that the insurer requests. If the forms are  
32 not furnished within 15 days, the insured is deemed to have  
33 complied with the requirements for furnishing information to  
34 the insurer. Suit may not be instituted against the insurer in less  
35 than 60 days from the posting of the first notice of the injury or  
36 accident to the insurer at the address shown on the policy or  
37 after personal delivery of the notice to the insurer or its agent.  
38 The failure to post notice to the insurer 60 days before the  
39 initiation of the suit shall not be grounds for dismissal of the  
40 action, but shall automatically extend the time for filing of an  
41 answer or other pleadings to 60 days after the time of service of  
42 the summons, complaint, or other process on the insurer.

43 Provided under this section the term "uninsured motor vehicle"  
44 shall include, but not be limited to, an insured motor vehicle where the

1 liability insurer thereof is unable to make payment with respect to the  
2 legal liability within the limits specified therein because of insolvency.

3 An insurer's insolvency protection shall be applicable only to  
4 accidents occurring during a policy period in which its insured's  
5 uninsured motorist coverage is in effect where the liability insurer of  
6 the tort-feasor becomes insolvent within three years after such an  
7 accident. Nothing herein shall be construed to prevent any insurer from  
8 affording insolvency protection under terms and conditions more  
9 favorable to the insured than is provided herein.

10 In the event of payment to any person under the coverage required  
11 by this section and subject to the terms and conditions of coverage, the  
12 insurer making payment shall, to the extent thereof, be entitled to the  
13 proceeds of any settlement for judgment resulting from the exercise of  
14 any limits of recovery of that person against any person or  
15 organization legally responsible for the bodily injury for which the  
16 payment is made, including the proceeds recoverable from the assets  
17 of the insolvent insurer.

18 For the purpose of this section, an "uninsured motor vehicle" shall  
19 be a motor vehicle as to which there is no bodily injury liability  
20 insurance and property damage liability insurance in at least the  
21 amounts specified in subsection (c) of G.S. 20-279.5, or there is that  
22 insurance but the insurance company writing the insurance denies  
23 coverage thereunder, or has become bankrupt, or there is no bond or  
24 deposit of money or securities as provided in G.S. 20-279.24 or  
25 20-279.25 in lieu of the bodily injury and property damage liability  
26 insurance, or the owner of the motor vehicle has not qualified as a  
27 self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is  
28 not subject to the provisions of the Motor Vehicle Safety and Financial  
29 Responsibility Act; but the term "uninsured motor vehicle" shall not  
30 include:

- 31 a. A motor vehicle owned by the named insured;
- 32 b. A motor vehicle that is owned or operated by a self-insurer  
33 within the meaning of any motor vehicle financial responsibility  
34 law, motor carrier law or any similar law;
- 35 c. A motor vehicle that is owned by the United States of America,  
36 Canada, a state, or any agency of any of the foregoing  
37 (excluding, however, political subdivisions thereof);
- 38 d. A land motor vehicle or trailer, if operated on rails or  
39 crawler-treads or while located for use as a residence or  
40 premises and not as a vehicle; or
- 41 e. A farm-type tractor or equipment designed for use principally  
42 off public roads, except while actually upon public roads.

43 For purposes of this section "persons insured" means the named  
44 insured and, while resident of the same household, the spouse of any

1 named insured and relatives of either, while in a motor vehicle or  
2 otherwise, and any person who uses with the consent, expressed or  
3 implied, of the named insured, the motor vehicle to which the policy  
4 applies and a guest in the motor vehicle to which the policy applies or  
5 the personal representative of any of the above or any other person or  
6 persons in lawful possession of the motor vehicle.

7 Notwithstanding the provisions of this subsection, no policy of  
8 motor vehicle liability insurance applicable solely to commercial  
9 motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to  
10 fleet vehicles shall be required to provide uninsured motorist coverage.  
11 Any motor vehicle liability policy that insures both commercial motor  
12 vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor  
13 vehicles shall provide uninsured motorist coverage in accordance with  
14 the provisions of this subsection in amounts equal to the highest limits  
15 of bodily injury and property damage liability coverage for any one  
16 noncommercial motor vehicle insured under the policy, subject to the  
17 right of the insured to purchase higher uninsured motorist bodily injury  
18 liability coverage limits as set forth in this subsection. For the purpose  
19 of the immediately preceding sentence, noncommercial motor vehicle  
20 shall mean any motor vehicle that is not a commercial motor vehicle as  
21 defined in G.S. 20-4.01(3d), but that is otherwise subject to the  
22 requirements of this subsection.

- 23 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)  
24 of this subsection, provide underinsured motorist coverage, to be used  
25 only with a policy that is written at limits that exceed those prescribed  
26 by subdivision (2) of this section ~~and that afford uninsured motorist~~  
27 ~~coverage as provided by subdivision (3) of this subsection, in an~~  
28 ~~amount not to be less than the financial responsibility amounts for~~  
29 ~~bodily injury liability as set forth in G.S. 20-279.5 nor greater than one~~  
30 ~~million dollars (\$1,000,000) as selected by the policy owner. section,~~  
31 with limits equal to the highest limits of bodily injury liability  
32 coverage for any one vehicle insured under the policy. The named  
33 insured may purchase underinsured motorist coverage with greater  
34 limits, subject to the limitation that in no event shall the underinsured  
35 motorist coverage limits exceed one million dollars (\$1,000,000) per  
36 person and one million dollars (\$1,000,000) per accident. The insurer  
37 shall notify the named insured of his or her right to purchase  
38 underinsured motorist coverage with greater limits, when the policy is  
39 issued and renewed, as provided in subsection (m) of this section. An  
40 "uninsured motor vehicle," as described in subdivision (3) of this  
41 subsection, includes an "underinsured highway vehicle," which means  
42 a highway vehicle with respect to the ownership, maintenance, or use  
43 of which, the sum of the limits of liability under all bodily injury  
44 liability bonds and insurance policies applicable at the time of the

1 accident is less than the applicable limits of underinsured motorist  
2 coverage for the vehicle involved in the accident and insured under the  
3 owner's policy. For purposes of an underinsured motorist claim  
4 asserted by a person injured in an accident where more than one  
5 person is injured, a highway vehicle will also be an "underinsured  
6 highway vehicle" if the total amount actually paid to that person under  
7 all bodily injury liability bonds and insurance policies applicable at the  
8 time of the accident is less than the applicable limits of underinsured  
9 motorist coverage for the vehicle involved in the accident and insured  
10 under the owner's policy. Notwithstanding the immediately preceding  
11 sentence, a highway vehicle shall not be an "underinsured motor  
12 vehicle" for purposes of an underinsured motorist claim under an  
13 owner's policy insuring that vehicle ~~if~~ unless the owner's policy  
14 insuring that vehicle provides underinsured motorist coverage with  
15 limits that are ~~less than or equal to~~ greater than that policy's bodily  
16 injury liability limits. For the purposes of this subdivision, the term  
17 "highway vehicle" means a land motor vehicle or trailer other than (i)  
18 a farm-type tractor or other vehicle designed for use principally off  
19 public roads and while not upon public roads, (ii) a vehicle operated on  
20 rails or crawler-treads, or (iii) a vehicle while located for use as a  
21 residence or premises. The provisions of subdivision (3) of this  
22 subsection shall apply to the coverage required by this subdivision.  
23 Underinsured motorist coverage is deemed to apply when, by reason of  
24 payment of judgment or settlement, all liability bonds or insurance  
25 policies providing coverage for bodily injury caused by the ownership,  
26 maintenance, or use of the underinsured highway vehicle have been  
27 exhausted. Exhaustion of that liability coverage for the purpose of any  
28 single liability claim presented for underinsured motorist coverage is  
29 deemed to occur when either (a) the limits of liability per claim have  
30 been paid upon the claim, or (b) by reason of multiple claims, the  
31 aggregate per occurrence limit of liability has been paid. Underinsured  
32 motorist coverage is deemed to apply to the first dollar of an  
33 underinsured motorist coverage claim beyond amounts paid to the  
34 claimant under the exhausted liability policy.

35 In any event, the limit of underinsured motorist coverage  
36 applicable to any claim is determined to be the difference between the  
37 amount paid to the claimant under the exhausted liability policy or  
38 policies and the limit of underinsured motorist coverage applicable to  
39 the motor vehicle involved in the accident. Furthermore, if a claimant  
40 is an insured under the underinsured motorist coverage on separate or  
41 additional policies, the limit of underinsured motorist coverage  
42 applicable to the claimant is the difference between the amount paid to  
43 the claimant under the exhausted liability policy or policies and the  
44 total limits of the claimant's underinsured motorist coverages as

1 determined by combining the highest limit available under each policy;  
2 provided that this sentence shall apply only to insurance on nonfleet  
3 private passenger motor vehicles as described in G.S. 58-40-15(9) and  
4 (10). The underinsured motorist limits applicable to any one motor  
5 vehicle under a policy shall not be combined with or added to the  
6 limits applicable to any other motor vehicle under that policy.

7 An underinsured motorist insurer may at its option, upon a claim  
8 pursuant to underinsured motorist coverage, pay moneys without there  
9 having first been an exhaustion of the liability insurance policy  
10 covering the ownership, use, and maintenance of the underinsured  
11 highway vehicle. In the event of payment, the underinsured motorist  
12 insurer shall be either: (a) entitled to receive by assignment from the  
13 claimant any right or (b) subrogated to the claimant's right regarding  
14 any claim the claimant has or had against the owner, operator, or  
15 maintainer of the underinsured highway vehicle, provided that the  
16 amount of the insurer's right by subrogation or assignment shall not  
17 exceed payments made to the claimant by the insurer. No insurer shall  
18 exercise any right of subrogation or any right to approve settlement  
19 with the original owner, operator, or maintainer of the underinsured  
20 highway vehicle under a policy providing coverage against an  
21 underinsured motorist where the insurer has been provided with  
22 written notice before a settlement between its insured and the  
23 underinsured motorist and the insurer fails to advance a payment to the  
24 insured in an amount equal to the tentative settlement within 30 days  
25 following receipt of that notice. Further, the insurer shall have the  
26 right, at its election, to pursue its claim by assignment or subrogation  
27 in the name of the claimant, and the insurer shall not be denominated  
28 as a party in its own name except upon its own election. Assignment or  
29 subrogation as provided in this subdivision shall not, absent contrary  
30 agreement, operate to defeat the claimant's right to pursue recovery  
31 against the owner, operator, or maintainer of the underinsured highway  
32 vehicle for damages beyond those paid by the underinsured motorist  
33 insurer. The claimant and the underinsured motorist insurer may join  
34 their claims in a single suit without requiring that the insurer be named  
35 as a party. Any claimant who intends to pursue recovery against the  
36 owner, operator, or maintainer of the underinsured highway vehicle for  
37 moneys beyond those paid by the underinsured motorist insurer shall  
38 before doing so give notice to the insurer and give the insurer, at its  
39 expense, the opportunity to participate in the prosecution of the claim.  
40 Upon the entry of judgment in a suit upon any such claim in which the  
41 underinsured motorist insurer and claimant are joined, payment upon  
42 the judgment, unless otherwise agreed to, shall be applied pro rata to  
43 the claimant's claim beyond payment by the insurer of the owner,



1 operator or maintainer of the underinsured highway vehicle and the  
2 claim of the underinsured motorist insurer.

3 A party injured by the operation of an underinsured highway  
4 vehicle who institutes a suit for the recovery of moneys for those  
5 injuries and in such an amount that, if recovered, would support a  
6 claim under underinsured motorist coverage shall give notice of the  
7 initiation of the suit to the underinsured motorist insurer as well as to  
8 the insurer providing primary liability coverage upon the underinsured  
9 highway vehicle. Upon receipt of notice, the underinsured motorist  
10 insurer shall have the right to appear in defense of the claim without  
11 being named as a party therein, and without being named as a party  
12 may participate in the suit as fully as if it were a party. The  
13 underinsured motorist insurer may elect, but may not be compelled, to  
14 appear in the action in its own name and present therein a claim  
15 against other parties; provided that application is made to and  
16 approved by a presiding superior court judge, in any such suit, any  
17 insurer providing primary liability insurance on the underinsured  
18 highway vehicle may upon payment of all of its applicable limits of  
19 liability be released from further liability or obligation to participate in  
20 the defense of such proceeding. However, before approving any such  
21 application, the court shall be persuaded that the owner, operator, or  
22 maintainer of the underinsured highway vehicle against whom a claim  
23 has been made has been apprised of the nature of the proceeding and  
24 given his right to select counsel of his own choice to appear in the  
25 action on his separate behalf. If an underinsured motorist insurer,  
26 following the approval of the application, pays in settlement or partial  
27 or total satisfaction of judgment moneys to the claimant, the insurer  
28 shall be subrogated to or entitled to an assignment of the claimant's  
29 rights against the owner, operator, or maintainer of the underinsured  
30 highway vehicle and, provided that adequate notice of right of  
31 independent representation was given to the owner, operator, or  
32 maintainer, a finding of liability or the award of damages shall be res  
33 judicata between the underinsured motorist insurer and the owner,  
34 operator, or maintainer of underinsured highway vehicle.

35 As consideration for payment of policy limits by a liability insurer  
36 on behalf of the owner, operator, or maintainer of an underinsured  
37 motor vehicle, a party injured by an underinsured motor vehicle may  
38 execute a contractual covenant not to enforce against the owner,  
39 operator, or maintainer of the vehicle any judgment that exceeds the  
40 policy limits. A covenant not to enforce judgment shall not preclude  
41 the injured party from pursuing available underinsured motorist  
42 benefits, unless the terms of the covenant expressly provide otherwise,  
43 and shall not preclude an insurer providing underinsured motorist  
44 coverage from pursuing any right of subrogation.

1           ~~The coverage required under this subdivision shall not be~~  
2           ~~applicable where any insured named in the policy rejects the coverage.~~  
3           ~~An insured named in the policy may select different coverage limits as~~  
4           ~~provided in this subdivision. If the named insured does not reject~~  
5           ~~underinsured motorist coverage and does not select different coverage~~  
6           ~~limits, the amount of underinsured motorist coverage shall be equal to~~  
7           ~~the highest limit of bodily injury liability coverage for any one vehicle~~  
8           ~~in the policy. Once the option to reject underinsured motorist coverage~~  
9           ~~or to select different coverage limits is offered by the insurer, the~~  
10           ~~insurer is not required to offer the option in any renewal,~~  
11           ~~reinstatement, substitute, amended, altered, modified, transfer, or~~  
12           ~~replacement policy unless a named insured makes a written request to~~  
13           ~~exercise a different option. The selection or rejection of underinsured~~  
14           ~~motorist coverage by a named insured or the failure to select or reject~~  
15           ~~is valid and binding on all insureds and vehicles under the policy.~~

16           ~~Rejection of or selection of different coverage limits for~~  
17           ~~underinsured motorist coverage for policies under the jurisdiction of~~  
18           ~~the North Carolina Rate Bureau shall be made in writing by the named~~  
19           ~~insured on a form promulgated by the Bureau and approved by the~~  
20           ~~Commissioner of Insurance.~~

21           Notwithstanding the provisions of this subsection, no policy of  
22           motor vehicle liability insurance applicable solely to commercial  
23           motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to  
24           fleet vehicles shall be required to provide underinsured motorist  
25           coverage. Any motor vehicle liability policy that insures both  
26           commercial motor vehicles as defined in G.S. 20-4.01(3d) and  
27           noncommercial motor vehicles shall provide underinsured motorist  
28           coverage in accordance with the provisions of this subsection in an  
29           amount equal to the highest limits of bodily injury liability coverage  
30           for any one noncommercial motor vehicle insured under the policy,  
31           subject to the right of the insured to purchase higher underinsured  
32           motorist bodily injury liability coverage limits as set forth in this  
33           subsection. For the purpose of the immediately preceding sentence,  
34           noncommercial motor vehicle shall mean any motor vehicle that is not  
35           a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is  
36           otherwise subject to the requirements of this subsection."

37           **SECTION 1.2.** G.S. 20-279.21 is amended by adding the following new  
38 subsections to read:

39           "(m) Every insurer that sells motor vehicle liability policies subject to the  
40           requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable  
41           notice to the named insured, when the policy is issued and renewed, that the named  
42           insured may purchase uninsured motorist bodily injury coverage and, if applicable,  
43           underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per  
44           person and one million dollars (\$1,000,000) per accident. An insurer shall be deemed to

1 have given reasonable notice if it includes the following or substantially similar  
2 language on the policy's original and renewal declarations pages or in a separate notice  
3 accompanying the original and renewal declarations pages in at least 10 point type:

4 "NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY  
5 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE  
6 WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND  
7 ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE  
8 PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE  
9 NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY  
10 MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD  
11 CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR  
12 OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD  
13 ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED  
14 UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

15 (n) Nothing in this section shall be construed to provide greater amounts of  
16 uninsured or underinsured motorist coverage in a liability policy than the insured has  
17 purchased from the insurer under this section.

18 (o) An insurer that fails to comply with subsection (m) of this section is subject  
19 to a civil penalty under G.S. 58-2-70."

## 20 **PART II. INSURANCE COMPANY FINANCIAL SOLVENCY PROVISIONS.**

### 21 **SECTION 2.1.** G.S. 58-5-50 reads as rewritten:

#### 22 **"§ 58-5-50. Deposits of foreign life insurance companies.**

23 In addition to other requirements of ~~Articles 1 through 64~~ of this Chapter, all foreign  
24 life insurance companies shall deposit securities, as specified in G.S. 58-5-20, ~~having~~  
25 that have a market value of four hundred thousand dollars (\$400,000) as a prerequisite  
26 of doing business in this State. All foreign life insurance companies shall deposit an  
27 additional two hundred thousand dollars (\$200,000) where such companies cannot show  
28 three years of net ~~operational gains prior to admission.~~ income before being licensed in  
29 this State."

### 30 **SECTION 2.2.** The catch line of G.S. 58-10-145 reads as rewritten:

#### 31 **"§ 58-10-145. ~~Mono-line~~ Monoline requirement for mortgage guaranty insurers."**

### 32 **SECTION 2.3.** G.S. 58-7-15(17) reads as rewritten:

33 "(17) "Credit insurance," meaning indemnifying merchants or other persons  
34 extending credit against loss or damage resulting from the nonpayment  
35 of debts owed to them; and including the incidental power to acquire  
36 and dispose of debts so insured, and to collect any debts owed to the  
37 insurer or to any person so insured by the insurer; and also including  
38 insurance where the debt is secured by either (a) a junior lien on real  
39 estate or (b) ~~where the debt is secured by a first lien on real estate as~~  
40 long as (i) the purpose of the debt being insured is not for the purchase  
41 of the real estate and the insurance is limited to twenty-five percent  
42 (25%) of the insurer's aggregate insured risk outstanding, before  
43 reinsurance ceded or assumed or (ii) the insurance is not included  
44 within the definition of mortgage guaranty insurance."

SECTION 2.4. G.S. 58-5-71 reads as rewritten:

"§ 58-5-71. Liens of policyholders; subordination.

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims. 'Special deposit claims' has the same meaning set forth in G.S. 58-30-10(19)."

SECTION 2.5. G.S. 58-5-55 reads as rewritten:

"§ 58-5-55. Deposits of capital and surplus by domestic insurance companies.

(a) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic stock insurance companies shall deposit their required statutory capital with the ~~Department, Commissioner~~. Such deposits shall be under the exclusive control of the ~~Department, Commissioner~~ for the protection of policyholders.

(b) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic mutual insurance companies shall deposit at least fifty percent (50%) of their minimum required surplus with the ~~Department, Commissioner~~, with the amount of the deposit to be determined by the Commissioner. Such deposits shall be under the exclusive control of the ~~Department, Commissioner~~ for the protection of policyholders.

(c) Deposits fulfilling the requirements of this section shall comprise:

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

SECTION 2.6. G.S. 58-7-75 is amended by adding two new subdivisions to

read:

"§ 58-7-75. Amount of capital and/or surplus required; impairment of capital or surplus.

...

(1a) Non-Stock Life Insurance Companies. – A nonstock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has a paid in initial surplus of at least one million five hundred thousand dollars (\$1,500,000) and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional surplus. Every such corporation shall at all times thereafter maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000). Provided that, any such corporation may conduct the kind of insurance authorized for stock accident and health insurance companies, as set out in G.S. 58-7-15(3)a. and b., where its charter so permits, and only as long as it maintains a minimum surplus equal to the sum of the minimum surplus requirements of this subdivision and the minimum surplus requirements of subdivision (2a) of this section.

...

1           (2a) Non-Stock Accident and Health Insurance Companies.

2           a. A non-stock corporation, not inclusive of a corporation  
 3           organized pursuant to subdivision (6) of this section, may be  
 4           organized in the manner prescribed in this Chapter and licensed  
 5           to do only the kind of insurance specified in G.S. 58-7-15(3)a.  
 6           when it has a paid in initial surplus of at least one million  
 7           dollars (\$1,000,000). Every such corporation shall at all times  
 8           thereafter maintain a minimum surplus of at least five hundred  
 9           thousand dollars (\$500,000).

10          b. Any non-stock corporation organized under the provisions of  
 11          sub-subdivision a. of this subdivision may, by the provisions of  
 12          its original charter or any amendment thereto, acquire the power  
 13          to do the kind of business specified in G.S. 58-7-15(3)b., if it  
 14          has a paid-in initial surplus of at least one million five hundred  
 15          thousand dollars (\$1,500,000). Every such corporation shall at  
 16          all times maintain a minimum surplus of at least seven hundred  
 17          fifty thousand dollars (\$750,000)."

18 **PART III. UNAUTHORIZED INSURER AMENDMENTS.**

19           **SECTION 3.1.** The catch line for G.S. 58-28-5 reads as rewritten:

20 **"§ 58-28-5. Transacting business without certificate of authority a license**  
 21 **prohibited; exceptions."**

22           **SECTION 3.2.** G.S. 58-28-5(a) reads as rewritten:

23           "(a) Except as otherwise provided in this section, it is unlawful for any company  
 24 to enter into a contract of insurance as an insurer or to transact insurance business in this  
 25 State as set forth in ~~G.S. 58-28-10~~, G.S. 58-28-13 without a license issued by the  
 26 Commissioner. This section does not apply to the following acts or transactions:

27           (1) The procuring of a policy of insurance upon a risk within this State  
 28 where the applicant is unable to procure coverage in the open market  
 29 with admitted companies and is otherwise in compliance with Article  
 30 21 of this Chapter.

31           (2) Contracts of reinsurance; but not including assumption reinsurance  
 32 transactions, whereby the reinsuring company succeeds to all of the  
 33 liabilities of and supplants the ceding company on the insurance  
 34 contracts that are the subject of the transaction, unless prior approval  
 35 has been obtained from the Commissioner.

36           (3) Transactions in this State involving a policy lawfully solicited, written  
 37 and delivered outside of this State covering only subjects of insurance  
 38 not resident, located or expressly to be performed in this State at the  
 39 time of issuance, and which transactions are subsequent to the issuance  
 40 of such policy.

41           (4) Transactions in this State involving group life insurance, group  
 42 annuities, or group, blanket, or franchise accident and health insurance  
 43 where the master policy for the insurance was lawfully issued and

delivered in a state in which the company was authorized to transact business.

- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

**SECTION 3.3.** G.S. 58-28-40(a) reads as rewritten:

"(a) Any act of entering into a contract of insurance as an insurer or transacting insurance business in this State, as set forth in ~~G.S. 58-28-10~~ G.S. 58-28-12 by an unauthorized, foreign or alien company, shall be equivalent to and shall constitute an appointment by such company of the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of G.S. 58-28-5, and any of said acts shall be a signification of its agreement that any such process against it, which is so served, shall be of the same legal force and validity as if in fact served upon the company."

**SECTION 3.4.** Article 28 of Chapter 58 of the General Statutes is amended by adding three new sections to read:

**"§ 58-28-12. Transacting insurance business in this State.**

Definitions. – As used in this section, G.S. 58-28-13, and G.S. 58-28-14:

- (1) "Admitted insurer" means an insurer that is licensed to write insurance in this State.
- (2) "Kind of insurance" means one of the types of insurance specified in G.S. 58-7-15.
- (3) "Nonadmitted insurer" means an insurer that is not licensed to write insurance in this State.
- (4) "Transacting insurance business" or "transact insurance business" means:

- 1           a.     The making of or proposing to make, as an insurer, an insurance  
2                 contract.
- 3           b.     The making of or proposing to make, as guarantor or surety,  
4                 any contract of guaranty or suretyship as a vocation and not  
5                 merely incidental to any other legitimate business or activity of  
6                 the guarantor or surety.
- 7           c.     The solicitation, taking, or receiving of an application for  
8                 insurance.
- 9           d.     The receiving or collection of any premium, commission,  
10                membership fees, assessments, dues, or other consideration for  
11                a contract of insurance or any part of the contract of insurance.
- 12           e.     The issuance or delivery in this State of a contract of insurance  
13                to a resident of this State or to a person authorized to do  
14                business in this State.
- 15           f.     The solicitation, negotiation, procurement, effectuation, or  
16                renewal of a contract of insurance.
- 17           g.     The dissemination of information as to coverage or rates;  
18                forwarding of an application; delivery of a contract of  
19                insurance; inspection of a risk; the fixing of rates; the  
20                investigation or adjustment of a claim or loss; the transaction of  
21                matters after effectuation of a contract of insurance and arising  
22                out of the contract; or any other manner of representing or  
23                assisting a person or insurer in transacting insurance business  
24                with respect to properties, risks, or exposures located or to be  
25                performed in this State.
- 26           h.     The transaction of any kind of insurance business specifically  
27                recognized as transacting an insurance business within the  
28                meaning of this Chapter.
- 29           i.     The offering of insurance or the transacting of insurance  
30                business.
- 31           j.     The offering of an agreement or contract which purports to  
32                alter, amend, or void coverage of an insurance contract.
- 33           k.     The transaction of any matters before or after the execution of  
34                contracts of insurance in contemplation of or arising out of the  
35                execution.
- 36           l.     The maintaining of any agency or office in this State where any  
37                acts in furtherance of an insurance business are transacted,  
38                including the execution of contracts of insurance with citizens  
39                of this State or any other state.
- 40           m.     The maintaining of files or records of contracts of insurance in  
41                this State.

42 **"§ 58-28-13. Placement of insurance business.**

- 43       (a) An insurer shall not transact insurance business in this State unless it is an  
44 admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

1       **(b)** A person shall not transact insurance business or in this State directly or  
2 indirectly act as agent for, or otherwise represent or aid on behalf of another, a  
3 nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of  
4 insurance, or renewals of insurance; forwarding of applications; delivery of policies or  
5 contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or  
6 losses; collection or forwarding of premiums; or in any other manner represent or assist  
7 the insurer in transacting insurance business.

8       **(c)** A person who represents or aids a nonadmitted insurer in violation of this  
9 section is subject to penalties or restitution, or both, as set forth in this section.

10       **(d)** This section does not prohibit employees, officers, directors, or partners of a  
11 commercial insured from acting in the capacity of an insurance manager or buyer in  
12 placing insurance on behalf of the employer, provided that the person's compensation is  
13 not based on buying insurance.

14       **(e)** The venue of an act committed by mail or any other medium is at the point  
15 where the matter transmitted by mail or other medium is delivered or issued for delivery  
16 or takes effect.

17       **(f)** The remedies prescribed in this section are not exclusive. Penalties may also  
18 be assessed under Article 63 of this Chapter or G.S. 58-2-161, or both.

19       **(g)** If the Commissioner finds a violation of this section, the Commissioner may  
20 order the payment of a monetary penalty after considering the factors in G.S. 58-28-14;  
21 or petition the Superior Court of Wake County for an order directing payment of  
22 restitution as provided in subsection (i) of this section; or both. The monetary penalty  
23 shall not exceed five thousand dollars (\$5,000) for the first offense and shall not exceed  
24 ten thousand dollars (\$10,000) for each succeeding offense. Each day during which a  
25 violation occurs constitutes a separate violation. The clear proceeds of the penalty shall  
26 be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
27 G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to  
28 payment of any other penalty for a violation of the criminal laws of this State.

29       **(h)** Upon petition of the Commissioner, the Superior Court of Wake County may  
30 order the person who committed a violation specified in this section to make restitution  
31 in an amount that would make whole any person harmed by the violation. The petition  
32 may be made at any time and also in any appeal of any order issued by the  
33 Commissioner.

34       **(i)** Restitution to the Department for extraordinary administrative expenses  
35 incurred in the investigation and hearing of the violation may also be ordered by the  
36 court in such amount that would reimburse the Department for the expenses.

37       **(j)** Nothing in this section prevents the Commissioner from negotiating a  
38 mutually acceptable agreement with any person as to any civil penalty or restitution.

39       **(k)** The Attorney General of the State of North Carolina at the request of and  
40 upon information from the Commissioner shall initiate a civil action in behalf of the  
41 Commissioner in any county of the State in which a violation under this section occurs  
42 to recover the penalty provided. Service of process upon the nonadmitted insurer shall  
43 be made under G.S. 58-28-40.

44 **"§ 58-28-14. Monetary penalty; factors to be considered.**



1 In determining the amount of the penalty under G.S. 58-28-13, the Commissioner  
2 shall consider:

- 3 (1) The amount of money that inured to the benefit of the violator as a  
4 result of the violation.
- 5 (2) Whether the violation was committed willfully.
- 6 (3) The prior record of the violator in complying or failing to comply with  
7 laws, rules, or orders applicable to the violator.
- 8 (4) The failure of the violator to provide timely and complete responses to  
9 the Department's inquiries about the violator's insurance activities in  
10 North Carolina.
- 11 (5) The extent and degree to which the violator marketed its insurance  
12 product in this State.
- 13 (6) The extent to which the violator's marketing materials, including fax  
14 solicitations, Internet Web sites, circulars, or other forms of  
15 advertisement or solicitations through any medium, were deceptive or  
16 misleading to residents of this State.
- 17 (7) The number of residents of this State who enrolled in the violator's  
18 insurance plan.
- 19 (8) The number of policies and amount of insurance coverage issued by  
20 the violator to residents of this State.
- 21 (9) The failure of the violator to promptly refund premiums and other  
22 consideration paid by residents of this State for insurance coverage  
23 issued by the violator upon requests by the residents of this State or the  
24 Department.
- 25 (10) The extent and degree of harm to residents of this State. In assessing  
26 the extent and degree of harm, the Commissioner shall consider,  
27 among other things, the amount of premiums and other consideration  
28 paid by residents of this State for coverage issued by the violator, the  
29 failure of the violator to pay claims made by residents of this State,  
30 and number and dollar amount of claims made by residents of this  
31 State that the violator has failed to pay.
- 32 (11) Whether the violator has a prior record of violating this Article or the  
33 unauthorized insurance laws of any other state. "Prior record" includes  
34 final administrative orders issued by the Commissioner or insurance  
35 regulator of any other state; federal or state criminal convictions,  
36 including pleas of guilty or nolo contendere; civil judgments; and  
37 written settlement agreements of state administrative proceedings,  
38 state or federal criminal proceedings, or civil lawsuits against the  
39 violator or any entity of which the violator was either a principal or  
40 owner."

41 **SECTION 3.5.** G.S. 58-28-10 is repealed.

42 **PART IV. RATE EVASION TECHNICAL AMENDMENTS.**

43 **SECTION 4.1.** G.S. 20-52(a)(4) reads as rewritten:

1 (4) A statement that the owner is an eligible risk for insurance coverage as  
2 defined in ~~G.S. 58-37-1~~. G.S. 58-37-1(4a)."

3 **SECTION 4.2.** G.S. 58-36-85(b) reads as rewritten:

4 "(b) Termination Restrictions. – An insurer shall not terminate a policy for a  
5 reason that is not specified in ~~G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g).~~  
6 G.S. 58-2-164(g), 58-36-65(g), or 58-37-50. A termination of a policy is not effective  
7 unless the insurer either has notified a named insured of the termination by sending a  
8 written termination notice by first class mail to the insured's last known address or is not  
9 required by this subsection to send a written termination notice. Proof of mailing of a  
10 written termination notice is proof that the notice was sent.

11 An insurer is not required to send a written termination notice if any of the following  
12 applies:

- 13 (1) The insurer has manifested its willingness to renew the policy by  
14 issuing or offering to issue a renewal policy, a certificate, or other  
15 evidence of renewal.
- 16 (2) The insurer has manifested its willingness to renew the policy by any  
17 means not described in subdivision (1) of this subsection, including  
18 mailing a premium notice or expiration notice by first class mail to the  
19 named insured and the failure of the insured to pay the required  
20 premium on or before the premium due date.
- 21 (3) A named insured has given written notification to the insurer or its  
22 agent that the named insured wants the policy to be terminated."

23 **PART V. MANAGED CARE RECORD RETENTION AMENDMENTS AND**  
24 **HMO TECHNICAL AMENDMENT.**

25 **SECTION 5.1.** G.S. 58-50-61(n) reads as rewritten:

26 "(n) Maintenance of Records. – Every insurer and URO shall maintain records of  
27 each review performed and each appeal received or reviewed, as well as documentation  
28 sufficient to demonstrate compliance with this section. The maintenance of these  
29 records, including electronic reproduction and storage, shall be governed by rules  
30 adopted by the Commissioner that apply to insurers. These records shall be retained by  
31 the insurer and URO for a period of ~~three-five years or~~ or, for domestic companies, until  
32 the Commissioner has adopted a final report of a general examination that contains a  
33 review of these records for that calendar year, whichever is later."

34 **SECTION 5.2.** G.S. 58-50-62(d) reads as rewritten:

35 "(d) Maintenance of Records. – Every insurer shall maintain records of each  
36 grievance received and the insurer's review of each grievance, as well as documentation  
37 sufficient to demonstrate compliance with this section. The maintenance of these  
38 records, including electronic reproduction and storage, shall be governed by rules  
39 adopted by the Commissioner that apply to insurers. The insurer shall retain these  
40 records for ~~three-five years or~~ or, for domestic companies, until the Commissioner has  
41 adopted a final report of a general examination that contains a review of these records  
42 for that calendar year, whichever is later."

43 **SECTION 5.3.** G.S. 58-67-50(e) reads as rewritten:

1       "(e) Effective January 1, 1989, every health maintenance organization shall  
2 provide at least minimum cost and utilization information for group contracts of 100 or  
3 more subscribers on an annual basis when requested by the group. Such information  
4 shall be compiled in accordance with the Data Collection Form developed by the  
5 Standardized HMO Date Form Task Force as endorsed by the Washington Business  
6 Group on Health and the Group Health Association of America on November 19, 1986,  
7 and any subsequent amendments. In addition, beginning with data for the calendar year  
8 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost,  
9 use of service, prevention, outcomes, and other group-specific data as collected in  
10 accordance with the latest edition of the ~~Health Plan Employer Data and Information~~  
11 ~~Set (HEDIS)~~ Healthcare Effectiveness Data and Information Set guidelines, as  
12 published by the National Committee for Quality Assurance. Beginning with data for  
13 the calendar year 1998, every HMO shall file with the Commissioner and make  
14 available to all employer groups, not later than July 1 of the following calendar year, a  
15 report of health benefit plan-wide experience on its costs, use of services, and other  
16 aspects of performance, in the ~~HEDIS~~ Healthcare Effectiveness and Information Set  
17 format."

18 **PART VI. HEALTH INSURANCE RISK POOL AMENDMENTS.**

19       **SECTION 6.1.** G.S. 58-50-180(c) reads as rewritten:

20       "(c) The initial appointments by the Governor and the General Assembly upon the  
21 recommendation of the Speaker of the House of Representatives and the President Pro  
22 Tempore of the Senate shall serve a term of three years. The initial appointments by the  
23 Commissioner under sub-subdivisions a., b., and d. of subdivision (b)(3) of this section  
24 shall be for a term of two years. The initial appointments by the Commissioner under  
25 sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term  
26 of one year. All succeeding appointments shall be for terms of three years. Members  
27 shall not serve for more than two successive terms.

28       A Board member's term shall continue until the member's successor is appointed by  
29 the original appointing authority. Vacancies shall be filled by the appointing authority  
30 for the unexpired portion of the term in which they occur. A Board member may be  
31 removed by the appointing authority for cause.

32       The Board shall meet at least quarterly upon the call of the chair. A majority of the  
33 total membership of the Commission shall constitute a quorum.

34       The Commissioner shall appoint a chair to serve for the initial two years of the  
35 Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board  
36 members and shall serve for two-year terms. Board members shall receive travel  
37 allowances under ~~G.S. 138-6~~ G.S. 138-5 when traveling to and from meetings of the  
38 ~~Board,~~ Board or for official business of the Pool, but shall not receive any ~~subsistence~~  
39 ~~allowance or per diem~~ under G.S. 138-5, subdivision (a)(1) of that section."

40       **SECTION 6.2.** G.S. 58-50-180(e)(1) reads as rewritten:

41       "(e) The Pool shall have the general powers and authority granted under the laws  
42 of this State to health insurers and the specific authority to do all of the following:

- 43       (1) Enter into contracts as are necessary or proper to carry out the  
44             provisions and purposes of this Part, including the authority, with the

1 approval of the Executive Director ~~in collaboration with~~ acting upon  
2 the approval or authorization of the Board, to enter into contracts with  
3 similar plans of other states for the joint performance of common  
4 administrative functions or with persons or other organizations for the  
5 performance of administrative functions."

6 **SECTION 6.3.** G.S. 58-50-185(a) reads as rewritten:

7 "(a) The Executive Director, ~~in collaboration with~~ the approval or authorization of  
8 the Board, shall select through a competitive bidding process one or more insurers to  
9 administer the Pool. The Executive Director shall evaluate bids submitted based on  
10 criteria established by the Board. The criteria shall allow for the comparison of  
11 information about each bidding administrator and selection of a Pool Administrator  
12 based on at least the following:

- 13 (1) Proven ability to handle health insurance coverage to individuals.
- 14 (2) Efficiency and timeliness of the claim processing procedures.
- 15 (3) Estimated total charges for administering the Pool.
- 16 (4) Ability to apply effective cost containment programs and procedures  
17 and to administer the Pool in a cost-efficient manner.
- 18 (5) Financial condition and stability.
- 19 (6) Evidence of authority to provide third-party administrative services in  
20 North Carolina."

21 **SECTION 6.4.** G.S. 58-50-195(d) reads as rewritten:

22 "(d) Coverage under the Pool shall cease:

- 23 (1) On the date an individual is no longer a resident of this State.
- 24 (2) On the date an individual requests coverage to end.
- 25 (3) Upon the death of the covered individual.
- 26 (4) On the date State law requires cancellation of the Pool policy.
- 27 (5) At the option of the Pool, 30 days after the Pool makes any inquiry  
28 concerning the individual's eligibility or residence to which the  
29 individual does not reply.
- 30 (6) Because the individual has failed to make the payments required under  
31 this Part.
- 32 (7) Because the individual has performed an act or practice that constitutes  
33 fraud or made an intentional misrepresentation of material fact under  
34 the terms of the coverage."

35 **SECTION 6.5.** G.S. 58-50-210 reads as rewritten:

36 "**§ 58-50-210. Preexisting conditions.**

37 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or  
38 expenses incurred during the first 12 months following the effective date of coverage as  
39 to any condition for which medical advice, care, or treatment was recommended or  
40 received as to such conditions during the 12-month period immediately preceding the  
41 effective date of coverage, except that no preexisting condition exclusion shall be  
42 applied to a federally defined eligible ~~individual~~ individual or an individual who is  
43 eligible for the Pool because of his or her eligibility for the credit for health insurance

1 costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the  
2 Internal Revenue Code of 1986, pursuant to G.S. 58-50-195(a)(6).

3 ~~(b) Subject to subsection (a) of this section, the preexisting condition exclusions~~  
4 ~~shall be waived to the extent that similar exclusions, if any, have been satisfied under~~  
5 ~~any prior health insurance coverage that was involuntarily terminated, provided that:~~

6 (1) ~~Application for Pool coverage is made not later than 63 days following~~  
7 ~~the involuntary termination, and in such case coverage in the Pool~~  
8 ~~shall be effective from the date on which the prior coverage was~~  
9 ~~terminated; and~~

10 (2) ~~The applicant is not eligible for continuation or conversion rights that~~  
11 ~~would provide coverage substantially similar to Pool coverage.~~

12 (c) The period of any preexisting condition exclusion shall be reduced by the  
13 aggregate of the periods of creditable coverage, if any, applicable as of the enrollment  
14 date. Credit for having satisfied some or all of the preexisting condition waiting period  
15 under previous creditable coverage, as defined in G.S. 58-51-17(a)(1), shall be provided  
16 in accordance with G.S. 58-51-17."

## 17 **PART VII. PEO AMENDMENTS.**

18 **SECTION 7.1.** The catch line of G.S. 58-89A-50 reads as rewritten:

19 **"§ 58-89A-50. Surety bond; letter of ~~credit~~credit; other deposits."**

20 **SECTION 7.2.** G.S. 58-89A-50(a) reads as rewritten:

21 "(a) An applicant for licensure shall file with the Commissioner a surety bond for  
22 the benefit of the Commissioner in the an amount of one hundred thousand dollars  
23 (\$100,000) in favor of the State of North Carolina equal to five percent (5%) of the  
24 applicant's prior year's total North Carolina wages, benefits, workers compensation  
25 premiums, and unemployment compensation contributions, but not greater than five  
26 hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may  
27 require."

28 **SECTION 7.3.** G.S. 58-89A-10 is repealed.

29 **SECTION 7.4.** G.S. 58-89A-105 reads as rewritten:

30 **"§ 58-89A-105. Employee benefit plans; required disclosure; other reports.**

31 (a) A licensee may sponsor and maintain employee benefit plans for the benefit  
32 of assigned employees. Any health insurance plan sponsored and maintained by a  
33 licensee shall only be fully insured by one of the following:

34 (1) A licensed insurance company that is authorized to write accident and  
35 health insurance, as defined in G.S. 58-7-15(3).

36 (2) A service corporation organized and licensed under Article 65 of this  
37 Chapter.

38 (3) A health maintenance organization organized and licensed under  
39 Article 67 of this Chapter.

40 ~~(b) A client company may sponsor and maintain employee benefit plans for the~~  
41 ~~benefit of assigned employees.~~

42 ~~(c) If a licensee offers to its assigned employees any health benefit plan that is~~  
43 ~~not fully insured by an authorized insurer, the plan shall:~~

- 1           (1) Utilize a third party administrator licensed or registered to do business  
2           in this State;  
3           (2) Hold all plan assets, including participant contributions, in a trust  
4           account; and  
5           (3) Provide sound reserves for the plan as determined using generally  
6           accepted actuarial standards.

7           (d) For purposes of this section, a "health benefit plan that is not fully insured by  
8           an authorized insurer" includes any arrangement except an arrangement under which an  
9           insurance company licensed to write insurance in this State has issued an insurance  
10          policy that covers all of the obligations of the health benefit plan. For the purposes of  
11          this section, a health insurance plan is fully insured only if all of the benefits provided  
12          under the plan are covered by an approved policy issued by one or more of the entities  
13          specified in subsection (a) of this section. A health insurance plan is not fully insured if  
14          the plan is any form of stop-loss insurance or any other form of reinsurance.

15          (e) Existing licensees shall comply with subsection (a) of this section by October  
16          1, 2009. Before October 1, 2009, if an existing licensee sponsors and maintains any  
17          health insurance plan that is not fully insured by one or more of the entities specified in  
18          subsection (a) of this section, the licensee shall do all of the following:

- 19               (1) Use a third-party administrator licensed or registered under Article 56  
20               of this Chapter.  
21               (2) Hold all plan assets, including participant contributions, in a trust  
22               account.  
23               (3) Provide sound reserves for the plan as determined by generally  
24               accepted actuarial standards."

## 25 **PART VIII. CODE OFFICIALS QUALIFICATION BOARD AMENDMENTS.**

26           **SECTION 8.1.** G.S. 143-151.13(a) reads as rewritten:

27           "(a) No person ~~may~~ shall engage in Code enforcement pursuant to under this  
28           Article unless ~~he~~ that person possesses one of the following types of certificates,  
29           currently valid, issued by the Board attesting to ~~his~~ that person's qualifications to hold  
30           such position: engage in Code enforcement: (i) a standard certificate; (ii) a limited  
31           certificate provided for in subsection ~~(e)~~;(c) of this section; or (iii) a probationary  
32           certificate provided for in subsection ~~(d)~~.(d) of this section. To obtain a standard  
33           certificate, a person must pass an examination, as prescribed by the Board, which Board  
34           or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina  
35           State Building Code and administrative procedures required to enforce the Code. for  
36           Code enforcement. The Board shall may issue a standard certificate of qualification to  
37           each person who successfully completes the examination authorizing the person named  
38           therein examination. The certificate authorizes that person to engage in Code  
39           enforcement and to practice as a qualified Code-enforcement official in North Carolina.  
40           The certificate of qualification shall bear the signatures of the chairman and secretary of  
41           the Board."

42           **SECTION 8.2.** G.S. 143-151.16(d) reads as rewritten:

43           "(d) The Board may establish and collect a fee to be paid by each applicant for  
44           examination in an amount not to exceed one hundred twenty five dollars (\$125.00). In

1 addition, the Board may establish and collect a fee to be paid by each applicant applying  
2 for a review of the applicant's examination. The amount of the examination review fee  
3 shall not exceed fifty dollars (\$50.00). Examination and examination review fees may  
4 be paid directly to approved testing services that maintain regional facilities for the  
5 purpose of administering the Board's examinations. The Board may contract with  
6 persons for the development and administration of the examinations required by  
7 G.S. 143-151.13(a), for course development related to the examinations, for review of a  
8 particular applicant's examination, and for other related services. The person with whom  
9 the Board contracts may charge applicants a reasonable fee for the costs associated with  
10 the development and administration of the examinations, for course development related  
11 to the examinations, for review of the applicant's examinations, and for other related  
12 services. The fee shall be agreed to by the Board and the other contracting party. The  
13 amount of the fee under this subsection shall not exceed one hundred seventy-five  
14 dollars (\$175.00). Contracts for the development and administration of the  
15 examinations, for course development related to the examinations, and for review of  
16 examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General  
17 Statutes or to Article 3D of Chapter 147 of the General Statutes."

18 **PART IX. PROHIBITION AGAINST FREE INSURANCE.**

19 **SECTION 9.1.** Chapter 66 of the General Statutes is amended by adding a  
20 new Article to read:

21 "Article 44.

22 "Free Insurance.

23 **"§ 66-380. Definitions.**

24 As used in this Article:

- 25 (1) "Consumer goods" means goods that are used primarily for personal,  
26 family, or household purposes. For the purposes of this Article,  
27 consumer goods do not include automobiles or residences.
- 28 (2) "Free insurance" means any of the following:
- 29 a. Insurance for which no identifiable or additional charge is made  
30 to the purchaser or lessee of consumer goods or services  
31 directly or indirectly connected with the purchase of consumer  
32 goods.
- 33 b. Insurance for which an identifiable or additional charge is made  
34 in an amount less than the cost of such insurance as to the  
35 seller, lessor, or other person other than the insurer providing  
36 the insurance.

37 **"§ 66-381. Free insurance.**

38 No person shall advertise, offer, or provide free insurance for damage, loss, or theft  
39 as an inducement to the purchase, sale, or rental of consumer goods or services directly  
40 or indirectly connected with the purchase of consumer goods.

41 **"§ 66-382. Unfair trade practice.**

42 A violation of G.S. 66-381 constitutes an unfair trade practice under G.S. 75-1.1."

43 **PART X. MISCELLANEOUS CHANGES.**

44 **SECTION 10.1.** G.S. 58-21-65(b) reads as rewritten:

1       "(b) The Commissioner shall issue a surplus lines license to any qualified holder  
2 of a current ~~fire and casualty~~ property broker's or agent's license, but only when the  
3 broker or agent has:

- 4           (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;
- 5           (2) Submitted a completed license application on a form supplied by the  
6 Commissioner, and the application has been approved by the  
7 Commissioner;
- 8           (3) Passed a qualifying examination approved by the Commissioner;  
9 except that all holders of a license prior to July 11, 1985 shall be  
10 deemed to have passed such an examination; and
- 11          (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17,  
12 2004."

### 13 **PART XI. SEVERABILITY.**

14       **SECTION 11.1.** If any section or provision of this act is declared  
15 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the  
16 validity of the act as a whole or any part other than the part so declared to be  
17 unconstitutional, preempted, or otherwise invalid.

### 18 **PART XII. EFFECTIVE DATES.**

19       **SECTION 12.1.** Part I of this act becomes effective January 1, 2009, and  
20 applies to policies issued or renewed on or after that date. Part III of this act is effective  
21 when it becomes law and applies to violations that occur on or after that date. Parts VI  
22 and VII of this act become effective October 1, 2008. Part IX of this act becomes  
23 effective October 1, 2008, and applies to violations that occur on or after that date. The  
24 remainder of this act is effective when it becomes law.