

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 909
SENATE BILL 514

1 AN ACT PROHIBITING UNAUTHORIZED INSURERS FROM TRANSACTING
2 INSURANCE BUSINESS IN THIS STATE, DEFINING ACTS WHICH CONSTITUTE
3 THE TRANSACTION OF BUSINESS IN THIS STATE; PROVIDING A METHOD OF
4 OBTAINING JURISDICTION OVER UNAUTHORIZED INSURERS AND
5 PRESCRIBING PENALTIES AND OTHER REMEDIES FOR VIOLATION OF THE
6 LAW BY UNAUTHORIZED INSURERS.

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8 The General Assembly of North Carolina do enact:
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10 **Section 1.** Chapter 58 of the General Statutes of North Carolina is hereby amended
11 by adding immediately after Article 3B thereof a new Article to be designated as "Article 3C"
12 and reading as follows:

13 "ARTICLE 3C

14 "Unauthorized Insurers

15 "**§ 58-54.20. Purpose of Act.** It is the purpose of this Act to abate and prevent the practices of
16 unauthorized insurers within the State of North Carolina, and to provide methods for effectively
17 enforcing the laws of this State against such practices. The General Assembly finds that there is
18 within this State a substantial amount of insurance business being transacted by insurers who
19 have not complied with the laws of this State and have not been authorized by the
20 Commissioner of Insurance to do business. These practices by unauthorized insurers are
21 deemed to be harmful and contrary to public welfare of the citizens of this State. The
22 difficulties which arise from the acts and practices of unauthorized insurers is compounded by
23 the fact that such companies are licensed in foreign jurisdictions and conduct a long-range
24 business without having personal representatives or agents in proximity to insureds. The
25 General Assembly further declares that it is a subject of vital public interest to the State that
26 unlicensed and unauthorized companies have been and are now engaged in soliciting by way of
27 direct mail and other advertising media, insurance risks within this State, and that such
28 companies enjoy the many benefits and privileges provided by the State as well as the
29 protection afforded to citizens under exercise of the police powers of the State, without
30 themselves being subject to the laws designed to protect the insurance consuming public. The
31 provisions of this Article are in addition to all other statutory provisions of Chapter 58 relating
32 to unauthorized insurers and do not replace, alter, modify or repeal such existing provisions.

33 "**§ 58-54.21. Transacting Business Without Certificate of Authority Prohibited;**
34 **Exceptions.** Except as hereinafter provided, it shall be unlawful for any company to enter into
35 a contract of insurance as an insurer or to transact insurance business in this State as set forth in
36 § 58-54.22 of this Article, without a certificate of authority issued by the Commissioner of
37 Insurance. This Section shall not apply to the following acts or transactions:

38 (a) The procuring of a policy of insurance upon a risk within this State where the
39 applicant is unable to procure coverage in the open market with admitted companies and is
40 otherwise in compliance with § 58-53.1;

41 (b) Contracts of reinsurance;

42 (c) Transactions in this State involving a policy lawfully solicited, written and delivered
43 outside of this State covering only subjects of insurance not resident, located or expressly to be

1 performed in this State at the time of issuance, and which transactions are subsequent to the
2 issuance of such policy;

3 (d) Transactions in this State involving group or blanket insurance and group annuities
4 where the master policy of such group insurance was lawfully issued and delivered in a state
5 where the company was authorized to transact business;

6 (e) Transactions in this State involving all policies of insurance issued prior to the
7 effective date of this Act;

8 (f) The procuring of contracts of insurance issued to an 'industrial insured' as
9 hereinafter denned.

10 "For the purposes of this Section, an 'industrial insured' is an insured (1) who procures the
11 insurance of any risk or risks by use of the services of a full-time employee acting as an
12 insurance manager or buyer, (2) whose aggregate annual premiums for insurance on all risks
13 total at least twenty-five thousand dollars (\$25,000.00), and (3) who has at least 25 full-time
14 employees: Provided, nothing herein shall relieve such industrial insured from complying with
15 the provisions of § 58-53.1.

16 **"§ 58-54.22. Acts or Transactions Deemed to Constitute Transacting Insurance Business**
17 **in this State.** The following acts, if performed in this State, shall be included among those
18 deemed to constitute transacting insurance business in this State:

19 1. (a) Maintaining any agency or office where any acts in furtherance of an insurance
20 business are transacted, including, but not limited to the execution of contracts of insurance
21 with citizens of this or any other state;

22 (b) Maintaining files or records of contracts of insurance; or

23 (c) Receiving payments of premiums for contracts of insurance.

24 2. Likewise, any of the following acts in this State, whether effected by mail or
25 otherwise by an unauthorized insurer, is included among those deemed to constitute transacting
26 insurance business in this State;

27 (a) The issuance or delivery of contracts of insurance to residents of this State or
28 to corporations authorized to do business therein;

29 (b) The soliciting of applications for contracts of insurance through the use of
30 the United States mail or any other media, method or device;

31 (c) The collections of premiums, membership fees, assessments or other
32 considerations for such contracts; or

33 (d) The transaction of any matters prior to or subsequent to the execution of
34 such contracts in contemplation thereof or arising out of them.

35 "Any company violating any of the provisions of this Section, by doing any of the
36 foregoing acts or transactions while not authorized to do business within this State, shall be
37 subject to penalty of not less than one hundred dollars (\$100.00) nor more than one thousand
38 dollars (\$1,000.00) for each offense; such penalty shall be payable to the Commissioner of
39 Insurance, who shall in turn forward the same to the county or counties wherein the violation or
40 violations occur, for the use of the public schools of such county or counties: Provided, that
41 each day in which a violation occurs shall constitute a separate offense. The Attorney General
42 of the State of North Carolina at the request of and upon information from the Insurance
43 Commissioner shall initiate a civil action in behalf of the Commissioner in any county of the
44 State wherein a violation under this Section occurs to recover the penalty provided. Service of
45 process upon the unauthorized insurer shall be had as is provided in § 58-54.25.

46 **"§ 58-54.23. Validity of Acts or Contracts of Unauthorized Company Shall not Impair**
47 **Obligation of Contract as to the Company; Maintenance of Suits; Right to Defend.** The
48 failure of a company to obtain a certificate of authority shall not impair the validity of any acts
49 or contracts of the company. Any person or insured holding contracts of insurance of an
50 unauthorized insurer may bring an action in the courts of this State under the provisions of
51 G.S. 58-153.1, known as the 'Unauthorized Insurers Process Act', for the enforcement of any

1 rights pursuant to the contract of insurance. The failure of the insurance company to obtain a
2 certificate of authority shall not prevent such company from defending any action at law or suit
3 in equity in any court of this State so long as the said company fully complies with the
4 provisions of Section 58-153.1(c), but no company transacting insurance business in this State
5 without a certificate of authority shall be permitted to maintain an action at law or in equity in
6 any court of this State to enforce any right, claim or demand arising out of the transaction of
7 such business until such company shall have obtained a certificate of authority. Nor shall an
8 action at law or in equity be maintained in any court of this State by any successor or assignee
9 of such company on any such right, claim or demand originally held by such company until a
10 certificate of authority shall have been obtained by the company or by a company which has
11 acquired all or substantially all of its assets. Nothing in this Section shall be construed to
12 abrogate the conditions of admission into this State nor to impair the authority of the
13 Commissioner of Insurance with respect to the issuance of certificates of authority. The
14 Commissioner of Insurance in considering the issuance of a certificate of authority shall take
15 into consideration the acts or transactions which an unauthorized company has engaged in in
16 this State prior to its application for a certificate of authority.

17 **"§ 58-54.24. Commissioner Empowered to Enjoin Unauthorized Companies.** Whenever
18 the Commissioner of Insurance, from evidence satisfactory to him, has reasonable grounds for
19 believing that any foreign or alien company is violating or is about to violate the provisions of
20 § 58-54.21, the Commissioner may through the Attorney General of this State cause a
21 complaint to be filed in the Superior Court of Wake County to enjoin and restrain such
22 company from continuing such violations or engaging therein, or doing any act in furtherance
23 thereof. The court shall have jurisdiction of the proceedings and shall have the power to make
24 and enter an appropriate order or judgment granting preliminary or final injunctive relief as in
25 its discretion is proper: Provided, however, that the company alleged to be in violation shall
26 have been served with process as is provided hereinafter.

27 **"§ 58-54.25. Service of Process Upon Unauthorized Company by Commissioner of**
28 **Insurance.** (a) Any act of entering into a contract of insurance as an insurer or transacting
29 insurance business in this State, as set forth in G.S. 58-54.22 by an unauthorized, foreign or
30 alien company, shall be equivalent to and shall constitute an appointment by such company of
31 the Secretary of State to be its true and lawful attorney upon whom may be served all lawful
32 process in any action or proceeding against it arising out of a violation of G.S. 58-54.21, and
33 any of said acts shall be a signification of its agreement that any such process against it, which
34 is so served, shall be of the same legal force and validity as if in fact served upon the company.

35 (b) Service of process on the Secretary of State shall be made by the sheriff delivering
36 to and leaving with the Secretary of State duplicate copies of such process, notice or demand.
37 Service shall be deemed complete when the Secretary of State is so served. The Secretary of
38 State shall endorse upon both copies the time of receipt and shall forthwith send one of such
39 copies by registered mail, with return receipt requested, to such insurer at its last known
40 principal place of business as shown on the process, notice or demand served on the Secretary
41 of State. The Insurance Commissioner and the Attorney General shall see that such address is
42 included on the process, notice or demand which is served upon the Secretary of State. A copy
43 of the complaint or order of the clerk extending the time for filing the complaint must be
44 mailed to the insurer with the copy of the summons. When a copy of the complaint is not
45 mailed with the summons, the Secretary of State shall mail a copy of the complaint when it is
46 served on him in the same manner as the copy of summons is required to be mailed.

47 (c) Upon the return to the Secretary of State of the requested return receipt showing
48 delivery and acceptance of such registered mail, or upon the return of such registered mail
49 showing refusal thereof by such foreign or alien insurer, the Secretary of State shall note
50 thereon the date of such return to him and shall attach either the return receipt or such refused
51 mail including the envelope, as the case may be, to the copy of the process, notice or demand

1 theretofore retained by him and shall mail the same to the clerk of the court in which such
2 action or proceeding is pending and in respect of which such process, notice or demand was
3 issued. Such mailing, in addition to the return by the sheriff, shall constitute the due return
4 required by law. The clerk of the court shall thereupon file the same as a paper in such action or
5 proceeding.

6 (d) Service made under this Section shall have the same legal force and validity as if the
7 service had been made personally in this State. The refusal of any such foreign or alien insurer
8 to accept delivery of the registered mail provided for in subsection (b) of this Section or the
9 refusal to sign the return receipt shall not affect the validity of such service; and any foreign or
10 alien insurer refusing to accept delivery of such registered mail shall be charged with
11 knowledge of the contents of any process, notice or demand contained therein.

12 (e) Whenever service of process is made upon the Secretary of State as herein provided
13 the defendant foreign or alien insurer shall have 30 days from the date when the defendant
14 receives or refuses to accept the registered mail containing the copy of the complaint sent as in
15 this Section provided in which to appear and answer the complaint in the action or proceeding
16 so instituted. Entries on the defendant's return receipt or the refused registered mail shall be
17 sufficient evidence of such date. If the date of acceptance or refusal to accept the registered
18 mail cannot be determined from the entries on the return receipt or from notations of the postal
19 authorities on the envelope, then the date when the defendant accepted or refused to accept the
20 registered mail shall be deemed to be the date that the return receipt or the registered mail was
21 received back by the Secretary of State.

22 (f) The court in any action or proceeding in which service is made in the manner
23 provided in the above paragraph may, in its discretion, order such postponement as may be
24 necessary to afford such company reasonable opportunity to defend such action or proceeding.

25 (g) The Secretary of State shall keep a summarized record of all processes, notices and
26 demands served upon him under this Section, and shall record therein the time of such service
27 and his action with reference thereto.

28 (h) Nothing herein contained shall limit or affect the right to serve any process, notice
29 or demand to be served upon an insurer in any other manner now or hereafter permitted by law.

30 (i) No judgment by default shall be entered in any such action or proceeding until the
31 expiration of 30 days from the date of the filing of the affidavit of compliance.

32 "**§ 58-54.25.1.** The provisions of Section 58-54.21 and Section 58-54.22 shall not apply to a
33 life insurance company already organized as a corporation or association and operating without
34 profit to any private shareholder or individual, exclusively for the purpose of aiding educational
35 or scientific institutions by providing directly from the home office of such corporation or
36 association, without agents or representatives in this State, contracts of insurance and annuities
37 to educational or scientific institutions organized and operated without profit to any private
38 shareholder or individual or to individuals engaged in the service of such educational or
39 scientific institution; nor shall the provisions of Sections 58-54.21 and 58-54.22 apply to any
40 insurance or annuity contracts issued by such life insurance company."

41 **Sec. 2.** If any provision of this Act or the application thereof to any person or
42 circumstances is held invalid, such invalidity shall not affect other provisions or applications of
43 the Act which can be given effect without the invalid provision or application, and to this end
44 the provisions of this Act are declared to be severable.

45 **Sec. 3.** All laws and clauses of laws in conflict with this Act are hereby repealed.

46 **Sec. 4.** This Act shall be effective on and after July 1, 1967, but the same shall not
47 apply to any contracts of insurance in effect before the effective date of this Act.

48 In the General Assembly read three times and ratified, this the 23rd day of June,
49 1967.