

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 504
SENATE BILL 586

AN ACT TO MAKE TECHNICAL AMENDMENTS, CLARIFICATIONS, AND CORRECTIONS IN VARIOUS INSURANCE AND INSURANCE-RELATED LAWS AND TO MAKE CHANGES TO THE LAWS ON SERVICE AGREEMENTS FOR MOTOR VEHICLES AND HOME APPLIANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-165 reads as rewritten:

"§ 58-2-165. Annual, semiannual, monthly, or quarterly statements to be filed with Commissioner.

(a) Every insurance company shall file in the Commissioner's office, on or before March 1 of each year, a statement showing the business standing and financial condition of the company, association, or order on the preceding December 31, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner or some officer authorized by law to administer oaths. Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of the company's annual statement, for a reasonable period of time, not to exceed 30 days. ~~However, In addition, the Commissioner may require any insurance company, association, or order to file its statement semiannually or quarterly.~~ semiannually, quarterly, or monthly.

(b) The Commissioner may require statements under this section, G.S. 58-2-170, ~~G.S. 58-2-175,~~ and G.S. 58-2-190 to be filed in a format that can be read by electronic data processing ~~equipment; and may require these readable statements to be filed on a monthly basis.~~ equipment.

(c) All statements filed under this section must be prepared in accordance with the appropriate NAIC Annual Statement Instructions Handbook and pursuant to the NAIC Accounting Practices and Procedures Manual and on the NAIC Model Financial Statement Blank, unless further modified by the Commissioner as the Commissioner considers to be appropriate."

Sec. 2. G.S. 58-4-5 reads as rewritten:

"§ 58-4-5. Filing requirements.

(a) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall file with the NAIC a copy of its financial statements required by G.S. 58-2-165, applicable rules, and legal directives and bulletins issued by the Department. The statements shall, in the Commissioner's discretion, be filed annually, semiannually, ~~or quarterly,~~ or monthly and shall be filed in a form or format prescribed or permitted by the Commissioner. The Commissioner may require the

statements to be filed in a format that can be read by electronic data processing equipment. Any amendments and addenda to the financial statement that are subsequently filed with the Commissioner shall also be filed with the NAIC.

(b) Foreign insurers that are domiciled in a state that has a law or regulation substantially similar to this Article shall be deemed to be in compliance with this section."

Sec. 3. 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. Such deposits shall be under the exclusive control of the Department, for the protection of ~~all policyholders wheresoever situated.~~ 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, with the amount of the deposit to be determined by the Commissioner. Such deposits shall be under the exclusive control of the Department, for the protection of ~~all policyholders wheresoever situated.~~ policyholders."

Sec. 4. The final paragraph of G.S. 58-7-35 reads as rewritten:

"Any Subject to G.S. 58-8-5, any proposed change in or amendment to the articles of incorporation, charter, or bylaws incorporation shall be promptly filed with the Commissioner. Commissioner, who shall examine the change. If the Commissioner approves the change, the Commissioner shall place a certificate of approval on the change, and forward it to the Secretary of State."

Sec. 5. G.S. 58-7-45 reads as rewritten:

"§ 58-7-45. Bylaws; classification and election of ~~directors.~~ directors; amendments.

(a) A domestic company may adopt bylaws for the conduct of its business that are not repugnant to law or its charter, articles of incorporation and therein provide for the division of its board of directors into two, three, or four classes, and the election thereof at its annual meetings so that the members of one class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term.

(b) Any change in the bylaws of a domestic company shall be promptly filed with the Commissioner."

Sec. 6. G.S. 58-7-183(b) reads as rewritten:

"(b) In no case shall the investments authorized under this section being held by an insurer be greater than the amount by which the insurer's policyholders' surplus exceeds the minimum ~~reserves and policyholders' surplus~~ required to be maintained."

Sec. 7. G.S. 58-13-5 reads as rewritten:

"§ 58-13-5. Purposes.

The purposes of this Article are to require insurers to maintain unencumbered assets in amounts equal to ~~reserve~~ policyholder-related liabilities and minimum required capital and minimum required surplus; to provide preferential claims against insurers' assets in favor of owners, beneficiaries, assignees, and holders of insurance policies and

certificates; and to prevent the pledging, hypothecation, or encumbrance of assets without a prior written order of the Commissioner."

Sec. 8. G.S. 58-13-15(4) reads as rewritten:

"(4) '~~Reserve-~~Policyholder-related liabilities' means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with Articles 1 through 64 of this Chapter and G.S. 58-65-95."

Sec. 9. G.S. 58-13-20(a) reads as rewritten:

"(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those ~~reserve-policyholder-related~~ liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

- (1) The ceding insurer and the reinsurer are both licensed to transact business in this State;
- (2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the ~~reserve-policyholder-related~~ liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in trust account for that purpose and under those conditions with a State or national bank domiciled in this State."

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

"§ 58-13-25. Prohibition of hypothecation.

(a) Every insurer subject to this Article shall at all times have and maintain free and unencumbered reserve assets equal to an amount that is at least ten percent (10%) more than the total of its ~~reserve-policyholder-related~~ liabilities and its required minimum capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber those reserve assets. The Commissioner, upon application made to the Commissioner, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer not otherwise prohibited upon a finding that the pledging, hypothecation, or encumbrance will not adversely affect the insurer's solvency.

(b) Every insurer shall file, along with ~~its~~ any statement filed under G.S. 58-2-165, a statement sworn to by the chief executive officer of the insurer that: (i) Title to assets in an amount equal to the ~~reserve-policyholder-related~~ liabilities and minimum required capital and minimum required surplus of the insurer that are not pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged,

hypothecated, or otherwise encumbered; and (iii) the terms and provisions of the transaction of the pledge, hypothecation, or encumbrance are as reported in the sworn statement.

(c) Any person that accepts a pledge, hypothecation, or encumbrance of any asset of an insurer, as security for a debt or other obligation of the insurer, not in accordance with this Article, is deemed to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of claimants: Provided, that said lien does not apply to the assets of an insurer in a delinquency proceeding under Article 30 of this Chapter if the Commissioner or the court, whichever is appropriate, approves the pledge, hypothecation, or encumbrance of the assets.

(d) In the event of the liquidation of any insurer subject to this Article, claimants of the insurer shall have a prior and preferential claim against all assets of the insurer except those that have been pledged, hypothecated, or encumbered in accordance with this Article. Subject to Article 30 of this Chapter, all claimants have equal status; and their prior and preferential claims are superior to any claim or cause of action against the insurer by any other person."

Sec. 11. G.S. 58-19-10(b) reads as rewritten:

"(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of Articles 1 through 64 of this Chapter, a domestic insurer may also:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of such insurer's admitted assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
- (2) Invest any amount in common stock, preferred stock, debt ~~obligation~~ obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer; provided that such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in

subdivision (b)(1) of this section or in Article 7 of this Chapter applicable to the insurer. For the purposes of this section, 'the total investment of the insurer' includes: (i) any direct investment by the insurer in an asset; and (ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

- (3) With the approval of the Commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

Sec. 12. G.S. 58-19-15(e) reads as rewritten:

"(e) The public hearing referred to in subsection (d) of this section shall be held within 120 days after the statement required by subsection (a) of this section is filed, and the Commissioner shall give at least 30 days notice of the hearing to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination as expeditiously as it reasonably practicable after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by the hearing shall have the right to present evidence, examine and cross-examine witnesses, and offer oral or written arguments; and in connection therewith shall be entitled to conduct discovery proceedings at any time after the statement is filed with the Commissioner under this section and in the same manner as is presently allowed in the superior courts of this State. In connection with discovery proceedings authorized by this section, the Commissioner may issue such protective orders and other orders governing the timing and scheduling of discovery proceedings as might otherwise have been issued by a superior court of this State in connection with a civil proceeding. If any party fails to make reasonable and adequate response to discovery on a timely basis or fails to comply with any order of the Commissioner with respect to discovery, the Commissioner on the Commissioner's own motion or on motion of any other party or person may order that the hearing be postponed, recessed, convened, or reconvened, as the case may be, following proper completion of discovery and reasonable notice to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner."

Sec. 13. G.S. 58-19-25(c) reads as rewritten:

"(c) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule or order provides otherwise, all sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (1/2%) or less of an insurer's admitted assets as of the

~~31st day of December next~~ preceding December 31 are not material for the purposes of this section."

Sec. 14. G.S. 58-19-50(a) reads as rewritten:

"(a) Any person failing, without just cause, to file any registration statement as required in this Article shall pay, after notice and hearing, a civil penalty of one hundred dollars (\$100.00) for each day's delay, not to exceed a total penalty of one thousand dollars (\$1,000), to the Commissioner, who shall forward the clear proceeds to the General Fund of this State."

Sec. 15. G.S. 58-26-1(b) reads as rewritten:

"(b) Such companies shall be subject to:

- (1) The same capital, surplus and investment requirements as govern the formation and operation of domestic stock casualty companies.
- (2) The same deposit requirements governing the operation of other state domestic or foreign casualty companies in this State; and
- (3) Repealed by Session Laws 1985, c. 666, s. 43."

Sec. 16. G.S. 58-23-40 reads as rewritten:

"§ 58-23-40. Pools not covered by guaranty associations or solvency funds. associations.

The provisions of Articles 48 and 62 of this Chapter and of ~~Articles 3 and Article 4~~ of Chapter 97 of the General Statutes do not apply to any risks retained by local governments pursuant to this Article."

Sec. 17. G.S. 58-26-10 reads as rewritten:

"§ 58-26-10. Financial statements and licenses required.

Title insurance companies are subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-165-58-2-165, and 58-2-180~~58-2-180, and 58-6-5~~. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The Commissioner shall annually license such companies and their agents, and have the same power and authority to visit and examine such corporations as he has in the case of other domestic insurance companies, and the duties and liabilities of such corporations and their agents in reference to such examinations are the same as those of other domestic insurance companies. agents."

Sec. 18. G.S. 58-26-15 reads as rewritten:

"§ 58-26-15. Investment of capital. Limitation of risk.

~~Any real estate title insurance company having a capital stock of more than fifty thousand dollars (\$50,000), may, with the consent of the Commissioner, after investing fifty thousand dollars (\$50,000) of the capital, as provided in Articles 1 through 64 of this Chapter, invest not to exceed one fourth of the total capital stock in abstract or title plants, and no such company~~ No real estate title insurance company shall guarantee or insure in any one risk on real property located in North Carolina more than forty percent (40%) of its combined capital and surplus without first having the approval of the Commissioner, which approval shall be endorsed upon the policy."

Sec. 19. G.S. 58-26-20 reads as rewritten:

"§ 58-26-20. Unearned premium reserve.

Every domestic title insurance company shall, in addition to other reserves, establish and maintain a reserve to be known as the 'unearned premium reserve' for title insurance, which shall at all times and for all purposes be considered and constitute unearned portions of the original risk premiums and shall be charged as a reserve liability of such title insurance company in determining its financial conditions. ~~While said sums are so reserved they~~ The unearned premium reserve shall be withdrawn from the use of the insurer for its general purposes and impressed with a trust placed in a trust account, as approved by the Commissioner, in favor of the holders of title policies and held available for reinsurance of the title policies in the event of insolvency of the insurer. Nothing herein contained shall preclude such an insurer from investing said reserve in investments authorized by law for such an insurer, and the income from such invested reserve shall be included in the general income of the insurer to be used by such insurer for any lawful purpose."

Sec. 20. G.S. 58-28-5(a) reads as rewritten:

"(a) Except as hereinafter provided, it shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-28-10, without a certificate of authority issued by the Commissioner. This section shall not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter;
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner;
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy of such insurance was lawfully issued and delivered in a state where the company was authorized to transact business;
- (5) Transactions in this State involving all policies of insurance issued prior to July 1, 1967;
- (6) The procuring of contracts of insurance issued to a nuclear insured;
- (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."

Sec. 21. G.S. 58-31-55 reads as rewritten:

"§ 58-31-55. Insurance and official fidelity bonds for State agencies to be placed by Department; exception; costs of placement.

Except as provided in G.S. 58-32-15, all insurance and all official fidelity and surety bonds authorized for State departments, institutions, and agencies shall be effected and placed by the Department, and the cost of such placement shall be paid by the ~~Department, State department,~~ institution, or agency involved upon bills rendered to and approved by the Commissioner."

Sec. 22. G.S. 58-33-25(c) reads as rewritten:

"(c) An agent or broker may be licensed for the following kinds of insurance:

- (1) ~~Life, Accident~~ Life and Health Insurance
- (2) Accident and Health Insurance
- (3) ~~Fire and Casualty~~ Property and Liability Insurance
- (4) Repealed by Session Laws 1989, c. 485, s. 17, effective June 28, 1989.
- (5) Title Insurance
- (6) Repealed by Session Laws 1989, c. 485, s.17, effective June 28, 1989.
- (7) Automobile Physical Damage.
- (8) Medicare Supplement Insurance and Long-Term Care Insurance, as a supplement to a license for the kinds of insurance listed in subdivision (1) of this subsection.

~~Any person who holds a valid license on February 1, 1988, which grants authority to act as an agent for the kinds of insurance described in this subsection shall be issued the equivalent agent's license for such kinds of insurance."~~

Sec. 23. G.S. 58-33-25(d) reads as rewritten:

"(d) A ~~fire and casualty property and liability~~ insurance license shall not authorize an agent to sell accident and health insurance. An agent must hold a ~~life, accident~~ life and health insurance license ~~or an accident and health insurance license~~ to sell accident and health insurance."

Sec. 24. G.S. 58-33-25(d1) reads as rewritten:

"(d1) A ~~life, accident~~ life and health insurance license ~~shall authorize~~ authorizes an agent to sell variable contracts, ~~provided that if the licensee~~ agent satisfies the Commissioner that he has met the NASD requirements of the Secretary of State of North Carolina."

Sec. 25. G.S. 58-33-25(d2) reads as rewritten:

"(d2) A ~~life, accident, life~~ and health license ~~or an accident and health license~~ authorizes an agent to sell Medicare supplement and long-term care insurance policies as defined respectively in Articles 54 and 55 of this Chapter, provided that the licensee takes and passes a supplemental written examination for such insurance as provided in G.S. 58-33-30(e) and pays the supplemental registration fee provided in G.S. 58-33-125(c)."

Sec. 26. G.S. 58-33-30(g) reads as rewritten:

"(g) Denial of License. – If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and shall notify in writing the applicant and the appointing insurer, if any, of such denial, stating the grounds therefor. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-33-45(a). Within 30 days after service of the notification, the applicant may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome."

Sec. 27. The catch line of G.S. 58-33-45 reads as rewritten:

"§ 58-33-45. ~~Denial, suspension, Suspension, revocation, or nonrenewal of licenses and appointments. licenses.~~"

Sec. 27.1. G.S. 58-33-45(a) reads as rewritten:

"(a) The Commissioner may suspend, revoke, or refuse to ~~issue or~~ renew any license issued under this Article if, ~~after notice to the licensee or applicant and hearing~~ in accordance with the provisions of Article 3A of Chapter 150B, he finds as to the licensee any one or more of the following conditions:

- (1) Any untrue material statement in the license application;
- (2) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance;
- (3) Violation of, or noncompliance with, any insurance laws, or of any lawful rule, or order of the Commissioner or of a Commissioner of another state;
- (4) Obtaining or attempting to obtain any such license through misrepresentation or fraud;
- (5) Improperly withholding, misappropriating, or converting to his own use any moneys belonging to policyholders, insurers, beneficiaries or others received in the course of his insurance business;
- (6) Misrepresentation of the terms of any actual or proposed insurance contract;
- (7) Willfully overinsuring property;
- (8) Conviction of a misdemeanor involving moral turpitude, or conviction of a felony;
- (9) The person has been found guilty of any unfair trade practice or fraud;
- (10) In the conduct of his affairs under the license, the licensee has used fraudulent, coercive or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible;
- (11) His license has been suspended or revoked in any other state, province, district, or territory;

(12) The person has forged another's name to an application for insurance;
or

(13) The person has cheated on an examination for an insurance license."

Sec. 28. G.S. 58-33-45(c) is repealed.

Sec. 29. G.S. 58-33-50 reads as rewritten:

"§ 58-33-50. Notices; loss of residency; duplicate licenses. Surrender, loss or destruction of license.

(a) The Commissioner shall notify ~~all appointing insurers, where applicable, and the licensee regarding every appointing insurer about~~ any suspension, revocation, or nonrenewal of a license by the ~~Commissioner. Commissioner~~ and about any surrender of a license by a licensee, whether by consent order or otherwise.

(b) Upon suspension, ~~revocation~~ revocation, nonrenewal, surrender, or reinstatement of any license, the Commissioner shall notify the Central Office of the NAIC.

(c) Any licensee who ceases to maintain his residency in this State ~~as defined in G.S. 58-33-30~~ shall deliver his insurance license or licenses to the Commissioner by personal delivery or by mail within 30 days after terminating ~~said~~ residency.

(d) The Commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this Article upon a written request from the licensee and payment of appropriate fees."

Sec. 30. G.S. 58-48-125 reads as rewritten:

"§ 58-48-125. Payments by the Association.

The accounts created in G.S. 58-48-115 and G.S. 58-48-120 shall be used to pay the claims against insolvent stock workers' compensation insurers and insolvent mutual workers' compensation insurers, respectively, pursuant to G.S. ~~58-48-35, 58-48-110(4)~~

where the insolvency occurred prior to January 1, 1993. The expenses of administering these accounts, including loss adjustment expenses, shall be paid out of the respective accounts."

Sec. 31. G.S. 97-99(a) reads as rewritten:

"(a) Every policy for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this Article. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Commissioner of Insurance. No policy form shall be approved unless the same shall provide a 30-day prior notice of an intention to cancel same by the carrier to the insured by registered mail or certified mail. This shall not apply to the expiration date shown in the policy. The carrier may cancel the policy for nonpayment of premium on 10 days' written notice to the insured, and the insured may cancel the policy on 10 days' written notice ~~by registered mail or certified mail~~ to the carrier. Whenever notice of intention to cancel is required to be given by registered or certified mail, no cancellation by the insurer shall be effective unless and until such method is employed and completed."

Sec. 32. G.S. 58-51-30 reads as rewritten:

"§ 58-51-30. Policies to cover newborn infants and adopted children.

Every policy of insurance and every hospital service or medical service plan as defined in Articles 65 and 66 of this Chapter, and any health care plan operated by a health maintenance organization as defined in Article 67 of this Chapter (regardless of whether any of such policies or plans shall be defined as individual, family, group, blanket, franchise, industrial or otherwise) that provides benefits on account of any sickness, illness, or disability of any minor child or that provides benefits on account of any medical treatment or service authorized or permitted to be furnished by a hospital under the laws of this State to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the policy, subscriber contract, or evidence of coverage with such a plan is in force. Adoptive children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the adoptive home, regardless of whether a final decree of adoption has been entered; provided that a petition for adoption has been duly filed and is pursued to a final ~~degree~~ decree of adoption.

Benefits in such insurance policies, plans, or evidence of coverage shall be the same for congenital defects or anomalies as are provided for most sicknesses or illnesses suffered by minor children which are covered by the policies, plans, or evidence of coverage. Benefits for congenital defects or anomalies shall specifically include, but not be limited to, all necessary treatment and care needed by individuals born with cleft lip or cleft palate.

No policy or plan subscriber contract or evidence of coverage shall be approved by the Commissioner of Insurance pursuant to the provisions of this Article or the provisions of Articles 65, 66, and 67 of this Chapter that does not comply with the provisions of this section.

The provisions of this section ~~shall~~ apply both to insurers governed by the provisions of Articles 1 through 64 of this Chapter and to corporations governed by the provisions of Articles 65, 66, and 67 of this Chapter."

Sec. 33. G.S. 58-71-85 reads as rewritten:

§ 58-71-85. Notice and hearing before refusal, suspension, revocation, etc., of license. License sanction and denial procedures.

(a) ~~No license shall be suspended, revoked, or renewal refused except on reasonable notice and opportunity to be heard afforded the person licensed or renewal thereof. The suspension or revocation of, or refusal to renew, any license under G.S. 58-71-80 shall be in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes.~~

(b) ~~Whenever the Commissioner denies an initial application for a license, license or an application for a reissuance of a license, he shall notify the applicant and advise, in writing, the applicant of the reasons for the denial of the license. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-71-80(a). Within 30 days of after receipt service of the notification, the applicant may make a written demand upon the Commissioner for a hearing review to determine the reasonableness of the Commissioner's action. Such hearing The review shall be scheduled within 30 days from the date of receipt of the written demand. completed without undue delay, and the applicant shall be notified~~

promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome."

Sec. 34. G.S. 143-143.14 reads as rewritten:

"§ 143-143.14. Notice and hearing.

~~(a) The Board shall not suspend, revoke or deny a license, or refuse the renewal of a license, or impose a civil penalty, until a written notice of the complaint has been furnished to the licensee or applicant against whom the same is directed, and a hearing thereon has been held before the Board. At least 30 days' written notice of the time and place of the hearing shall be given to the licensee or applicant by certified mail to his last known address, as shown on the license or other record of information in possession of the Board. At any such hearing, the licensee or applicant shall have the right to be heard in person or through counsel. After the hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question, or to impose a civil penalty for violation of the provisions of this Article. Immediate notice of any such action by the Board shall be given to the licensee or applicant in the same manner as provided herein for furnishing notice of the hearing. License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.~~

(b) Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written demand upon the Board for a review by a member of the Department staff designated by the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the Board shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the Board may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the Board disagrees with the outcome."

Sec. 35. G.S. 143-150 reads as rewritten:

"§ 143-150. No electricity to be furnished units not in compliance.

~~It shall be is unlawful for any individual natural person, partnership, firm or corporation person to allow any electric current for use in any manufactured home to be turned on or to continue to initially furnish electricity for use in such any manufactured home without having first ascertained that either a label of compliance is permanently attached to said manufactured home or a certificate of compliance has been issued for such manufactured home, provided this section shall not apply if electricity to such manufactured home had been turned on or furnished prior to September 1, 1971, by said firm or corporation or if the owner of said manufactured home shall have obtained a certificate of title for said manufactured home as required by G.S. 20-52 prior to September 1, 1971, or his predecessor in title shall have obtained such certificate prior to September 1, 1971, or the owner furnishes other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that said manufactured home was manufactured prior to September 1, 1971. first ascertaining that the manufactured home and its electrical supply has been inspected pursuant to G.S. 143-139 by the inspection~~

authority having jurisdiction and found to comply with the requirements of the State Electrical Code. The certificate of compliance issued by the inspection jurisdiction shall be accepted as evidence of compliance."

Sec. 36. G.S. 143-151.17 is amended by adding a new subsection to read:

"(d) The Board may deny an application for a certificate for any of the grounds for suspension, revocation, or refusal to grant that are described in subsection (a) of this section. Within 30 days after receipt of a notification that an application for a certificate has been denied, the applicant may make a written demand upon the Board for a review by a member of the Department staff designated by the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the Board shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the Board may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the Board disagrees with the outcome."

Sec. 37. G.S. 58-33-30(d)(2) reads as rewritten:

"(2) All individual applicants for licensing as ~~life, accident-life~~ and health agents or as ~~fire and casualty-property and liability~~ agents shall furnish evidence satisfactory to the Commissioner of successful completion of at least 40 hours of instruction, which shall in all cases include the general principles of insurance and any other topics that the Commissioner establishes by regulation; and which shall, in the case of ~~life, accident-life~~ and health insurance applicants, include the principles of life, accident, and health insurance and, in the case of ~~fire and casualty-property and liability~~ insurance applicants, shall include instruction in ~~fire and casualty-property and liability~~ insurance. Any applicant who submits satisfactory evidence of having successfully completed an agent training course that has been approved by the Commissioner and that is offered by or under the auspices of a ~~fire and casualty-property or liability~~ or life or health insurance company admitted to do business in this State or a professional insurance association shall be deemed to have satisfied the educational requirements of this subdivision. The requirement in this subdivision for completion of 40 hours of instruction applies only to applicants for ~~life, accident-life~~ and health or ~~fire and casualty-property and liability~~ insurance licenses. The provisions of this subdivision also apply to the applicants for accident and health insurance licenses; except that such applicants shall be required to successfully complete 20 hours of instruction. Such instruction shall in all cases include the general principles of insurance and the principles of accident and health insurance."

Sec. 38. G.S. 58-54-15 reads as rewritten:

"§ 58-54-15. Minimum standards for benefits, marketing practices, compensation arrangements, reporting practices, and claims payments.

The Commissioner shall adopt ~~rules, pursuant to G.S. 150B-13,~~ rules to establish minimum standards for benefits, marketing practices, compensation arrangements, reporting practices, and claims payments under policies."

Sec. 39. G.S. 58-55-30(k) reads as rewritten:

"(k) The Commissioner shall adopt ~~rules, pursuant to G.S. 150B-13,~~ rules to establish minimum standards for marketing practices and compensation arrangements for long-term care insurance."

Sec. 40. G.S. 58-57-107 is recodified as G.S. 58-3-147.

Sec. 41. G.S. 58-27-5(b) reads as rewritten:

"(b) Any person or entity violating the provisions of ~~Articles 1 through 64~~ of this ~~Chapter~~ section shall be guilty of a misdemeanor and subject to a fine of not more than five thousand dollars (\$5,000), or imprisonment for not more than six months, or both, in the discretion of the court."

Sec. 42. G.S. 58-48-42 reads as rewritten:

"§ 58-48-42. Procedure for appeal to Commissioner from decision of Association.

In any hearing called by the Commissioner for an appeal made pursuant to ~~G.S. 58-48-40(7), G.S. 58-48-40(c)(7)~~ no later than 20 days before the hearing the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence the appellee intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost of the recording and transcribing shall be borne equally by the appellant and the appellee. However, upon any final adjudication the prevailing party shall be reimbursed for that party's share of the costs by the other party. Each party shall, on a date determined by the Commissioner or the Commissioner's designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the Commissioner's designated hearing officer and serve on the other party, a proposed order. The Commissioner or the Commissioner's designated hearing officer shall then issue an order."

Sec. 43. G.S. 58-7-170(c), as amended by House Bill 622 of the 1993 General Assembly, reads as rewritten:

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

An insurer that, as of October 1, ~~1991, 1993,~~ has mortgage investments ~~with any one person~~ that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, ~~1992, 1994,~~ a plan to bring the amount of mortgage investments with that person into compliance with the limitations by January 1, 2001."

Sec. 44. G.S. 58-7-173(17), as amended by House Bill 622 of the 1993 General Assembly, reads as rewritten:

"(17) Mortgage pass-through securities and derivatives thereof, that have been rated as investment grade by the Securities Valuation Office of the NAIC ~~and considered by the Federal Financial Institutions Examination Council or its successor to be nonhigh risk mortgage securities,~~—including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class, and investment quality as those eligible for investment under G.S. 58-7-179."

Sec. 45. G.S. 58-23-26(c), as enacted by House Bill 622 of the 1993 General Assembly, reads as rewritten:

"(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, ~~58-3-70, 58-3-71, 58-3-75, 58-3-80, 58-3-81, 58-3-105,~~ 58-6-5, 58-7-21, 58-7-26, 58-7-30, ~~58-7-32, 58-7-31,~~ 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, ~~58-7-190,~~ 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

Sec. 46. G.S. 58-57-105(b), as enacted by House Bill 665 of the 1993 General Assembly, reads as rewritten:

"(b) If credit life insurance premiums are charged through a credit card facility or if credit life insurance premiums are payable on the then outstanding balances on revolving charge account contracts defined in G.S. 25A-11, a premium not exceeding seventy-four cents (74¢) per one thousand dollars (\$1,000) of insured indebtedness per month is authorized. The premium rate for joint credit life insurance may not exceed one and two-thirds (1 2/3) the permitted single credit life insurance premium rate."

Sec. 47. G.S. 58-1-25(a) reads as rewritten:

"(a) This section applies to all motor vehicle service agreement companies soliciting business in this State, but it ~~shall~~ does not apply to ~~the usual performance guarantees or warranties offered at no charge~~ performance guarantees, warranties, or motor vehicle service agreements made by manufacturers

- (1) A manufacturer,
- (2) A distributor, or
- (3) A subsidiary or affiliate of a manufacturer or a distributor, where fifty-one percent (51%) or more of the subsidiary or affiliate is owned directly or indirectly by

- a. The manufacturer,
- b. The distributor, or
- c. The common owner of fifty-one percent (51%) or more of the manufacturer or distributor

in connection with the sale of ~~new~~ motor vehicles. This section does not apply to any motor vehicle dealer licensed to do business in this State (i) whose primary business is the retail sale and service of motor vehicles; (ii) who makes and administers its own service agreements with or without association with any other entity; a third-party administrator or who makes its own service agreements in association with a manufacturer, distributor, or their subsidiaries or affiliates; or and (iii) whose service agreements cover only vehicles sold by the dealer to its retail ~~customer.~~ customer; provided that the dealer complies with G.S. 58-1-35. A motor vehicle dealer who sells a motor vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3), shall not be deemed to have made a written warranty to the consumer with respect to the motor vehicle sold or to have entered into a service contract with the consumer that applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle dealer acts as a mere agent of a third party in selling the motor vehicle service agreement; and (ii) the motor vehicle dealer would, after the sale of the motor vehicle service agreement, have no further obligation under the motor vehicle service agreement to the consumer to service or repair the vehicle sold to the consumer at or within 90 days before the dealer sold the motor vehicle service agreement to the consumer."

Sec. 48. G.S. 58-1-25(b) reads as rewritten:

"(b) The following definitions apply in this section: section and in G.S. 58-1-30 through G.S. 58-1-50:

- (1) Authorized insurer. – An insurance company authorized to write liability insurance under Articles 7, 16, 21, or 22 of this Chapter.
- (2) Distributor. – Defined in G.S. 20-286(3).
- (3) Licensed insurer. – An insurance company licensed to write liability insurance under Article 7 or 16 of this Chapter.
- (4) Motor vehicle. – Defined in G.S. 20-4.01(23), but also including mopeds as defined in G.S. 20-4.01(27)d1.
- ~~(4)~~(5) Motor vehicle service agreement. – Any contract or agreement indemnifying the motor vehicle service agreement holder against loss caused by failure, arising out of the ownership, operation, or use of a motor vehicle, of a mechanical or other component part of the motor vehicle that is listed in the agreement. The term does not mean a contract or agreement guaranteeing the performance of parts or lubricants manufactured by the guarantor and sold for use in connection with a motor vehicle where no additional consideration is paid or given to the guarantor for the contract or agreement beyond the price of the parts or lubricants.
- ~~(2)~~(6) Motor vehicle service agreement company. – Any person that issues motor vehicle service agreements and that is not a licensed insurer."

Sec. 49. G.S. 58-1-30(a) reads as rewritten:

"(a) This section applies to all home appliance service agreement companies soliciting business in this State, but it ~~shall~~does not apply to the ~~usual~~ performance guarantees or warranties ~~offered at no charge~~made by manufacturers in connection with the sale of new home appliances. This section does not apply to any home appliance dealer licensed to do business in this State (i) whose primary business is the retail sale and service of home appliances; (ii) who makes and administers its own service agreements without association with any other entity; ~~or~~and (iii) whose service agreements cover only appliances sold by the dealer to its retail ~~customers~~customers, provided that the dealer complies with G.S. 58-1-35. This section does not apply to any warranty made by a builder or seller of real property relating to home appliances that are sold along with real property. This section does not apply to any issuer of credit cards or charge cards that markets home appliance service agreements as an ancillary part of its business; provided, however, that such issuer maintains contractual liability insurance in accordance with G.S. 58-1-35(k)."

Sec. 50. G.S. 58-1-35(j) reads as rewritten:

"(j) Any person who knowingly offers for sale or sells a service agreement for a company that has failed to comply with the provisions of this section is guilty of a misdemeanor. All service agreement companies and individuals selling service agreements are subject to ~~Article 63 of this Chapter and~~ G.S. 75-1 through G.S. 75-19. ~~It is unlawful for any person to operate, maintain, or establish a service agreement company unless the company has a valid registration issued by the Commissioner. Any service agreement company operating in this State without a valid registration is an unauthorized insurer.~~"

Sec. 51. G.S. 58-1-35(k) reads as rewritten:

"(k) Each service agreement company shall maintain contractual liability insurance with a ~~licensed~~an authorized insurer for one hundred percent (100%) of claims exposure, including reported and incurred but not reported claims and claims expenses, on business written in this State. The Commissioner may adopt rules governing the terms and conditions of policy forms for the insurance required by this subsection."

Sec. 52. Section 5 of Chapter 1014 of the 1991 Session Laws (1992 Regular Session) reads as rewritten:

"Sec. 5. This act becomes effective January 1, 1993, and applies to service agreements written to become effective on or after that ~~date~~date; provided, however, that service agreement companies have until January 1, 1995, to comply with the provisions of G.S. 58-1-25(c) through (g), 58-1-30(c) through (g), 58-1-35(g), 58-1-40, 58-1-41, 58-1-45, and 58-1-50."

Sec. 53. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives