

1 indirectly, by insurance proceeds, or a licensee similarly licensed in
2 other states and nations, or the practitioner of any nonmedical
3 treatment rendered in accordance with a recognized religious method
4 of healing.

5 (5) 'Producer' means an agent, broker, or solicitor licensed to transact the
6 business of insurance in North Carolina.

7 (6) 'Statement' includes but is not limited to, any writing, notice,
8 expression, statement, proof of loss, bill of lading, receipt invoice,
9 account, estimate of property damages, bill for services, diagnosis,
10 prescription, hospital or physician records, X ray, test result or other
11 evidence of loss, injury, or expense.

12 **"§ 58-89-10. Actions which violate Article.**

13 (a) A person or a practitioner violates this Article if the person:

14 (1) Presents or causes to be presented any written or oral statement as part
15 of, or in support of or opposition to, a claim for payment or other
16 benefit pursuant to an insurance policy, knowing that the statement
17 contains any false or misleading information concerning any fact or
18 thing material to the claim; or

19 (2) Prepares or makes any written or oral statement that is intended to be
20 presented to any insurance company or any insurance claimant in
21 connection with, or in support of or opposition to, any claim or
22 payment or other benefit pursuant to an insurance policy, knowing that
23 the statement contains any false or misleading information concerning
24 any fact or thing material to the claim; or

25 (3) Conceals or knowingly fails to disclose the occurrence of an event
26 which affects any person's initial or continued right or entitlement to
27 (i) any insurance benefit or payment, or (ii) the amount of any benefit
28 or payment to which the person is entitled.

29 (b) A person or practitioner violates this Article if the person knowingly assists,
30 conspires with, or urges any person or practitioner to violate any of the provisions of
31 this Article.

32 (c) A person or practitioner violates this Article when the person, due to the
33 assistance, conspiracy, or urging of any person or practitioner, knowingly benefits,
34 directly or indirectly, from the proceeds derived from a violation of this Article.

35 (d) A person or practitioner who is the owner, administrator, or employee of any
36 hospital violates this Article by knowingly allowing the use of the facilities of the
37 hospital by any person in furtherance of a scheme or conspiracy to violate any of the
38 provisions of this Article.

39 (e) A person or practitioner violates this Article when the person, directly or
40 indirectly, for pecuniary gain:

41 (1) Solicits any person or practitioner to engage, employ, or retain either
42 himself or any other person to manage, adjust, or prosecute any claim
43 or cause of action against any person for damages for negligence;

1 (2) Solicits other persons to bring causes of action to recover damages for
2 personal injuries or death; or

3 (3) Solicits other persons to make a claim for personal injury benefits.

4 This subsection shall not apply to any conduct otherwise permitted by law or by rule
5 of the Supreme Court.

6 **"§ 58-89-15. Violations; penalties; costs and attorneys' fees; consent agreements;**
7 **disposition of penalties.**

8 If a person or practitioner is found by a court of competent jurisdiction, pursuant to a
9 claim initiated by the Commissioner, to have violated any provision of this Article, the
10 person or practitioner shall be subject to a civil penalty not to exceed two thousand five
11 hundred dollars (\$2,500) for the first violation, five thousand dollars (\$5,000) for the
12 second violation, and ten thousand dollars (\$10,000) for each subsequent violation. The
13 penalty shall be paid to the Commissioner. The court may also award court costs and
14 reasonable attorneys' fees to the Commissioner.

15 Nothing in this section shall be construed to prohibit, in the case of a first offense,
16 the Commissioner and the person or practitioner alleged to be guilty of a violation of
17 this Article from entering into a written agreement in which the person or practitioner
18 does not admit or deny the charges but consents to payment of the civil penalty. A
19 consent agreement may not be used in a subsequent civil or criminal proceeding relating
20 to any violation of this Article, nor shall notification thereof be made to a licensing
21 authority as required pursuant to G.S. 58-89-40.

22 **"§ 58-89-20. Statement to be contained in insurance claim forms; verification of**
23 **services and materials as necessary.**

24 Insurance claim forms shall contain a statement in a form approved by the
25 Commissioner that clearly states in substance the following: 'Any person who
26 knowingly files a statement of claim containing any false or misleading information is
27 subject to criminal and civil penalties.'

28 **"§ 58-89-25. Action by insurance companies against violators; damages; copies of**
29 **legal documents sent to Commissioner; report; joinder in action by**
30 **Commissioner.**

31 (a) Any insurance company damaged as the result of a violation of any provision
32 of this Article may sue therefor in any court of competent jurisdiction to recover
33 compensatory damages, which may include reasonable investigation expenses, costs of
34 suit, and attorneys' fees.

35 (b) A successful claimant under subsection (a) of this section shall recover treble
36 damages if the court determines that the defendant has engaged in a pattern of violating
37 this Article.

38 (c) A claimant under this section shall mail a copy of the initial claim, amended
39 claim, counterclaims, briefs, and legal memoranda to the Commissioner at the time of
40 filing of documents with the court wherein the matter is pending. A successful claimant
41 shall report to the Commissioner, on a form prescribed by the Commissioner, the
42 amount recovered and other information as is required by the Commissioner.

43 (d) Upon receipt of notification of the filing of a claim by an insurer, the
44 Commissioner may join in the action for the purpose of seeking judgment for the

1 payment of a civil penalty authorized under G.S. 58-89-5. If the Commissioner
2 prevails, the court may also award court costs and reasonable attorneys' fees actually
3 incurred by the Commissioner.

4 **"§ 58-89-30. Division of insurance fraud prevention; duties; personnel; advisory**
5 **board; ascertaining and certification of expenses; apportionment of**
6 **expenses among insurance companies; appropriations limit.**

7 (a) There is established in the Department of Insurance the Division of Insurance
8 Fraud Prevention. The Division shall assist the Commissioner in administratively
9 investigating allegations of insurance fraud and in developing and implementing
10 programs to prevent insurance fraud and abuse.

11 (b) The Commissioner shall appoint the full-time supervisory and investigative
12 personnel of the Division, including the Director, who shall hold their employment at
13 the pleasure of the Commissioner and shall receive salaries as the Commissioner from
14 time to time designates, and who shall be qualified by training and experience to
15 perform the duties of their positions.

16 (c) The Commissioner shall also appoint the clerical and other staff necessary for
17 the Division to fulfill its responsibilities under this Article. The personnel shall be
18 employed subject to the provisions of Chapter 126 of the General Statutes, and other
19 applicable statutes.

20 (d) The Commissioner shall appoint an insurance fraud advisory board consisting
21 of nine members who are insurers doing business in the State and three members who
22 are consumers of the general public. The members of the board shall serve for two-year
23 terms and until their successors are appointed and qualified. The members of the board
24 shall receive no compensation. The board shall advise the Commissioner with respect to
25 the implementation of this Article, when so requested by the Commissioner.

26 (e) The Budget Office of the Department of Insurance shall, on or before
27 September 1 of each year, ascertain and certify to the Commissioner the total amount of
28 expense incurred by the State in connection with the administration of this Article
29 during the preceding fiscal year, which expenses shall include, in addition to the direct
30 cost of personal service, the cost of maintenance and operation, the cost of retirement
31 contributions made, and the workers compensation paid for and on account of
32 personnel, rentals for space occupied in State-owned or State-leased buildings, and all
33 other direct and indirect costs of the administration thereof.

34 (f) The Commissioner shall, on or before October 15 of each year, apportion the
35 amount so certified to him among all of the companies writing the class or classes of
36 insurance in this Chapter within this State in the proportion that the net premiums
37 received by each of them for insurance written or renewed on risks within this State
38 during the calendar year immediately preceding, as reported to him, bears to the sum
39 total of all net premiums received by all companies writing that insurance within the
40 State during the year, as reported, except that no one company shall be assessed for
41 more than five percent (5%) of the amount apportioned. The Commissioner shall certify
42 to the Department of Revenue and the Joint Legislative Committee on Governmental
43 Operations the sum apportioned to each company on or before November 15 next
44 ensuing. Each company shall pay the amount so certified as apportioned to the

1 Department of Revenue on or before December 31 next ensuing, and the sum paid shall
2 be paid into the General Fund in reimbursement to the State for the expenses paid.

3 'Net premiums received' means gross premiums written, less return premiums
4 thereon and dividends credited or paid to policyholders.

5 **"§ 58-89-35. Report of alleged violations; investigation; civil liability; records.**

6 (a) Any insurance company or producer who believes that a violation of this
7 Article has been or is being made shall, within 30 days after discovery of the alleged
8 violation of this Article, send to the Division, on a form prescribed by the
9 Commissioner, the information requested and any additional information relative to the
10 claim and the parties claiming loss or damages as the Division may require. The
11 Division shall review the reports and select those claims as may require further
12 investigation. It shall then cause an independent examination or evaluation of the facts
13 surrounding the claim to be made to determine the extent, if any, to which fraud, deceit,
14 or intentional misrepresentation of any kind exists in the submission or processing of
15 the claim.

16 (b) No person shall be subject to civil liability for libel, violation of privacy, or
17 otherwise by virtue of the filing of reports or furnishing of other information, in good
18 faith and without malice, required by this section or required by the Division as a result
19 of the authority conferred upon it by law.

20 (c) The Commissioner may, by regulation, require insurance companies licensed
21 to do business in this State to keep records and other information deemed necessary for
22 the effective enforcement of this Article.

23 **"§ 58-89-40. Compelling attendance of witnesses or production of documents;**
24 **subpoenas; fees and mileage; contempt; matters located outside of State;**
25 **violations by persons licensed by State.**

26 (a) If the Division has reason to believe that a person has engaged in, or is
27 engaging in, an act or practice which violates this Article, or any other relevant statute
28 or regulation, the Commissioner or the Commissioner's designee may administer oaths
29 and affirmations, requests, or compel the attendance of witnesses or the production of
30 documents. The Commissioner may issue, or designate another to issue, subpoenas to
31 compel the attendance of witnesses and the production of books, records, accounts,
32 papers, and documents.

33 If a person subpoenaed pursuant to this section shall neglect or refuse to obey the
34 command of the subpoena, a judge of the superior court may, on proof by affidavit of
35 service of the subpoena, of payment or tender of the fees required, and of refusal or
36 neglect by the person to obey the command of the subpoena, issue a warrant for the
37 arrest of said person to bring him before the judge, who is authorized to proceed against
38 the person as for contempt of court.

39 (b) If matter that the Division seeks to obtain by request is located outside the
40 State, the person so required may make it available to the Division or its representative
41 to examine the matter at the place where it is located. The Division may designate
42 representatives, including officials of the state in which the matter is located, to inspect
43 the matter on its behalf, and it may respond to similar requests from officials of other
44 states.

1 (c) If (i) a practitioner, (ii) an owner, administrator, or employee of any hospital,
2 (iii) an insurance company, agent, broker, solicitor, or adjuster, or (iv) any other person
3 licensed by a licensing authority of this State, or an agent, representative, or employee
4 of any of them is found to have violated any provision of this Article, the Commissioner
5 or the Attorney General shall notify the appropriate licensing authority of the violation
6 so that the licensing authority may take appropriate administrative action.

7 **"§ 58-89-45. Public inspection, disposition and subpoena of evidence; subpoena of**
8 **investigators.**

9 Papers, documents, reports, or evidence relative to the subject of an investigation
10 under this Article shall not be subject to public inspection except as specifically
11 provided in this Article. The Commissioner shall not detain subpoenaed records after
12 an investigation is closed or, if a claim for a civil penalty is filed by the Commissioner
13 pursuant to G.S. 58-89-15 or G.S. 58-89-25, upon final disposition of the claim by a
14 court of competent jurisdiction, whichever shall be the later date. Subpoenaed records
15 shall be returned to the persons from whom they were obtained. The Commissioner
16 may, in his discretion, make relevant papers, documents, reports, or evidence available
17 to the Attorney General, an appropriate licensing authority, an insurance company, or
18 insurance claimant injured by a violation of this Article, consistent with the purposes of
19 this Article and under conditions deemed appropriate. These papers, documents,
20 reports, or evidence shall not be subject to subpoena, unless the Commissioner consents,
21 or until, after notice to the Commissioner and hearing, a court of competent jurisdiction
22 determines that the Commissioner would not be unnecessarily hindered by the
23 subpoena. Division investigators shall not be subject to subpoena in civil actions by any
24 court of this State to testify concerning any matter of which they have knowledge
25 pursuant to a pending insurance fraud investigation by the Division, or a pending claim
26 for civil penalties initiated by the Commissioner.

27 **"§ 58-89-50. Rules.**

28 The Commissioner may promulgate rules deemed necessary for the effective
29 implementation of this Article.

30 **"§ 58-89-55. Annual report on activities and cost-effectiveness.**

31 The Commissioner shall report annually to the Joint Legislative Commission on
32 Governmental Operations the activities of the Division and the cost-effectiveness of the
33 programs established by the Division.

34 **"§ 58-89-60. Criminal prosecution.**

35 The imposition of any fine or other remedy under this Article shall not preclude
36 prosecution for a violation of the criminal law of this State."

37 Sec. 2. G.S. 58-89-1, 58-89-5, 58-89-30, and 58-89-50 as enacted by this act
38 become effective upon ratification except rules adopted under G.S. 58-89-50 do not
39 become effective until July 1, 1994. G.S. 58-89-10, 58-89-15, 58-89-20, 58-89-25, 58-
40 89-35, 58-89-40, 58-89-45, 58-89-55, and 58-89-60 as enacted by this act become
41 effective July 1, 1994.