

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 306

Short Title: Insurance Amendments/AB.

(Public)

Sponsors: Representatives Hardaway; and Hurley.

Referred to: Insurance.

March 4, 1999

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO CONDUCT
3 HEARINGS AND ADOPT CERTAIN RULES RELATED TO THE BEACH AND
4 FAIR PLANS, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND
5 HUMAN SERVICES TO APPROVE ADDITIONAL BEDS FOR CONTINUING
6 CARE RETIREMENT FACILITIES UNDER CERTAIN CIRCUMSTANCES, TO
7 REVISE THE LAW PROHIBITING DISCRIMINATION IN THE TREATMENT
8 OF HANDICAPPED AND DISABLED PERSONS, TO GOVERN MANAGED
9 CARE WITH REGARD TO WORKERS' COMPENSATION, TO EXEMPT
10 COMMERCIAL AIRCRAFT INSURANCE FROM STATE REGULATION, TO
11 REQUIRE ADDITIONAL INFORMATION FROM SURPLUS LINES
12 LICENSEES, TO CLARIFY WHICH SECTIONS OF THE GENERAL STATUTES
13 APPLY TO SURPLUS LINES INSURANCE, TO AUTHORIZE THE SECRETARY
14 OF REVENUE TO PROVIDE THE NORTH CAROLINA SELF-INSURANCE
15 GUARANTY ASSOCIATION WITH INFORMATION ON SELF-INSURERS'
16 PREMIUMS, TO REPEAL THE REQUIREMENT FOR A BIENNIAL REPORT
17 FROM THE DEPARTMENT OF INSURANCE, TO REPEAL THE AGENCY
18 BUSINESS CESSATION LAW, AND TO AUTHORIZE THE COMMISSIONER
19 TO ADOPT RULES RECOGNIZING NEW ANNUITY MORTALITY TABLES.

20 The General Assembly of North Carolina enacts:

PART I. HEARINGS AND FAIR AND BEACH PLANS APPEALS.

Section 1.1. G.S. 58-2-50 reads as rewritten:

"§ 58-2-50. ~~Examinations~~ Examinations, hearings, and investigations.

All ~~examinations~~ examinations, hearings, and investigations provided for by this Chapter may be conducted by the Commissioner personally or by one or more deputies, investigators, actuaries, examiners or employees designated for the purpose. If the Commissioner or any investigator appointed to conduct the investigations is of the opinion that there is evidence to charge any person or persons with a criminal violation of any provision of this Chapter, the Commissioner may arrest with warrant or cause the person or persons to be arrested. All hearings shall, unless otherwise specially provided, be held in accordance with this Article and Article 3A of Chapter 150B of the General Statutes and at a time and place designated in a written notice given by the Commissioner to the person cited to appear. The notice shall state the subject of inquiry and the specific charges, if any."

Section 1.2. G.S. 58-45-50 reads as rewritten:

"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the appeal shall be in accordance with the procedure set forth in G.S. 58-2-50; rules adopted by the Commissioner. Provided, however, the Commissioner is authorized to appoint a member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such those~~ appeals and a ruling based upon ~~such the~~ hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as is provided by ~~the provisions of~~ in G.S. 58-2-75.

No later than 20 days before each hearing, the appellant shall file with the Commissioner or ~~his~~ the Commissioner's designated hearing officer and shall serve on the appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he that the~~ appellant intends to offer at the hearing. No later than five days before ~~such the~~ hearing, the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence ~~he that the~~ appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed. The cost of such recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. The procedures governing recordings of hearings and, if necessary, transcripts of recordings, as well as the fees for copies of recordings and transcripts, shall be determined by rules adopted by the Commissioner.~~ Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party,

1 submit to the Commissioner or ~~his~~the designated hearing officer and serve on the other
2 party, a proposed order. The Commissioner or ~~his~~the designated hearing officer shall
3 then issue an order."

4 Section 1.3. G.S. 58-46-30 reads as rewritten:

5 **"§ 58-46-30. Appeals; judicial review.**

6 The association shall provide reasonable means, to be approved by the Commissioner,
7 whereby any person or insurer affected by any act or decision of the administrators of the
8 Plan or underwriting association, other than an act or decision relating to the cause or
9 amount of a claimed loss, may be heard in person or by an authorized representative,
10 before the governing board of the association or a designated committee. Any person or
11 insurer aggrieved by any decision of the governing board or designated committee, may
12 be appealed to the Commissioner within 30 days ~~from~~after the date of ~~such~~the ruling or
13 decision. The Commissioner, after a hearing held pursuant to the procedure set forth in G.S.
14 ~~58-2-50~~, under rules adopted by the Commissioner, shall issue an order approving or
15 disapproving the act or decision with respect to the matter ~~which~~that is the subject of
16 appeal. The Commissioner ~~is authorized to~~may appoint a member of ~~his~~the
17 Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~the appeals
18 and a ruling based on ~~such~~the hearing shall ~~have~~has the same effect as if heard by the
19 ~~Commissioner personally~~Commissioner. All persons or insurers or their representatives
20 aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the~~
21 provisions of in G.S. 58-2-75.

22 No later than 20 days before each hearing, the appellant shall file with the
23 Commissioner or ~~his~~the designated hearing officer and shall serve on the appellee a
24 written statement of ~~his~~the appellant's case and any evidence ~~he~~that the appellant intends
25 to offer at the hearing. No later than five days before ~~such~~the hearing, the appellee shall
26 file with the Commissioner or ~~his~~the designated hearing officer and shall serve on the
27 appellant a written statement of ~~his~~the appellee's case and any evidence ~~he~~that the
28 appellee intends to offer at the hearing. ~~Each such hearing shall be recorded and transcribed.~~
29 ~~The cost of such recording and transcribing shall be borne equally by the appellant and appellee;~~
30 ~~provided that upon any final adjudication the prevailing party shall be reimbursed for his share of~~
31 ~~such costs by the other party.~~ The procedures governing recordings of hearings and, if
32 necessary, transcripts of recordings, as well as the fees for copies of recordings and
33 transcripts, shall be determined by rules adopted by the Commissioner. Each party shall,
34 on a date determined by the Commissioner or ~~his~~the designated hearing officer, but not
35 sooner than 15 days after delivery of the completed transcript to the party, submit to the
36 Commissioner or ~~his~~the designated hearing officer and serve on the other party, a
37 proposed order. The Commissioner or ~~his~~the designated hearing officer shall then issue
38 an order."
39

40 **PART II. CONTINUING CARE RETIREMENT RECEIVERSHIPS.**

41 Section 2. Article 64 of Chapter 58 of the General Statutes is amended by
42 adding a new section to read:

43 **"§ 58-64-46. Receiverships; exception for facility beds.**

1 When the Commissioner has been appointed as a receiver under Article 30 of this
2 Chapter for a provider or facility subject to this Article, the Department of Health and
3 Human Services may, notwithstanding any other provision of law, accept and approve the
4 addition of beds for that facility if it appears to the court, upon petition of the
5 Commissioner or the provider, or on the court's own motion, that (i) the best interests of
6 the facility or (ii) the welfare of persons who have previously contracted with the
7 provider or may contract with the facility may be best served by the addition of adult care
8 home beds."

10 **PART III. HANDICAPPED PERSONS.**

11 Section 3.1. G.S. 168-10 reads as rewritten:

12 **"§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.**

13 Each handicapped person shall have the same consideration as any other person for
14 individual accident and health insurance coverage, and no insurer, service corporation,
15 multiple employer welfare arrangement, or health maintenance organization subject to
16 Chapter 58 of the General Statutes solely on the basis of such the person's handicap, shall
17 deny such coverage or benefits. The availability of such insurance coverage or benefits
18 shall not be denied solely due to because of the handicap, provided, however, that no such
19 insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions
20 from such coverage, and further provided that handicap; however, any such insurer may
21 charge the appropriate premiums or fees for the risk insured on the same basis and
22 conditions as insurance issued to other persons. persons, in accordance with actuarial and
23 underwriting principles and other coverage provisions prescribed in Chapter 58 of the
24 General Statutes. Nothing contained herein or in any other statute shall restrict or preclude any
25 insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or
26 fee based upon the class or classes of risks and on sound actuarial and underwriting principles as
27 determined by such insurer, or from applying its regular underwriting standards applicable to all
28 classes of risks. The provisions of this section shall apply to both corporations governed by
29 Chapter 58 of the General Statutes."

30 Section 3.2. G.S. 168-22(b) reads as rewritten:

31 "(b) A family care home shall be deemed a residential use of property for the
32 purposes of determining charges or assessments imposed by political subdivisions or
33 businesses for water, sewer, power, telephone service, cable television, garbage and trash
34 collection, repairs or improvements to roads, streets, and sidewalks, and other services,
35 utilities, and improvements, and for purposes of classification for insurance. improvements."

37 **PART IV. WORKERS' COMPENSATION MANAGED CARE.**

38 Section 4.1. G.S. 58-50-65(a) reads as rewritten:

39 "(a) Nothing Except as provided in this subsection, nothing in Articles 50 through
40 55 of this Chapter shall apply applies to or affect any policy of liability or workers'
41 compensation insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c)
42 of G.S. 58-50-55 shall insurance policy. This Article and Articles 65 and 67 of this
43 Chapter and any administrative rules adopted under these Articles relating to preferred

1 providers and utilization review apply to policies of workers' compensation insurance.
2 insurance policies and to individual and group self-funded workers' compensation
3 insurance plans. If there is any conflict between managed care rules adopted by the
4 Commissioner under this Chapter and managed care rules adopted by the Industrial
5 Commission under G.S. 97-25.2, the Industrial Commission's rules govern. If there is
6 any conflict between managed care provisions of this Chapter and managed care
7 provisions of Chapter 97 of the General Statutes with respect to workers' compensation,
8 the provisions of Chapter 97 govern."

9 Section 4.2. G.S. 97-2(21) reads as rewritten:

10 "(21) Managed care organization. – The term 'managed care organization'
11 means a preferred provider organization or a health maintenance
12 organization regulated under Chapter 58 of the General Statutes.
13 'Managed care organization' also means a preferred provider benefit
14 plan of an insurance company, hospital, or medical service corporation
15 in which utilization review or quality management programs are used to
16 manage the provision of health care services and benefits under this
17 Chapter."

18

19 **PART V. COMMERCIAL AIRCRAFT INSURANCE.**

20 Section 5.1. G.S. 58-7-15(19) reads as rewritten:

21 "(19) ~~'Motor vehicle and aircraft insurance,'~~ meaning insurance against loss of
22 or damage resulting from any cause to motor vehicles or ~~aircraft~~ and
23 their equipment, and against legal liability of the insured for loss or
24 damage to another's property resulting from the ownership, maintenance
25 or use of motor vehicles or ~~aircraft~~ and against loss, damage or expense
26 incident to a claim of such liability."

27 Section 5.2. G.S. 58-41-10(a) reads as rewritten:

28 "(a) Except as otherwise provided, this Article applies to all kinds of insurance
29 authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all
30 insurance companies licensed by the Commissioner to write those kinds of insurance.
31 This Article does not apply to insurance written under Articles 21, 36, 37, 45 or 46 of this
32 Chapter; insurance written for residential risks in conjunction with insurance written
33 under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to
34 personal inland marine insurance; to ~~aviation~~ commercial aircraft insurance; to policies
35 issued in this State covering risks with multistate locations, except with respect to
36 coverages applicable to locations within this State; to any town or county farmers mutual
37 fire insurance association restricting its operations to not more than six adjacent counties
38 in this State; nor to domestic insurance companies, associations, orders, or fraternal
39 benefit societies doing business in this State on the assessment plan."

40 Section 5.3. G.S. 58-21-10(8) reads as rewritten:

41 "(8) 'Surplus lines insurance' means any insurance in this State of risks
42 resident, located, or to be performed in this State, permitted to be placed
43 through a surplus lines licensee with a nonadmitted insurer eligible to

1 accept such insurance, other than reinsurance, ~~aviation~~ commercial
2 aircraft insurance, wet marine and transportation insurance, insurance
3 independently procured pursuant to G.S. 58-28-5, life and accident or
4 health insurance, and annuities."

5 Section 5.4. G.S. 58-28-5(a) reads as rewritten:

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

11 (1) The procuring of a policy of insurance upon a risk within this State
12 where the applicant is unable to procure coverage in the open market
13 with admitted companies and is otherwise in compliance with Article 21
14 of this ~~Chapter~~; Chapter.

15 (2) Contracts of reinsurance; but not including assumption reinsurance
16 transactions, whereby the reinsuring company succeeds to all of the
17 liabilities of and supplants the ceding company on the insurance
18 contracts that are the subject of the transaction, unless prior approval
19 has been obtained from the ~~Commissioner~~; Commissioner.

20 (3) Transactions in this State involving a policy lawfully solicited, written
21 and delivered outside of this State covering only subjects of insurance
22 not resident, located or expressly to be performed in this State at the
23 time of issuance, and which transactions are subsequent to the issuance
24 of such ~~policy~~; policy.

25 (4) Transactions in this State involving group life insurance, group
26 annuities, or group, blanket, or franchise accident and health insurance
27 where the master policy ~~of such~~ for the insurance was lawfully issued
28 and delivered in a state ~~where-in which~~ the company was authorized to
29 transact ~~business~~; business.

30 (5) Transactions in this State involving all policies of insurance issued ~~prior~~
31 ~~to~~ before July 1, ~~1967~~; 1967.

32 (6) The procuring of contracts of insurance issued to a nuclear ~~insured~~;
33 insured. As used in this subdivision, 'nuclear insured' means a public
34 utility procuring insurance against radioactive contamination and other
35 risks of direct physical loss at a nuclear electric generating plant.

36 (7) Insurance independently procured, as specified in subsection (b) of this
37 ~~section~~; section.

38 (8) Insurance on vessels or craft, their cargoes, marine builders' risks,
39 marine protection and indemnity, or other risks commonly insured
40 under marine insurance policies, as distinguished from inland marine
41 insurance policies.

42 (9) Transactions in this State involving commercial aircraft insurance,
43 meaning insurance against (i) loss of or damage resulting from any

1 cause to commercial aircraft and its equipment, (ii) legal liability of the
2 insured for loss or damage to another person's property resulting from
3 the ownership, maintenance, or use of commercial aircraft, and (iii) loss,
4 damage, or expense incident to a liability claim."

5 Section 5.5. G.S. 58-1-5 reads as rewritten:

6 **"§ 58-1-5. Definitions.**

7 In this Chapter, unless the context clearly requires otherwise:

8 (1) 'Alien company' means a company incorporated or organized under the
9 laws of any jurisdiction outside of the United States.

10 (1a) 'Commercial aircraft' means aircraft used in domestic, flag,
11 supplemental, commuter, or on-demand operations, as defined in
12 Federal Aviation Administration Regulations, 14 C.F.R. § 119.3, as
13 amended.

14 (2) 'Commissioner' means the Commissioner of Insurance of North
15 Carolina or an authorized designee of the Commissioner.

16 (3) 'Company' or 'insurance company' or 'insurer' includes any corporation,
17 association, partnership, society, order, individual or aggregation of
18 individuals engaging or proposing or attempting to engage as principals
19 in any kind of insurance business, including the exchanging of
20 reciprocal or interinsurance contracts between individuals, partnerships
21 and corporations. 'Company' or 'insurance company' or 'insurer' does not
22 mean the State of North Carolina or any county, city, or other political
23 subdivision of the State of North Carolina.

24 (4) 'Department' means the Department of Insurance of North Carolina.

25 (5) 'Domestic company' means a company incorporated or organized under
26 the laws of this State.

27 (6) 'Foreign company' means a company incorporated or organized under
28 the laws of the United States or of any jurisdiction within the United
29 States other than this State.

30 (7) 'NAIC' means the National Association of Insurance Commissioners.

31 (8) ~~"Nuclear insured" means a public utility procuring insurance against~~
32 ~~radioactive contamination and other risks of direct physical loss at a~~
33 ~~nuclear electric generating plant.~~

34 (9) 'Person' means an individual, partnership, firm, association, corporation,
35 joint-stock company, trust, any similar entity, or any combination of the
36 foregoing acting in concert. "Person" does not mean the State of North
37 Carolina or any county, city, or other political subdivision of the State
38 of North Carolina.

39 (10) The singular form ~~shall include~~ includes the plural, and the masculine
40 form ~~shall include~~ includes the feminine wherever appropriate."

41
42 **PART VI. SURPLUS LINES FILINGS.**

43 Section 6.1. G.S. 58-21-35 reads as rewritten:

1 **"§ 58-21-35. Duty to file evidence of insurance and affidavits. reports and retain**
2 **affidavit.**

3 (a) Within 30 days after the placing of any surplus lines insurance, the surplus
4 lines licensee shall ~~execute and file with the Commissioner.~~ Commissioner a

5 (1) ~~A written report in a format prescribed by the Commissioner regarding~~
6 the insurance and including the following information:

7 ~~a.~~(1) ~~The name and address of the insured;~~ insured.

8 ~~b.~~(2) ~~The identity of the insurer or insurers;~~ insurers.

9 ~~c.~~(3) ~~A description of the subject and location of the risk;~~ risk.

10 ~~d.~~(4) ~~The amount of premium charged for the insurance;~~ and insurance.

11 e. ~~Such other pertinent information as the Commissioner may~~
12 ~~reasonably require;~~ and

13 (5) The amount of premium tax for the insurance.

14 (6) The policy period.

15 (7) The policy number.

16 (8) The name, address, telephone number, facsimile telephone number, and
17 electronic mail address of the licensee, as applicable.

18 (9) Any other relevant information the Commissioner may reasonably
19 require.

20 (2) ~~An~~

21 (b) The licensee shall complete and retain an affidavit as to the efforts to place the
22 coverage with admitted insurers and the results thereof of the efforts, in accordance with
23 G.S. 58-21-15. The report and affidavit required by this section and the quarterly report
24 required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed
25 by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

26 Section 6.2. Article 21 of Chapter 58 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 58-21-2. Relationship to other insurance laws.**

29 Unless surplus lines insurance, surplus lines licensees, or nonadmitted insurers are
30 specifically referenced in a particular section of this Chapter, no sections contained in
31 Articles of this Chapter other than this Article apply to surplus lines insurance, surplus
32 lines licensees, or nonadmitted insurers."

33
34 **PART VII. WORKERS' COMPENSATION SELF-INSURANCE.**

35 Section 7. G.S. 105-259(b) is amended by adding a new subdivision to read:

36 "(16a) To provide the North Carolina Self-Insurance Guaranty Association
37 information on self-insurers' premiums as determined under G.S. 105-
38 228.5(b), (b1), and (c) for the purpose of collecting the assessments
39 authorized in G.S. 97-133(a)."

40
41 **PART VIII. REPEAL REQUIREMENT OF BIENNIAL REPORT.**

42 Section 8. G.S. 58-2-120 reads as rewritten:

43 **"§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.**

1 ~~The Commissioner shall biennially submit to the General Assembly, through the~~
2 ~~Governor, a report of his official acts, including a summary of official rulings and~~
3 ~~regulations.—The Commissioner shall, from time to time, report to the Governor and the~~
4 ~~General Assembly any change or changes which that in his—the Commissioner's opinion~~
5 ~~should be made in the laws relating to insurance and other subjects pertaining to his~~
6 ~~department. On or before the first day of February of each year in which the General~~
7 ~~Assembly is in session he shall make to the Governor the recommendations called for in~~
8 ~~this section, to be transmitted to the General Assembly, with the last annual report of this~~
9 ~~Department, including receipts and disbursements.—the Department."~~

11 **PART IX. REPEAL THE AGENCY BUSINESS CESSATION LAW.**

12 Section 9. G.S. 58-41-35 is repealed.

13 Section 9.1. G.S. 58-41-40(a) reads as rewritten:

14 "(a) There is no liability on the part of and no cause of action for defamation or
15 invasion of privacy arises against any insurer or its authorized representatives, agents, or
16 employees, or any licensed insurance agent or broker, for any communication or
17 statement made, unless shown to have been made in bad faith with malice, in any of the
18 following:

- 19 (1) A written notice of cancellation under ~~G.S. 58-41-15,~~ G.S. 58-41-15 or of
20 nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an~~
21 ~~agency under G.S. 58-41-35,~~ specifying the reasons therefor; for
22 cancellation.
- 23 (2) Communications providing information pertaining to ~~such cancellation,~~
24 ~~nonrenewal, or cessation of business through an agency;~~ the cancellation or
25 nonrenewal.
- 26 (3) Evidence submitted at any court proceeding, administrative hearing, or
27 informal inquiry in which ~~such cancellation, nonrenewal, or cessation of~~
28 ~~business through an agency~~ the cancellation or nonrenewal is an issue."

30 **PART X. MORTALITY TABLE AND RESERVES UPDATE.**

31 Section 10. G.S. 58-58-50(k) reads as rewritten:

32 "(k) The Commissioner shall adopt rules containing the minimum standards
33 applicable to the valuation of health plans. The Commissioner may also adopt rules for
34 the purpose of recognizing new annuity mortality tables for use in determining reserve
35 liabilities for annuities and may adopt rules that govern minimum valuation standards for
36 reserves of life insurance companies. In adopting these rules, the Commissioner may
37 consider model laws and regulations promulgated and amended from time to time by the
38 NAIC."

40 **PART XI. EFFECT OF HEADINGS.**

41 Section 11. The headings to the parts of this act are a convenience to the
42 reader and are for reference only. The headings do not expand, limit, or define the text of
43 this act.

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PART XII. EFFECTIVE DATE.

Section 12. Sections 2 through 11 of this act become effective October 1, 1999. The remainder of this act is effective when this act becomes law, but Sections 1.1, 1.2, and 1.3 of this act shall not apply to appeals pending on the date this act becomes law.