

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 342\*

Insurance Committee Substitute Adopted 5/13/91

House Committee Substitute Favorable 6/25/91

Short Title: Insurer Solvency Program.

(Public)

Sponsors:

Referred to:

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND AND IMPROVE THE INSURANCE LAWS ON THE MONITORING OF THE FINANCIAL CONDITION OF INSURANCE COMPANIES IN ACCORDANCE WITH THE FINANCIAL REGULATION STANDARDS AND INSURANCE DEPARTMENT ACCREDITATION PROGRAM OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-25 reads as rewritten:

"§ 58-2-25. Other deputies, actuaries, examiners and employees.

(a) The Commissioner shall appoint or employ such other deputies, actuaries, economists, financial analysts, financial examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees as may be found that the Commissioner considers to be necessary for the proper execution of the work of the Department, at such the compensation as shall be that is fixed and provided by the Department of Administration. If the Commissioner finds it considers it to be necessary for the proper execution of the work of the Insurance Department to contract with persons, except to fill authorized employee positions, all of those contracts, except those provided for in Articles 36 and 37 of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter 143-143 of the General Statutes.

1 Whenever the Commissioner or any deputy or employee of the Department is  
2 requested or subpoenaed to testify as an expert witness in any civil or administrative  
3 action, the party making the request or filing the subpoena and on whose behalf the  
4 testimony is given shall, upon receiving a statement of the cost from the Commissioner,  
5 reimburse the Department for the actual time and expenses incurred by the Department  
6 in connection with the testimony.

7 (b) The minimum education requirements for financial analysts and  
8 examiners referred to in subsection (a) of this section are a bachelors degree, with the  
9 appropriate courses in accounting as defined in 21 NCAC 8A.0309, and other courses  
10 that are required to qualify the applicant as a candidate for the uniform certified public  
11 accountant examination, based on the examination requirements in effect at the time of  
12 employment by the Department of the analyst or examiner."

13 Sec. 2. Article 2 of Chapter 58 of the General Statutes is amended by adding  
14 the following new sections:

15 **"§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct**  
16 **of examinations.**

17 (a) This section and G.S. 58-2-132 and G.S. 58-2-133 shall be known and  
18 may be cited as the Examination Law. The purpose of the Examination Law is to  
19 provide an effective and efficient system for examining the activities, operations,  
20 financial condition, and affairs of all persons transacting the business of insurance in  
21 this State and all persons otherwise subject to the Commissioner's jurisdiction; and to  
22 enable the Commissioner to use a flexible system of examinations that directs resources  
23 that are appropriate and necessary for the administration of the insurance statutes and  
24 rules of this State.

25 (b) As used in this section, G.S. 58-2-132 and G.S. 58-2-133, unless the context  
26 clearly indicates otherwise:

27 (1) 'Commissioner' includes an authorized representative or designee of  
28 the Commissioner.

29 (2) 'Examination' means an examination conducted under the  
30 Examination Law.

31 (3) 'Examiner' means any person authorized by the Commissioner to  
32 conduct an examination.

33 (4) 'Insurance regulator' means the official or agency of another  
34 jurisdiction that is responsible for the regulation of a foreign or alien  
35 insurer.

36 (5) 'Person' includes a trust or any affiliate of a person.

37 (c) Before licensing any person to write insurance in this State, the  
38 Commissioner shall be satisfied, by such examination and evidence as the  
39 Commissioner decides to make and require, that the person is otherwise duly qualified  
40 under the laws of this State to transact business in this State.

41 (d) The Commissioner may conduct an examination of any insurer whenever the  
42 Commissioner deems it to be prudent for the protection of policyholders but shall at a  
43 minimum conduct an examination of every domestic insurer not less frequently than  
44 once every three years. In scheduling and determining the nature, scope, and frequency

1 of examinations, the Commissioner shall consider such matters as the results of  
2 financial statement analyses and ratios, changes in management or ownership, actuarial  
3 opinions, reports of independent certified public accountants, and other criteria as set  
4 forth in the NAIC Examiners' Handbook.

5 (e) To complete an examination of any insurer, the Commissioner may authorize  
6 an examination or investigation of any person, or the business of any person, insofar as  
7 the examination or investigation is necessary or material to the insurer under  
8 examination.

9 (f) Instead of examining any foreign or alien insurer licensed in this State, the  
10 Commissioner may accept an examination report on that insurer prepared by the  
11 insurer's insurance regulator until January 1, 1994. Thereafter, reports may only be  
12 accepted if (i) the insurance regulator was at the time of the examination accredited  
13 under NAIC Financial Regulation Standards and Accreditation Program, or (ii) the  
14 examination is performed under the supervision of an NAIC-accredited insurance  
15 regulator or with the participation of one or more examiners who are employed by the  
16 regulator and who, after a review of the examination work papers and report, state under  
17 oath that the examination was performed in a manner consistent with the standards and  
18 procedures required by the regulator.

19 (g) If it appears that the insurer is of good financial and business standing and is  
20 solvent, and it is certified in writing and attested by the seal, if any, of the insurer's  
21 insurance regulator that it has been examined by the regulator in the manner prescribed  
22 by its laws, and was by the examination found to be in sound condition, that there is no  
23 reason to doubt its solvency, and that it is still permitted under the laws of such  
24 jurisdiction to do business therein, then, in the Commissioner's discretion, further  
25 examination may be dispensed with, and the obtained information and the furnished  
26 certificate may be accepted as sufficient evidence of the solvency of the insurer.

27 (h) Upon determining that an examination should be conducted, the  
28 Commissioner shall issue a notice of examination appointing one or more examiners to  
29 perform the examination and instructing them about the scope of the examination. In  
30 conducting the examination, an examiner shall observe the guidelines and procedures in  
31 the NAIC Examiners' Handbook. The Commissioner may also use such other  
32 guidelines or procedures as the Commissioner deems to be appropriate.

33 (i) Every person from whom information is sought and its officers, directors, and  
34 agents must provide to the Commissioner timely, convenient, and free access, at all  
35 reasonable hours at its offices, to all data relating to the property, assets, business, and  
36 affairs of the insurer being examined. The officers, directors, employees, and agents of  
37 the person must facilitate and aid in the examination. The refusal of any insurer, by its  
38 officers, directors, employees, or agents, to submit to examination or to comply with  
39 any reasonable written request of the Commissioner or to knowingly or willfully make  
40 any false statement in regard to the examination or written request, is grounds for  
41 revocation, suspension, refusal, or nonrenewal of any license or authority held by the  
42 insurer to engage in an insurance or other business subject to the Commissioner's  
43 jurisdiction.

1       (j) The Commissioner may issue subpoenas, administer oaths, and examine  
2 under oath any person about any matter pertinent to the examination. Upon the failure  
3 or refusal of any person to obey a subpoena, the Commissioner may petition the  
4 Superior Court of Wake County, and upon proper showing the Court may enter any  
5 order compelling the witness to appear and testify or produce documentary evidence.  
6 Failure to obey the Court order is punishable as contempt of court.

7       (k) When making an examination, the Commissioner may retain attorneys,  
8 appraisers, independent actuaries, independent certified public accountants, or other  
9 professionals and specialists as examiners, the cost of which shall be borne by the  
10 insurer that is the subject of the examination.

11       (l) Pending, during, and after the examination of any insurer the Commissioner  
12 shall not make public the financial statement, findings, or examination report, or any  
13 report affecting the status or standing of the insurer examined, until the insurer has  
14 either accepted and approved the final examination report or has been given a  
15 reasonable opportunity to be heard on the report and to answer or rebut any statements  
16 or findings in the report. The hearing, if requested, shall be informal and private.

17       (m) Nothing in the Examination Law limits the Commissioner's authority to  
18 terminate or suspend any examination in order to pursue other legal or regulatory action  
19 under the laws and rules of this State and to use any final or preliminary examination  
20 report, any examiner or insurer work papers or other documents, or any other  
21 information discovered or developed during any examination in the furtherance of any  
22 legal or regulatory action that the Commissioner may consider to be appropriate.  
23 Findings of fact and conclusions made pursuant to any examination are **prima facie**  
24 evidence in any legal or regulator action.

25 **"§ 58-2-132. Examination reports.**

26       (a) All examination reports shall comprise only facts appearing upon the books,  
27 records, or other documents of the insurer, its agents or other persons examined, or as  
28 ascertained from the testimony of its officers or agents or other persons examined  
29 concerning its affairs, and conclusions and recommendations that the examiners find  
30 reasonably warranted from the facts.

31       (b) No later than 60 days following completion of an examination, the examiners  
32 shall file with the Department a verified written examination report under oath. Upon  
33 receipt of the verified report, the Department shall send the report to the insurer  
34 examined, together with a notice that affords the insurer examined a reasonable  
35 opportunity of not more than 30 days to make a written submission or rebuttal with  
36 respect to any matters contained in the examination report. Within 30 days of the date  
37 of the examination report, the insurer shall file affidavits executed by each of its  
38 directors stating under oath that they have received and read a copy of the report.

39       (c) At the end of the 30 days provided for the receipt of written submissions or  
40 rebuttals, the Commissioner shall fully consider and review the report, together with any  
41 written submissions or rebuttals and any relevant parts of the examiners' work papers  
42 and enter an order:

43               (1) Adopting the examination report as filed or with modifications or  
44 corrections. If the examination report reveals that the insurer is

1 operating in violation of any law, rule, or prior order of the  
2 Commissioner, the Commissioner may order the insurer to take any  
3 action the Commissioner considers necessary and appropriate to cure  
4 the violation; or

5 (2) Rejecting the examination report with directions to the examiners to  
6 reopen the examination to obtain additional data, documentation of the  
7 information, and refileing under subdivision (1) of this subsection; or

8 (3) Calling for an investigatory hearing with no less than 20 days' notice to  
9 the insurer for purposes of obtaining additional documentation, data,  
10 and testimony.

11 (d) All orders entered under subdivision (c)(1) of this section shall be  
12 accompanied by findings and conclusions resulting from the Commissioner's  
13 consideration and review of the examination report, relevant examiner work papers, and  
14 any written submissions or rebuttals. Any such order shall be considered a final  
15 administration decision and shall be served upon the insurer by certified mail. Any  
16 hearing conducted under subdivision (c)(3) of this section shall be conducted as a  
17 nonadversarial confidential investigatory proceeding as necessary for the resolution of  
18 any inconsistencies, discrepancies, or disputed issues apparent on the face of the filed  
19 examination report or raised by or as a result of the Commissioner's review of relevant  
20 work papers or by the written submission or rebuttal of the insurer. Within 20 days  
21 after the conclusion of any such hearing, the Commissioner shall enter an order under  
22 subdivision (c)(1) of this section. The Commissioner may not appoint a member of the  
23 Department's examination staff as an authorized representative to conduct the hearing.  
24 The hearing shall proceed expeditiously with discovery by the insurer limited to the  
25 examiner's work papers that tend to substantiate any assertions set forth in any written  
26 submission or rebuttal. The Commissioner may issue subpoenas for the attendance of  
27 any witnesses or the production of any documents the Commissioner considers to be  
28 relevant to the investigation, whether they are under the control of the Department, the  
29 insurer, or other persons. The documents produced shall be included in the record, and  
30 testimony taken by the Commissioner shall be under oath and preserved for the record.  
31 Nothing in this section requires the Department to disclose any information or records  
32 that would show the existence or content of any investigation or activity of any federal  
33 or state criminal justice agency. In the hearing, the Commissioner shall question the  
34 persons subpoenaed. Thereafter the insurer and the Department may present testimony  
35 relevant to the investigation. Cross-examination shall be conducted only by the  
36 Commissioner. The insurer and the Department may make closing statements and may  
37 be represented by counsel of their choice.

38 (e) Upon completion of the examination report under subdivision (c)(1) of this  
39 section, the Commissioner shall hold the content of the examination report as private  
40 and confidential information for the 30-day period provided for written submissions or  
41 rebuttals. If after 30 days after the examination report has been submitted to it, the  
42 insurer examined has neither notified the Commissioner of its acceptance and approval  
43 of the report nor requested to be heard on the report, the report shall then be filed as a  
44 public document and shall be open to public inspection, as long as no court of

1 competent jurisdiction has stayed its publication. Nothing in the Examination Law  
2 prohibits the Commissioner from disclosing the content of the examination report,  
3 preliminary examination report or results, or any related matter, to an insurance  
4 regulator or to law enforcement officials of this or any other state or country or of the  
5 United States government at any time, as long as the person or agency receiving the  
6 report or related matters agrees in writing and is authorized by law to hold it  
7 confidential and in a manner consistent with this section. If the Commissioner  
8 determines that further regulatory action is appropriate as a result of any examination,  
9 the Commissioner may initiate such proceedings or actions as provided by law.

10 (f) All working papers, recorded information, documents, and copies thereof  
11 produced by, obtained by, or disclosed to the Commissioner or any other person during  
12 an examination shall be given confidential treatment and is not subject to subpoena and  
13 may not be made public by the Commissioner or any other person, except to the extent  
14 provided in G.S. 58-2-131(l) or subsection (e) of this section. Access may also be  
15 granted to the NAIC. Such parties must agree in writing before receiving the  
16 information to give it the same confidential treatment as this section requires, unless the  
17 prior written consent of the insurer to which it pertains has been obtained. The  
18 provisions of this section do not prohibit the Commissioner from taking any action  
19 provided for, or from exercising any power conferred by, any provision of this Chapter  
20 to suspend or revoke the license of any insurer.

21 **"§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.**

22 (a) No person may be appointed as an examiner by the Commissioner if that  
23 person, either directly or indirectly, has a conflict of interest or is affiliated with the  
24 management of or owns a pecuniary interest in any person subject to examination. This  
25 section does not preclude an examiner from being:

26 (1) A policyholder or claimant under an insurance policy;

27 (2) A grantor of a mortgage or similar instrument on the examiner's  
28 residence to an insurer if done under customary terms and in the  
29 ordinary course of business;

30 (3) An investment owner in shares of regulated diversified investment  
31 companies; or

32 (4) A settler or beneficiary of a blind trust into which any otherwise  
33 nonpermissible holdings have been placed.

34 (b) Notwithstanding the requirements of G.S. 58-2-131, the Commissioner may  
35 retain from time to time, on an individual basis, qualified actuaries, certified public  
36 accountants, or other similar individuals who are independently practicing their  
37 professions, even though they may from time to time be similarly employed or retained  
38 by persons subject to examination under the Examination Law.

39 (c) Any insurer examined shall pay the proper charges incurred in the  
40 examination, including the expenses and compensation of the Commissioner. The  
41 charges and expenses shall be reasonable as determined by the Commissioner and in  
42 accordance with guidelines established by the NAIC set forth in the NAIC Examiners'  
43 Handbook. The refusal of any insurer to submit to examination, or the refusal or failure  
44 of any insurer to pay the expenses of examination upon presentation by the

1 Commissioner of a bill for those expenses, is grounds for the revocation, suspension, or  
2 refusal of a license. The Commissioner may make public any such revocation,  
3 suspension, or refusal of license and may give reasons for that action. The  
4 Commissioner shall promptly begin a civil action to recover the expenses of  
5 examination against any insurer that refuses or fails to pay.

6 (d) The provisions of G.S. 58-2-160 apply to examinations conducted under the  
7 Examination Law."

8 Sec. 3. G.S. 58-2-130, 58-2-135, and 58-2-140 are repealed.

9 Sec. 4. G.S. 58-2-145 reads as rewritten:

10 **"§ 58-2-145. Examination, financial statement, and records of employers self-**  
11 **insuring for workers' compensation.**

12 The provisions of G.S. ~~58-2-130, 58-2-140, 58-2-131~~ through G.S. 58-2-133, 58-2-  
13 150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to  
14 employers that furnish proof of financial responsibility to the Commissioner under G.S.  
15 97-93(a)(2) and to persons that administer workers' compensation self-insurance for  
16 ~~such those~~ employers."

17 Sec. 5. G.S. 58-20-30 reads as rewritten:

18 **"§ 58-20-30. Financial monitoring and evaluation of clubs.**

19 Each club shall be audited annually, at the Club's expense, by a certified public  
20 accounting firm. A copy of the audit report shall be furnished to each member, and to  
21 the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the  
22 loss and loss adjustment expenses reserves of the Club, including estimate of losses and  
23 loss adjustment expenses incurred but not reported. The provisions of ~~G.S. 58-2-130~~  
24 ~~(examination of companies by the Commissioner before authority to transact business granted),~~  
25 ~~G.S. 58-2-131 through G.S. 58-2-133, G.S. 58-2-150 (affidavit of compliance with law~~  
26 ~~required), G.S. 58-2-150, insurance fraud), 58-2-160, G.S. 58-2-165 (annual, semiannual, or~~  
27 ~~quarterly statements filed with the Commissioner), 58-2-165, G.S. 58-2-180 (punishment for~~  
28 ~~false statement), 58-2-180, G.S. 58-2-185 (making and keeping business records for the~~  
29 ~~Commissioner's inspection), 58-2-185, G.S. 58-2-190 (Commissioner's authority to require~~  
30 ~~special reports), 58-2-190, G.S. 58-2-200 (exhibition of books, accounts and other papers to~~  
31 ~~the Commissioner), 58-2-200, and G.S. 58-6-5 (Commissioner authorized to collect and pay~~  
32 ~~fees and charges for examination to State Treasury) shall apply to each Club and to persons~~  
33 that administer the Clubs."

34 Sec. 6. G.S. 58-23-25 reads as rewritten:

35 **"§ 58-23-25. Financial monitoring and evaluation of pools.**

36 Each pool must be audited annually at the expense of the pool by a certified public  
37 accounting firm, with a copy of the report available to the governing body or chief  
38 executive officer of each member of the pool and to the Commissioner. The board of  
39 trustees of the pool must obtain an appropriate actuarial evaluation of the loss and loss  
40 adjustment expense reserves of the pool, including an estimate of losses and loss  
41 adjustment expenses incurred but not reported. The provisions of G.S. ~~58-2-130, 58-2-~~  
42 ~~131 through G.S. 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-~~  
43 ~~190, 58-2-200, and 58-6-5~~ apply to each pool and to persons that administer pools for

1 local governments. Annual financial statements required by G.S. 58-2-165 shall be  
2 filed by each pool within 60 days after the end of the pool's fiscal year."

3 Sec. 7. G.S. 58-2-165 reads as rewritten:

4 **"§ 58-2-165. Annual, semiannual, ~~or monthly, or quarterly~~ statements to be filed**  
5 **with Commissioner.**

6 (a) Every insurance company shall file in the Commissioner's office, office of the  
7 Commissioner of Insurance on or before the first day of March 1 in of each year, in form  
8 and detail as the Commissioner of Insurance prescribes, a statement showing the business  
9 standing and financial condition of such the company, association, or order on the  
10 preceding thirty first day of December, December 31, signed and sworn to by the chief  
11 managing agent or officer thereof, before the Commissioner of Insurance or some  
12 officer authorized by law to administer oaths. The Commissioner of Insurance shall, in  
13 December of each year, furnish to each of the insurance companies authorized to do business in  
14 the State two or more blanks adapted for their annual statements. Provided, the  
15 Commissioner may, for good and sufficient cause shown by an applicant company,  
16 extend the filing date of such the company's annual statement for such company,  
17 statement, for a reasonable period of time, not to exceed 30 days. Provided further,  
18 However, the Commissioner may, in his discretion, may require the statement required by  
19 this section to be filed semiannually or quarterly by any insurance company, association, or  
20 order order to file its statement semiannually or quarterly.

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

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

29 Sec. 8. Article 2 of Chapter 58 of the General Statutes is amended by adding  
30 a new section to read:

31 **"§ 58-2-225. Regulation of reinsurance intermediaries.**

32 (a) As used in this section, 'reinsurance intermediary' means any person that acts  
33 as a broker in soliciting, negotiating, or procuring the making of any reinsurance  
34 contract or binder on behalf of a ceding insurer; or acts as a broker in accepting any  
35 reinsurance contract or binder on behalf of an assuming insurer.

36 (b) The Commissioner may adopt rules to provide for the regulation of  
37 reinsurance intermediaries. Those rules may be based on the NAIC model act that  
38 provides for: licensure, required contract provisions, maintenance and production of  
39 books and records, duties of insurers and reinsurers, prohibited acts, examination  
40 authority, and penalties and liabilities."

41 Sec. 9. Article 3 of Chapter 58 of the General Statutes is amended by adding  
42 a new section to read:

43 **"§ 58-3-155. Business transacted with insurer-controlled brokers.**

44 (a) As used in this section:



1           (1) 'Broker' means a person who, being a licensed agent, obtains insurance  
2 for another party through a duly authorized agent of an insurer that is  
3 licensed to do business in this State but for which the broker is not  
4 authorized to act as agent.

5           (2) 'Control' or 'controlled' means the direct or indirect possession of the  
6 power to direct or cause the direction of the management and policies  
7 of a person, whether through the ownership of voting securities, by  
8 contract other than a commercial contract for goods or  
9 nonmanagement services, or otherwise, unless the power is the result  
10 of an official position with or a corporate office held by the person.  
11 Control is presumed to exist if any person directly or indirectly owns,  
12 controls, holds with the power to vote, or holds proxies representing  
13 ten percent (10%) or more of the voting securities of any other person.

14       (b) The Commissioner may determine, after furnishing all persons in interest  
15 notice and opportunity to be heard and making specific findings of fact to support that  
16 determination, that control exists in fact, notwithstanding the absence of a presumption  
17 to that effect. The Commissioner may determine upon application that any person does  
18 not or will not upon the taking of some proposed action control another person. The  
19 Commissioner may prospectively revoke or modify that determination, after notice and  
20 opportunity to be heard whenever in the Commissioner's judgment revocation or  
21 modification is consistent with this section.

22       (c) No licensed property or casualty insurer that has control of a broker may  
23 accept insurance from the broker in any transaction in which the broker, when the  
24 insurance is placed, is acting as such on behalf of the insured for any compensation,  
25 commission, or thing of value unless the broker, before the effective date of the  
26 coverage, delivers written notice to the prospective insured disclosing the relationship  
27 between the insurer and broker. The disclosure must be signed by the insured and must  
28 be retained in the insurer's underwriting file until the completion and release of the  
29 examination report under G.S. 58-2-131, 58-2-132, and 58-2-133 for the period in  
30 which the coverage is in effect. If the insurance is placed through a subbroker that is  
31 not a controlled broker, the controlling insurer shall retain in its records a signed  
32 commitment from the subbroker that the subbroker is aware of the relationship between  
33 the insurer and the broker and that the subbroker has notified or will notify the insured.

34       (d) This section does not affect the rights of policyholders, claimants, creditors,  
35 or other third parties."

36           Sec. 10. Article 3 of Chapter 58 of the General Statutes is amended by  
37 adding a new section to read:

38 **"§ 58-3-160. Sale of company or major reorganization; license to be restricted.**

39 The Commissioner shall restrict the license by prohibiting new or renewal insurance  
40 business transacted in this State by any licensed insurer that, in anticipation of a sale of  
41 the insurer to new owners or a major reorganization of the business or management of  
42 the insurer, transfers all of its existing insurance business to another insurer through an  
43 assumption reinsurance agreement or does not write any new insurance business for  
44 over one year. The restriction shall remain in force until after the insurer has filed the

1 following information with the Commissioner and the Commissioner has granted  
2 approval:

- 3 (1) Biographical information in a form acceptable to the Commissioner for  
4 each new owner, director, or management person;
- 5 (2) A detailed and complete plan of operation describing the kinds of  
6 insurance to be written and the method in which the reorganized  
7 insurer will perform its various functions;
- 8 (3) Financial projections of the anticipated operational results of the  
9 reorganized insurer for the succeeding three years based on the  
10 capitalization of the reorganized insurer and its plan of operation,  
11 which must be prepared by a properly qualified individual, be in  
12 sufficient detail for a complete analysis to be performed, and be  
13 accompanied by a list of the assumptions used in making the  
14 projections; and
- 15 (4) Any other information the Commissioner considers to be pertinent for  
16 a proper analysis of the reorganized insurer."

17 Sec. 11. G.S. 58-4-5 reads as rewritten:

18 **"§ 58-4-5. Filing requirements.**

19 (a) Each domestic, foreign, and alien insurer that is authorized to transact  
20 insurance in this State shall, ~~on or before March 1 of each year,~~ shall file with the National  
21 ~~Association of Insurance Commissioners (NAIC) NAIC~~ a copy of its ~~annual statement~~  
22 ~~convention blank, along with such additional filings as prescribed by the Commissioner, for the~~  
23 ~~preceding year.~~ financial statements required by G.S. 58-2-165, applicable rules, and  
24 legal directives and bulletins issued by the Department. The statements shall, in the  
25 Commissioner's discretion, be filed annually, semiannually, or quarterly, and shall be  
26 filed in a form or format prescribed or permitted by the Commissioner. The  
27 Commissioner may require the statements to be filed in a format that can be read by  
28 electronic data processing equipment. The information filed with the NAIC shall be in the  
29 same format and scope as that required by the Commissioner and shall include the signed jurat  
30 page and the actuarial certification. ~~Any amendments and addenda to the annual statement~~  
31 ~~filing financial statement~~ that are subsequently filed with the Commissioner shall also be  
32 filed with the NAIC."

33 Sec. 12. G.S. 58-4-15 reads as rewritten:

34 **"§ 58-4-15. Revocation of certificate of authority.**

35 The Commissioner may suspend, revoke, or refuse to renew the certificate of  
36 authority of any insurer failing to file its ~~annual statement~~ financial statement when due  
37 or within any extension of time that the Commissioner, for good cause, may have  
38 granted."

39 Sec. 13. Article 4 of Chapter 58 of the General Statutes is amended by  
40 adding a new section to read:

41 **"§ 58-4-25. Insurance Regulatory Information System and similar program test**  
42 **data records.**

43 Financial test ratios, data, or information generated by the NAIC Insurance  
44 Regulatory Information System, any successor program, or any similar program shall be

1 disseminated by the Commissioner consistent with procedures established by the  
2 NAIC."

3 Sec. 14. G.S. 58-2-220 reads as rewritten:

4 **"§ 58-2-220. Insurance Regulatory Information System and similar program test**  
5 **data not public records.**

6 ~~Financial—~~Except as provided in G.S. 58-4-25, ~~financial test ratios—~~ratios, data, or  
7 ~~information and other data received or—~~generated by the Commissioner pursuant to the  
8 NAIC Insurance Regulatory Information System, any successor program, or any similar  
9 program developed by the Commissioner, are not public records and are not subject to  
10 Chapter 132 of the General Statutes or G.S. 58-2-100."

11 Sec. 15. G.S. 58-5-5 reads as rewritten:

12 **"§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine**  
13 **insurance companies.**

14 Unless otherwise provided in this Article, every fire, marine, or fire and marine  
15 insurance company chartered by any other state or foreign government shall make and  
16 maintain deposits of securities with the Commissioner in the ~~following amounts:~~ amount  
17 of twenty-five thousand dollars (\$25,000) market value.

18 (1) ~~Companies whose premium income derived from this State is less than~~  
19 ~~fifty thousand dollars (\$50,000) per annum, ten thousand dollars~~  
20 ~~(\$10,000);~~

21 (2) ~~Companies whose premium income is more than fifty thousand dollars~~  
22 ~~(\$50,000) but less than one hundred thousand dollars (\$100,000) per~~  
23 ~~annum, twenty thousand dollars (\$20,000);~~

24 (3) ~~Companies whose premium income is more than one hundred~~  
25 ~~thousand dollars (\$100,000) per annum, twenty five thousand dollars~~  
26 ~~(\$25,000);~~

27 ~~for which deposit the Commissioner shall give a receipt."~~

28 Sec. 16. G.S. 58-5-10 reads as rewritten:

29 **"§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and**  
30 **casualty insurance companies.**

31 Unless otherwise provided in this ~~Article—~~Article, every fidelity, surety or casualty  
32 insurance company chartered by any other state or foreign government shall make and  
33 maintain deposits of securities with the Commissioner in the ~~following amounts:~~ amount  
34 of fifty thousand dollars (\$50,000) market value.

35 (1) ~~Companies whose premium income derived from this State is less than~~  
36 ~~one hundred thousand dollars (\$100,000), twenty five thousand dollars~~  
37 ~~(\$25,000);~~

38 (2) ~~Companies whose premium income is in excess of one hundred~~  
39 ~~thousand dollars (\$100,000), fifty thousand dollars (\$50,000);~~

40 ~~for which deposit the Commissioner shall give a receipt."~~

41 Sec. 17. G.S. 58-5-15 reads as rewritten:

42 **"§ 58-5-15. Minimum deposit required upon admission.**

43 Upon admission to do business in the State of North Carolina every foreign or alien  
44 fire, marine, or fire and marine, fidelity, surety or casualty company shall deposit with

1 the Commissioner securities in the ~~minimum~~ amounts required under the provisions of  
2 G.S. 58-5-5 and 58-5-10."

3 Sec. 18. G.S. 58-5-20 reads as rewritten:

4 **"§ 58-5-20. Type of deposits.**

5 The deposits required to be made under the provisions of G.S. 58-5-5, 58-5-10, and  
6 58-5-50 shall be composed of of:

7 (a) Interest-bearing bonds of the United States, States of America;

8 (b) Interest-bearing bonds of the State of North Carolina, or of the ~~its~~ cities or  
9 counties of this State. counties; or

10 (c) Certificates of deposit issued by any solvent bank domesticated in the State of  
11 North Carolina."

12 Sec. 19. G.S. 58-5-40 reads as rewritten:

13 **"§ 58-5-40. Authority to increase deposit.**

14 When, in the ~~opinion of the Commissioner,~~ Commissioner's opinion, it is necessary for  
15 the protection of the public interest to increase the amount of deposits specified in G.S.  
16 58-5-5, 58-5-10, ~~and 58-5-50,~~ and 58-5-55, the companies described in ~~said~~ those  
17 sections shall, upon demand, make additional deposits in such sums as the  
18 Commissioner may require, and ~~such~~ those additional deposits shall be held in  
19 accordance with and for the purposes set out in this ~~Article.~~ Article, and shall comprise:

20 (a) Interest-bearing bonds of the United States of America;

21 (b) Interest-bearing bonds of the State of North Carolina or of its cities or  
22 counties;

23 (c) Certificates of deposit issued by any solvent bank domesticated in the State of  
24 North Carolina;

25 (d) Interest-bearing AA or better rated corporate bonds and classified as  
26 investment grade in the latest NAIC Securities Valuation Manual; or

27 (e) Other interest-bearing bonds or notes considered to be acceptable by the  
28 Commissioner on a case by case basis."

29 Sec. 20. G.S. 58-5-55(c) reads as rewritten:

30 "(c) ~~Domestic insurance companies that are licensed on or before June 28, 1989,~~  
31 ~~shall have one year from that date to comply with this section.~~ Deposits fulfilling the  
32 requirements of this section shall comprise:

33 (1) Interest-bearing bonds of the United States of America;

34 (2) Interest-bearing bonds of the State of North Carolina or of its cities or  
35 counties; or

36 (3) Certificates of deposit issued by any solvent bank domesticated in the  
37 State of North Carolina."

38 Sec. 21. G.S. 58-5-45, 58-5-85, and 58-5-125 are repealed.

39 Sec. 22. Article 7 of Chapter 58 of the General Statutes is amended by  
40 adding the following new sections:

41 **"§ 58-7-21. Credit allowed a domestic ceding insurer.**

42 (a) As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-32:

43 (1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer  
44 to an assuming insurer.

1           (2)   'Insurance risk' means an uncertainty regarding the ultimate amount of  
2           any claim payment (underwriting risk) or an uncertainty regarding the  
3           timing of such payments (timing risk), or both.

4           (b)   Credit for reinsurance shall be allowed a domestic ceding insurer as either an  
5           asset or a deduction from liability on account of reinsurance ceded only when the  
6           reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this  
7           subsection. If meeting the requirements of subdivisions (3) or (4) of this subsection, the  
8           reinsurer must also meet the requirements of subdivision (6) of this subsection.

9           (1)   Credit shall be allowed when the reinsurance is ceded to an assuming  
10           insurer that is licensed to transact insurance or reinsurance in this  
11           State.

12           (2)   Credit shall be allowed when the reinsurance is ceded to an assuming  
13           insurer that is accredited as a reinsurer in this State. An accredited  
14           reinsurer is one that:

15           a.   Files with the Commissioner evidence of its submission to this  
16           State's jurisdiction;

17           b.   Submits to this State's authority to examine its books and  
18           records;

19           c.   Is licensed to transact insurance or reinsurance in at least one  
20           state, or in the case of a United States branch of an alien  
21           assuming insurer is entered through and licensed to transact  
22           insurance or reinsurance in at least one state;

23           d.   Files annually with the Commissioner a copy of its annual  
24           statement filed with the insurance regulator of its state of  
25           domicile and a copy of its most recent audited financial  
26           statement; and either

27           1.   Maintains a policyholders' surplus in an amount that is  
28           not less than twenty million dollars (\$20,000,000) and  
29           whose accreditation has not been denied by the  
30           Commissioner within 90 days after its submission; or

31           2.   Maintains a policyholders' surplus in an amount less than  
32           twenty million dollars (\$20,000,000) and whose  
33           accreditation has been approved by the Commissioner.

34                   No credit shall be allowed a domestic ceding  
35                   insurer if the assuming insurer's accreditation has  
36                   been revoked by the Commissioner after notice  
37                   and opportunity for a hearing.

38           (3)   Credit shall be allowed when the reinsurance is ceded to an assuming  
39           insurer that is domiciled and licensed in, or in the case of a United  
40           States branch of an alien assuming insurer is entered through, a state  
41           that uses standards regarding credit for reinsurance substantially  
42           similar to those applicable under this section and the assuming insurer  
43           or United States branch of an alien assuming insurer:

- 1           a. Maintains a policyholders' surplus in an amount not less than  
2           twenty million dollars (\$20,000,000); and  
3           b. Submits to the authority of this State to examine its books and  
4           records.

5           However, the requirement in sub-subdivision (3)a. of this subsection  
6           does not apply to reinsurance ceded and assumed under pooling  
7           arrangements among insurers in the same holding company system.

- 8           (4) a. Credit shall be allowed when the reinsurance is ceded to an  
9           assuming insurer that maintains a trust fund in a qualified United  
10           States financial institution, as defined in G.S. 58-7-26(b), for the  
11           payment of the valid claims of its United States policyholders and  
12           ceding insurers, their assigns and successors in interest. The assuming  
13           insurer shall report annually to the Commissioner information  
14           substantially the same as that required to be reported on the NAIC  
15           Annual Statement form by licensed insurers to enable the  
16           Commissioner to determine the sufficiency of the trust fund. In the  
17           case of a single assuming insurer, the trust shall consist of a trusteeed  
18           account representing the assuming insurer's liabilities attributable to  
19           business written in the United States and, in addition, the assuming  
20           insurer shall maintain a trusteeed surplus of not less than twenty million  
21           dollars (\$20,000,000). In the case of a group of individual  
22           unincorporated underwriters, the trust shall consist of a trusteeed  
23           account representing the group's liabilities attributable to business  
24           written in the United States and, in addition, the group shall maintain a  
25           trusteed surplus of which one hundred million dollars (\$100,000,000)  
26           shall be held jointly for the benefit of United States ceding insurers of  
27           any member of the group; and the group shall make available to the  
28           Commissioner an annual certification of the solvency of each  
29           underwriter by the group's domiciliary regulator and its independent  
30           certified public accountants.

- 31           b. In the case of a group of incorporated insurers under common  
32           administration which (i) complies with the filing requirements  
33           contained in the previous paragraph, (ii) has continuously  
34           transacted an insurance business outside the United States for at  
35           least three years immediately before making application for  
36           accreditation, (iii) submits to this State's authority to examine  
37           its books and records and bears the expense of the examination,  
38           and (iv) has aggregate policyholders' surplus of ten billion  
39           dollars (\$10,000,000,000); the trust shall be in an amount equal  
40           to the group's several liabilities attributable to business ceded  
41           by United States ceding insurers to any member of the group  
42           under reinsurance contracts issued in the name of the group. In  
43           addition, the group shall maintain a joint trusteeed surplus of  
44           which one hundred million dollars (\$100,000,000) shall be held

1 jointly for the benefit of United States ceding insurers of any  
2 member of the group as additional security for any such  
3 liabilities, and each member of the group shall make available  
4 to the Commissioner an annual certification of the member's  
5 solvency by the member's domiciliary regulator and its  
6 independent public accountant.

7 c. The trust shall be established in a form approved by the  
8 Commissioner. The trust instrument shall provide that  
9 contested claims shall be valid and enforceable upon the final  
10 order of any court of competent jurisdiction in the United  
11 States. The trust shall vest legal title to its assets in the trustees  
12 of the trust for its United States policyholders and ceding  
13 insurers, their assigns and successors in interest. The trust and  
14 the assuming insurer shall be subject to examination as  
15 determined by the Commissioner. The trust shall remain in  
16 effect for as long as the assuming insurer has outstanding  
17 obligations due under the reinsurance agreements subject to the  
18 trust.

19 d. No later than February 28 of each year the trustees of the trust  
20 shall report to the Commissioner in writing, setting forth the  
21 balance of the trust and listing the trust's investments at the end  
22 of the preceding year, and shall certify the date of termination  
23 of the trust, if so planned, or certify that the trust shall not  
24 expire before the next following December 31.

25 (5) Credit shall be allowed when the reinsurance is ceded to an assuming  
26 insurer not meeting the requirements of subdivisions (1), (2), (3), or  
27 (4) of this subsection, but only with respect to the insurance of risks  
28 located in jurisdictions where the reinsurance is required by applicable  
29 law or regulation of that jurisdiction.

30 (6) If the assuming insurer is not licensed or accredited to transact  
31 insurance or reinsurance in this State, the credit permitted by  
32 subdivisions (3) and (4) of this subsection shall not be allowed unless  
33 the assuming insurer agrees in the reinsurance agreements:

34 a. That if the assuming insurer fails to perform its obligations  
35 under the terms of the reinsurance agreement, the assuming  
36 insurer, at the ceding insurer's request, shall submit to the  
37 jurisdiction of any court of competent jurisdiction in any state  
38 of the United States, shall comply with all requirements  
39 necessary to give the court jurisdiction, and shall abide by the  
40 final decision of the court or of any appellate court if there is an  
41 appeal; and

42 b. To designate the Commissioner as its true and lawful attorney  
43 upon whom may be served any lawful process in any action,

1 suit, or proceeding begun by or on behalf of the ceding  
2 company.

3 This subdivision does not affect the obligation of the parties to a  
4 reinsurance agreement to arbitrate their disputes, if such an obligation  
5 is created in the agreement.

6 (c) This section applies to all reinsurance cessions made on or after January 1,  
7 1992, under reinsurance agreements that have an inception, anniversary, or renewal date  
8 on or after January 1, 1992.

9 **"§ 58-7-26. Reduction from liability for reinsurance ceded by a domestic insurer to**  
10 **an assuming insurer.**

11 (a) A reduction from liability for reinsurance ceded by a domestic insurer to an  
12 assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an  
13 amount not exceeding the liabilities carried by the ceding insurer; and such reduction  
14 shall be in the amount of funds held by or on behalf of the ceding insurer, including  
15 funds held in trust for the ceding insurer, under a reinsurance contract with the assuming  
16 insurer as security for the payment of obligations thereunder, if the security is held in  
17 the United States subject to withdrawal solely by, and under the exclusive control of, the  
18 ceding insurer; or, in the case of a trust, held in a qualified United States financial  
19 institution as defined in subsection (c) of this section. This security may be in the form  
20 of:

21 (1) Cash;

22 (2) Securities that are listed by the Securities Valuation Office of the  
23 NAIC and qualifying as admitted assets;

24 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed  
25 by a qualified United States financial institution, as defined in  
26 subsection (b) of this section, no later than December 31 of the year  
27 for which the filing is being made, and in the possession of the ceding  
28 company on or before the filing date of its annual statement. Letters of  
29 credit meeting applicable standards of issuer acceptability as of the  
30 dates of their issuance (or confirmation) shall, notwithstanding the  
31 issuing (or confirming) institution's subsequent failure to meet  
32 applicable standards of issuer acceptability, continue to be acceptable  
33 as security until their expiration, extension, renewal, modification or  
34 amendment, whichever occurs first; or

35 (4) Any other form of security acceptable to the Commissioner.

36 (b) For purposes of subdivision (a)(3) of this section, a 'qualified United States  
37 financial institution' means an institution that:

38 (1) Is organized, or in the case of a United States office of a foreign  
39 banking organization licensed, under the laws of the United States or  
40 any of its states;

41 (2) Is regulated, supervised, and examined by United States federal or  
42 state authorities having regulatory authority over banks and trust  
43 companies; and



1           (3) Has been determined by either the Commissioner or the Securities  
2 Valuation Office of the NAIC to meet such standards of financial  
3 condition and standing as are considered necessary and appropriate to  
4 regulate the quality of financial institutions whose letters of credit will  
5 be acceptable to the Commissioner.

6           (c) A 'qualified United States financial institution' means, for purposes of those  
7 provisions of this section specifying those institutions that are eligible to act as a  
8 fiduciary of a trust, an institution that:

9           (1) Is organized, or in the case of a United States branch or agency office  
10 of a foreign banking organization licensed, under the laws of the  
11 United States or any of its states and has been granted authority to  
12 operate with fiduciary powers; and

13           (2) Is regulated, supervised, and examined by federal or state authorities  
14 having regulatory authority over banks and trust companies.

15           (d) This section applies to all reinsurance cessions made on or after January 1,  
16 1992, under reinsurance agreements that have an inception, anniversary, or renewal date  
17 on or after January 1, 1992."

18           Sec. 23. G.S. 58-7-20 and G.S. 58-7-25 are repealed.

19           Sec. 24. G.S. 58-16-5(6) reads as rewritten:

20           "(6) Satisfies the Commissioner that it is in substantial compliance with the  
21 provisions of ~~G.S. 58-7-20 through G.S. 58-7-30~~ G.S. 58-7-21, 58-7-26,  
22 58-7-30, and 58-7-32 and Article 13 of this Chapter."

23           Sec. 25. Article 7 of Chapter 58 of the General Statutes is amended by  
24 adding a new section to read:

25 **"§ 58-7-32. Life reinsurance agreements.**

26           (a) This section applies to domestic life insurers and other licensed life insurers  
27 that are not subject to a substantially similar statute or administrative rule in their  
28 domiciliary jurisdictions.

29           (b) No insurer shall, for reinsurance ceded, reduce any liability or establish any  
30 asset in any financial statement filed with the Commissioner if, by the terms of the  
31 reinsurance agreement, in substance or effect, any of the following conditions exist:

32           (1) The primary effect of the reinsurance agreement is to transfer  
33 deficiency reserves or excess interest reserves to the books of the  
34 reinsurer for a risk charge and the agreement does not provide for  
35 significant participation by the reinsurer in one or more of the  
36 following risks: mortality, morbidity, investment, or surrender benefit;

37           (2) The reserve credit taken by the ceding insurer is not in compliance  
38 with insurance statutes or with rules or actuarial interpretations or  
39 standards adopted by the Commissioner;

40           (3) The reserve credit taken by the ceding insurer is greater than the  
41 underlying reserve of the ceding insurer supporting the policy  
42 obligations transferred under the reinsurance agreement;

43           (4) The ceding insurer is required to reimburse the reinsurer for negative  
44 experience under the ceding insurer of an amount equal to prior years'

1 losses upon voluntary termination of in-force reinsurance by that  
2 ceding insurer shall be considered such a reimbursement to the  
3 reinsurer for negative experience;

4 (5) The ceding insurer can be deprived of surplus at the reinsurer's option  
5 or automatically upon the occurrence of some event, such as the  
6 insolvency of the ceding insurer; except that termination of the  
7 reinsurance agreement by the reinsurer for nonpayment of reinsurance  
8 premiums shall not be considered to be such a deprivation of surplus;

9 (6) The ceding insurer must, at scheduled times specified or implied in the  
10 agreement, terminate or automatically recapture all or part of the  
11 coverage ceded;

12 (7) No cash payment is due from the reinsurer, throughout the lifetime of  
13 the reinsurance agreement, with all settlements before the termination  
14 date of the agreement made only in a reinsurance account, and no  
15 funds in the account are available for the payment of benefits; or

16 (8) The reinsurance agreement involves the possible payment by the  
17 ceding insurer to the reinsurer of amounts other than from income  
18 reasonably expected from the reinsured policies.

19 (c) Notwithstanding subsection (b) of this section, an insurer may, with the  
20 Commissioner's prior approval, take such reserve credit as the Commissioner considers  
21 to be consistent with insurance statutes; or rules, actuarial interpretations, or standards  
22 adopted by the Commissioner.

23 (d) No reinsurance agreement or amendment to any agreement may be used to  
24 reduce any liability or to establish any asset in any financial statement filed with the  
25 Commissioner, unless the agreement, amendment or a letter of intent has been duly  
26 executed in writing by both parties no later than the 'as of date' of the financial  
27 statement.

28 (e) In the case of a letter of intent, a reinsurance agreement, or an amendment to  
29 a reinsurance agreement must be executed within a reasonable period of time, not  
30 exceeding 90 days after the execution date of the letter of intent, for credit to be granted  
31 for the reinsurance ceded.

32 (f) Insurers may continue to reduce liabilities or establish assets in financial  
33 statements filed with the Commissioner for reinsurance ceded under types of  
34 reinsurance agreements described in subsection (b) of this section, provided:

35 (1) The agreements were executed and in force before the effective date of  
36 this section;

37 (2) No new business is ceded under the agreements after the effective date  
38 of this section;

39 (3) The reduction of the liability or the asset established for the  
40 reinsurance ceded is reduced to zero by December 31, 1992, or a later  
41 date approved by the Commissioner as a result of an application made  
42 by the ceding insurer before January 1, 1992; and

43 (4) The Commissioner is notified, within 90 days after the effective date  
44 of this section, of the existence of the reinsurance agreements and all

1                    corresponding credits taken in the ceding insurer's 1990 Annual  
2                    Statement."

3                    Sec. 26. Article 7 of Chapter 58 of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 58-7-33. Minimum policyholders' surplus to assume property or casualty**  
6 **reinsurance.**

7                    (a) Notwithstanding any other provision of law, no domestic property or casualty  
8 insurer with less than ten million dollars (\$10,000,000) in policyholders' surplus may,  
9 without the Commissioner's prior written approval, assume reinsurance on any risk that  
10 it is otherwise permitted to assume except where the reinsurance is:

11                    (1) Required by applicable law or regulation; or

12                    (2) Assumed under pooling arrangement among members of the same  
13 holding company system.

14                    (b) This section applies to reinsurance contracts entered into or renewed on or  
15 after the effective date of this section.

16                    (c) This section does not invalidate any reinsurance contract that was entered into  
17 before the effective date of this section as between the parties to the contract."

18                    Sec. 27. G.S. 58-7-75 is amended by adding a new subdivision to read:

19                    "(11) The Commissioner may require an insurer to have and maintain a  
20 larger amount of capital or surplus than prescribed in this section,  
21 based upon the volume and kinds of insurance transacted by the  
22 insurer and on the principles of risk-based capital as determined by the  
23 NAIC or the Commissioner."

24                    Sec. 28. Article 3 of Chapter 58 of the General Statutes is amended by  
25 adding a new section to read:

26 **"§ 58-3-165. Business transacted with producer-controlled property or casualty**  
27 **insurers.**

28                    (a) As used in this section:

29                    (1) 'Accredited state' means a state in which the insurance department or  
30 regulatory agency has qualified as meeting the minimum financial  
31 regulatory standards promulgated and established from time to time by  
32 the NAIC.

33                    (2) 'Captive insurer' means an insurance company that is owned by  
34 another organization and whose exclusive purpose is to insure risks of  
35 the parent organization and affiliated companies. In the case of groups  
36 and associations, 'captive insurer' means an insurance organization  
37 that is owned by the insureds, and whose exclusive purpose is to insure  
38 risks of member organizations or group members and their affiliates.

39                    (3) 'Control' and its cognates mean the direct or indirect possession of the  
40 power to direct or cause the direction of the management and policies  
41 of a person, whether through the ownership of voting securities, by  
42 contract other than a commercial contract for goods or  
43 nonmanagement services, or otherwise, unless the power is the result  
44 of an official position with or corporate office held by the person.

1 Control is presumed to exist if any person directly or indirectly owns,  
2 controls, holds with the power to vote, or holds proxies representing  
3 ten percent (10%) or more of the voting securities of any other person.

4 (4) 'Controlled insurer' means an insurer that is controlled, directly or  
5 indirectly, by a producer.

6 (5) 'Controlling producer' means a producer who, directly or indirectly,  
7 controls an insurer.

8 (6) 'Insurer' means any person licensed to write property or casualty  
9 insurance in this State. 'Insurer' does not mean a risk retention group  
10 under Article 22 of this Chapter, residual market mechanism, joint  
11 underwriting authority, nor captive insurer.

12 (7) 'Producer' means an insurance broker or brokers or any other person,  
13 when, for any compensation, commission, or other thing of value, that  
14 person acts or aids in any manner in soliciting, negotiating, or  
15 procuring the making of any insurance contract on behalf of an insured  
16 other than that person. 'Producer' does not mean an exclusive agent or  
17 any independent agent acting on behalf of a controlled insurer,  
18 including any subagent or representative of the agent, who acts as such  
19 in the solicitation of, negotiation for, or procurement or making of an  
20 insurance contract, if the agent is not also acting in the capacity of an  
21 insurance broker in the transaction in question.

22 (b) The Commissioner may determine, after furnishing all persons in interest  
23 notice and opportunity to be heard and making specific findings of fact to support the  
24 determination, that control exists in fact, notwithstanding the absence of a presumption  
25 to that effect. The Commissioner may determine upon application that any person does  
26 not or will not upon the taking of some proposed action control another person. The  
27 Commissioner may prospectively revoke or modify that determination, after notice and  
28 opportunity to be heard, whenever in the Commissioner's judgment revocation or  
29 modification is consistent with this section.

30 (c) This section applies to insurers that are either domiciled in this State or  
31 domiciled in a state that is not an accredited state having in effect a substantially similar  
32 law. The provisions of Article 19 of this Chapter, to the extent they are not superseded  
33 by this section, apply to all parties within holding company systems subject to this  
34 section.

35 (d) The provisions of this section apply if, in any calendar year, the aggregate  
36 amount of gross written premiums on business placed with a controlled insurer by a  
37 controlling producer is equal to or greater than five percent (5%) of the admitted assets  
38 of the controlled insurer, as reported in the controlled insurer's most recent annual  
39 statement or its quarterly statement filed as of September 30 of the prior year. The  
40 provisions of this section do not apply if:

41 (1) The controlling producer places insurance only with the controlled  
42 insurer, or only with the controlled insurer and a member or members  
43 of the controlled insurer's holding company system, or the controlled  
44 insurer's parent, affiliate, or subsidiary and receives no compensation

1           based upon the amount of premiums written in connection with that  
2           insurance; and the controlling producer accepts insurance placements  
3           only from nonaffiliated subproducers, and not directly from insureds;  
4           and

5           (2)   The controlled insurer, except for insurance business written through a  
6           residual market mechanism, accepts insurance business only from a  
7           controlling producer, a producer controlled by the controlled insurer,  
8           or a producer that is a subsidiary of the controlled insurer.

9           (e)   A controlled insurer shall not accept business from a controlling producer and  
10          a controlling producer shall not place business with a controlled insurer unless there is a  
11          written contract between the producer and the insurer specifying the responsibilities of  
12          each party, and unless the contract has been approved by the board of directors of the  
13          insurer and contains all of the following minimum provisions:

14          (1)   The insurer may terminate the contract for cause, upon written notice  
15          to the producer. The insurer shall suspend the producer's authority to  
16          write business during the pendency of any dispute regarding the cause  
17          for the termination.

18          (2)   The producer shall render accounts to the insurer detailing all material  
19          transactions, including information necessary to support all  
20          commissions, charges, and other fees received by, or owing to, the  
21          producer.

22          (3)   The producer shall remit all funds due under the contract terms to the  
23          insurer on at least a monthly basis. The due date shall be fixed so that  
24          premiums or installments of premiums collected shall be remitted no  
25          later than 90 days after the effective date of any policy placed with the  
26          insurer under this contract.

27          (4)   The producer shall hold all funds collected for the insurer's account in  
28          a fiduciary capacity, in one or more appropriately identified bank  
29          accounts in banks that are members of the Federal Reserve System, in  
30          accordance with the provisions of this Chapter as applicable. Funds of  
31          a producer who is not required to be licensed in this State shall be  
32          maintained in compliance with the requirements of the producer's  
33          domiciliary jurisdiction.

34          (5)   The producer shall maintain separately identifiable records of business  
35          written for the insurer.

36          (6)   The producer shall not assign the contract in whole or in part.

37          (7)   The insurer shall provide the producer with its underwriting standards,  
38          rules and procedures, the manuals setting forth the rates to be charged,  
39          and the conditions for the acceptance or rejection of risks. The  
40          producer shall adhere to the standards, rules, procedures, rates, and  
41          conditions. The standards, rules, procedures, rates, and conditions  
42          shall be the same as those applicable to comparable business placed  
43          with the insurer by a producer other than a controlling producer.

- 1           (8)   The rates and terms of the producer's commissions, charges, or other  
2           fees and the purposes for the charges or fees. The rates of the  
3           commissions, charges, and other fees shall be no greater than those  
4           applicable to comparable business placed with the insurer by producers  
5           other than controlling producers. For the purposes of this subdivision  
6           and subdivision (7) of this subsection, 'comparable business' includes  
7           the same lines of insurance, same kinds of insurance, same kinds of  
8           risks, similar policy limits, and similar quality of business.
- 9           (9)   If the contract provides that the producer, on insurance business placed  
10          with the insurer, is to be compensated contingent upon the insurer's  
11          profits on that business, then the compensation shall not be determined  
12          and paid until at least five years after the premiums on liability  
13          insurance are earned and at least one year after the premiums are  
14          earned on any other insurance. In no event shall the commissions be  
15          paid until the adequacy of the insurer's reserves on remaining claims  
16          has been independently verified under subsection (g) of this section.
- 17          (10) A limit on the producer's writings in relation to the insurer's surplus  
18          and total writings. The insurer may establish a different limit for each  
19          line or subline of business. The insurer shall notify the producer when  
20          the applicable limit is approached and shall not accept business from  
21          the producer if the limit is reached. The producer shall not place  
22          business with the insurer if it has been notified by the insurer that the  
23          limit has been reached.
- 24          (11) The producer may negotiate but shall not bind reinsurance on behalf of  
25          the insurer on business the producer places with the insurer; however,  
26          the producer may bind facultative reinsurance contracts under  
27          obligatory facultative agreements if the producer's contract with the  
28          insurer contains underwriting guidelines including, for both  
29          reinsurance assumed and ceded, a list of reinsurers with which the  
30          automatic agreements are in effect, the coverages and amounts or  
31          percentages that may be reinsured, and commission schedules.
- 32          (f)   Every controlled insurer shall have an audit committee, consisting of  
33          independent directors, of the insurer's board of directors. The audit committee shall  
34          meet annually with the insurer's management, the insurer's independent certified public  
35          accountants, and an independent casualty actuary or another independent loss reserve  
36          specialist acceptable to the Commissioner, to review the adequacy of the insurer's loss  
37          reserves.
- 38          (g)   In addition to any other required loss reserve certification, the controlled  
39          insurer shall, on or before April 1 of each year, file with the Commissioner an opinion  
40          of an independent casualty actuary or of another independent loss reserve specialist  
41          acceptable to the Commissioner, reporting loss ratios for each kind of insurance written  
42          and attesting to the adequacy of loss reserves established for losses incurred and  
43          outstanding and for incurred but not reported losses as of the end of the prior calendar  
44          year on business placed by the producer.

1       (h) The controlled insurer shall report annually to the Commissioner the amount  
2 of commissions paid to the controlling producer, the percentage that amount represents  
3 of the net premiums written, and comparable amounts and percentages paid to  
4 noncontrolling producers for placements of the same kinds of insurance.

5       (i) The controlling producer, before the effective date of any policy, shall deliver  
6 written notice to the prospective insured disclosing the relationship between the  
7 producer and the controlled insurer: However, if the business is placed through a  
8 subproducer who is not a controlling producer, the controlling producer shall retain in  
9 the controlling producer's records a signed commitment from the subproducer that the  
10 subproducer is aware of the relationship between the insurer and the producer and that  
11 the subproducer has or will notify the prospective insured.

12       (j) If the Commissioner believes that a controlling producer or any other person  
13 has not materially complied with this section or with any rule adopted or order issued  
14 under this section, after notice and opportunity to be heard, the Commissioner may  
15 order the controlling producer to stop placing business with the controlled insurer. If it  
16 is found that, because of the material noncompliance, the controlled insurer or any  
17 policyholder of the controlled insurer has suffered any loss or damage, the  
18 Commissioner may maintain a civil action or intervene in an action brought by or on  
19 behalf of the insurer or policyholder for recovery of compensatory damages for the  
20 benefit of the insurer or policyholder or other appropriate relief.

21       (k) If an order for liquidation or rehabilitation of the controlled insurer has been  
22 entered under Article 30 of this Chapter, and the receiver appointed under that order  
23 believes that the controlling producer or any other person has not materially complied  
24 with this section or any rule adopted or order issued under this section, the receiver may  
25 maintain a civil action for recovery of damages or other appropriate sanctions for the  
26 benefit of the insurer.

27       (l) In addition to any other remedies provided in this section, whenever the  
28 Commissioner believes that a person has not materially complied with this section, the  
29 Commissioner may institute a proceeding under G.S. 58-2-60 or under G.S. 58-2-70. In  
30 addition to the civil penalty or restitution proceedings provided for in G.S. 58-2-70, the  
31 Commissioner may issue a cease and desist order against the person.

32       (m) This section does not affect the Commissioner's right to impose any other  
33 penalties provided for in this Chapter nor the rights of policyholders, claimants,  
34 creditors, or other third parties.

35       (n) Controlled insurers and controlling producers who are not in compliance with  
36 subsection (e) of this section on October 1, 1991, have until December 1, 1991, to come  
37 into compliance and shall comply with subsection (i) of this section beginning with all  
38 policies written or renewed on or after December 1, 1991."

39       Sec. 29. Article 7 of Chapter 58 of the General Statutes is amended by  
40 adding the following new sections to read:

41 **"§ 58-7-160. Investments unlawfully acquired.**

42 Whenever it appears by examination as authorized by law that a domestic insurer  
43 has acquired any assets in violation of the law in force on the date of the acquisition, the  
44 Commissioner shall disallow the amount of the assets, if wholly ineligible, or the

1 amount of the value thereof in excess of any limitation prescribed by this Chapter and  
2 shall deduct that amount as a nonadmitted asset of the insurer.

3 **"§ 58-7-162. Allowable or admitted assets.**

4 In any determination of the financial condition of an insurer, there shall be allowed  
5 as assets only those assets owned by an insurer and that consist of:

6 (1) Cash in the possession of the insurer, or in transit under its control, and  
7 including the true balance of any deposit in a solvent United States  
8 bank, savings and loan association, or trust company, and the balance  
9 of any such deposit in an insolvent United States bank, savings and  
10 loan association, or trust company, to the extent insured by a federal  
11 agency.

12 (2) Investments, securities, properties, and loans acquired or held in  
13 accordance with this Chapter, and in connection therewith the  
14 following items:

15 a. Interest due or accrued on any bond or evidence of indebtedness  
16 that is not in default.

17 b. Declared and unpaid dividends on stock and shares, unless that  
18 amount has otherwise been allowed as an asset.

19 c. Interest due or accrued upon a collateral loan in an amount not  
20 to exceed one year's interest thereon.

21 d. Interest due or accrued on deposits in solvent banks, savings  
22 and loan associations, and trust companies, and interest due or  
23 accrued on other assets, if the interest is, in the Commissioner's  
24 judgment, a collectible asset.

25 e. Interest due or accrued on a current mortgage loan, in an  
26 amount not exceeding in any event the amount, if any, of the  
27 excess of the value of the property less delinquent taxes thereon  
28 over the unpaid principal; but in no event shall interest accrued  
29 for a period in excess of 90 days be allowed as an asset.

30 f. Rent due or accrued on real property if the rent is not in arrears  
31 for more than three months, and rent more than three months in  
32 arrears if the payment of the rent is adequately secured by  
33 property held in the tenant's name and conveyed to the insurer  
34 as collateral and the underlying collateral is admissible under  
35 this Chapter.

36 g. The unaccrued portion of taxes paid before the due date on real  
37 property.

38 (3) Premium notes, policy loans, and other policy assets and liens on  
39 policies and certificates of life insurance and annuity contracts and  
40 accrued interest thereon, in an amount not exceeding the legal reserve  
41 and other policy liabilities carried on each individual policy.

42 (4) The net amount of uncollected and deferred premiums and annuity  
43 considerations in the case of a life insurer.



- 1           (5) Premiums in the course of collection, other than for life insurance, not  
2 more than 90 days past due, less commissions payable thereon, except  
3 for premiums payable directly or indirectly by the United States  
4 government or by any of its instrumentalities.
- 5           (6) All premiums not more than 90 days past due, excluding commissions  
6 payable thereon, due from any person that solely or in combination  
7 with the person's affiliates owes the insurer an amount that exceeds  
8 five percent (5%) of the insurer's total premiums in course of  
9 collection, but only if:
- 10           a. The premiums collected by the person or affiliates and not  
11 remitted to the insurer are held in a trust account with a bank or  
12 other depository approved by the Commissioner. The funds  
13 shall be held as trust funds and may not be commingled with  
14 any other funds of the person or affiliates. Disbursements from  
15 the trust account may be made only to the insurer, the insured,  
16 or, for the purpose of returning premiums, a person that is  
17 entitled to returned premiums on behalf of the insured. A  
18 written copy of the trust agreement shall be filed with and  
19 approved by the Commissioner before becoming effective. The  
20 Commissioner shall disapprove any trust agreement filed under  
21 this sub-subdivision that does not assure the safety of the  
22 premiums collected. The investment income derived from the  
23 trust may be allocated as the parties consider to be proper. The  
24 person or affiliates shall deposit premiums collected into the  
25 trust account within 15 business days after collection; or
- 26           b. The person or affiliates shall provide to the insurer, and the  
27 insurer shall maintain in its possession, an unexpired, clean,  
28 irrevocable letter of credit, payable to the insurer, issued for a  
29 term of no less than one year and in conformity with the  
30 requirements set forth in this sub-subdivision, the amount of  
31 which equals or exceeds the liability of the person or affiliates  
32 to the insurer, at all times during the period that the letter of  
33 credit is in effect, for premiums collected by the person or  
34 affiliates. The letter of credit shall be issued under  
35 arrangements satisfactory to the Commissioner and the letter  
36 shall be issued by a banking institution that is a member of the  
37 Federal Reserve System and that has a financial standing  
38 satisfactory to the Commissioner; or
- 39           c. The person or affiliates shall provide to the insurer, and the  
40 insurer shall maintain in its possession, evidence that the person  
41 or affiliates have purchased and have currently in effect a  
42 financial guaranty bond, payable to the insurer, issued for a  
43 term of not less than one year and that is in conformity with the  
44 requirements set forth in this sub-subdivision, the amount of

1                   which equals or exceeds the liability of the person or affiliates  
2                   to the insurer, at all times during which the financial guaranty  
3                   bond is in effect, for the premiums collected by the person or  
4                   persons. The financial guaranty bond shall be issued under an  
5                   arrangement satisfactory to the Commissioner and the financial  
6                   guaranty bond shall be issued by an insurer that is authorized to  
7                   transact that business in this State, that has a financial standing  
8                   satisfactory to the Commissioner, and that is neither controlled  
9                   nor controlling in relation to either the insurer or the person or  
10                   affiliates for whom the bond is purchased.

11                   Premiums receivable under this subdivision will not be allowed as an  
12                   admitted asset if a financial evaluation by the Commissioner indicates  
13                   that the person or affiliates are unlikely to be able to pay the premiums  
14                   as they become due. The financial evaluation shall be based on a  
15                   review of the books and records of the controlling or controlled  
16                   person.

17                   (7) Installment premiums other than life insurance premiums to the extent  
18                   of the unearned premium reserve carried on the policy to which the  
19                   premiums apply.

20                   (8) Notes and like written obligations not past due, taken for premiums  
21                   other than life insurance premiums, on policies permitted to be issued  
22                   on that basis, to the extent of the unearned premium reserves carried  
23                   thereon.

24                   (9) The full amount of reinsurance which is recoverable by a ceding  
25                   insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.

26                   (10) Amounts receivable by an assuming insurer representing funds  
27                   withheld by a solvent ceding insurer under a reinsurance treaty.

28                   (11) Deposits or equities recoverable from underwriting associations,  
29                   syndicates, and reinsurance funds, or from any suspended banking  
30                   institution, to the extent considered by the Commissioner to be  
31                   available for the payment of losses and claims and at values to be  
32                   determined by the Commissioner.

33                   (12) Electronic and mechanical machines, including operating and system  
34                   software constituting a management information system, if the cost of  
35                   the system is at least twenty-five thousand dollars (\$25,000) but not  
36                   more than two percent (2%) of total admitted assets; the cost shall be  
37                   amortized in full over a period not to exceed seven calendar years.

38                   (13) Other assets, not inconsistent with the provisions of this section,  
39                   considered by the Commissioner to be available for the payment of  
40                   losses and claims, at values to be determined by the Commissioner.

41 **"§ 58-7-163. Assets not allowed.**

42                   In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the  
43                   following expressly shall not be allowed as assets in any determination of the financial  
44                   condition of an insurer:

- 1           (1) Goodwill, trade names, and other like intangible assets.
- 2           (2) Advances (other than policy loans) to officers, directors, and  
3 controlling stockholders, whether secured or not, and advances to  
4 employees, agents, and other persons on personal security only.
- 5           (3) Stock of the insurer or any material equity therein or loans secured  
6 thereby, or any material proportionate interest in the stock acquired or  
7 held through the ownership by the insurer of an interest in another  
8 firm, corporation, or business unit.
- 9           (4) Furniture, fixtures, other equipment, safes, vehicles, libraries,  
10 stationery, literature, and supplies, other than data processing and  
11 accounting systems authorized under G.S. 58-7-162(12), except in the  
12 case of title insurers the materials and plants which G.S. 58-7-182  
13 expressly authorizes the insurer to invest in, and except, in the case of  
14 any insurer, any personal property that the insurer is permitted to hold  
15 under this Chapter, or that is acquired through foreclosure of chattel  
16 mortgages acquired under G.S. 58-7-180, or that is reasonably  
17 necessary for the maintenance and operation of real estate that the  
18 insurer uses for a home office, branch office, and similar purposes.
- 19           (5) The amount, if any, by which the aggregate book value of investments  
20 as carried in the ledger assets of the insurer exceeds the aggregate  
21 value of the investments as determined under this Chapter.
- 22           (6) Bonds, notes, or other evidences of indebtedness that are secured by  
23 mortgages or deeds of trust that are in default, to the extent of the cost  
24 of carrying value that is in excess of the value as determined pursuant  
25 to other provisions of this Chapter.
- 26           (7) Prepaid and deferred expenses.
- 27           (8) Certificates of contribution or other similar evidences of indebtedness.

28 **"§ 58-7-165. Eligible investments.**

29       (a) Insurers shall invest in or lend their funds on the security of, and shall hold as  
30 invested assets, only eligible investments as prescribed in this Chapter.

31       (b) Any particular investment held by an insurer on December 31, 1991, that was  
32 a legal investment when it was made, and that the insurer was legally entitled to possess  
33 immediately before January 1, 1992, is an eligible investment.

34       (c) Eligibility of an investment shall be determined as of the date of its making or  
35 acquisition, except as stated otherwise in this Chapter.

36       (d) Any investment limitation based upon the amount of the insurer's assets or  
37 particular funds shall relate to those assets or funds shown by the insurer's annual  
38 statement as of the December 31 preceding the date of acquisition of the investment by  
39 the insurer, or, if applicable, as shown by the most current quarterly financial statement  
40 filed by the insurer.

41 **"§ 58-7-167. General qualifications.**

42       (a) No security or investment, other than real or personal property acquired under  
43 G.S. 58-7-187, is eligible for acquisition unless it is interest-bearing or interest-  
44 accruing, is entitled to receive dividends if and when declared and paid, or is otherwise

1 income-producing, is not then in default in any respect, and the insurer is entitled to  
2 receive for its exclusive account and benefit the interest or income accruing thereon.

3 (b) No security or investment shall be eligible for purchase at a price above its  
4 market value unless it is approved by the Commissioner and is valued in accordance  
5 with valuation procedures of the NAIC that have been adopted by the Commissioner.

6 (c) This Chapter does not prohibit the acquisition by an insurer of other or  
7 additional securities or property if received as a dividend, as a lawful distribution of  
8 assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or  
9 consolidation. Any investment so acquired that is not otherwise eligible under this  
10 Chapter shall be disposed of under G.S. 58-7-188 if the investment is in property or  
11 securities.

12 **"§ 58-7-168. Authorization of investment.**

13 An insurer shall not make any investment or loan, other than a policy loan or annuity  
14 contract loan of a life insurer, unless the investment or loan is authorized or approved by  
15 the insurer's board of directors or by a committee authorized by the board and charged  
16 with the supervision or making of the investment or loan. The minutes of any such  
17 committee shall be recorded and regular reports of the committee shall be submitted to  
18 the board of directors.

19 **"§ 58-7-170. Diversification.**

20 (a) Every insurer must maintain an amount equal to its entire policyholder-  
21 related liabilities and the minimum capital and surplus required to be maintained by the  
22 insurer under this Chapter invested in coin or currency of the United States and in  
23 investments authorized under this Chapter, other than the investments authorized under  
24 G.S. 58-7-183 or G.S. 58-7-187, except G.S. 58-7-187(b)(1).

25 (b) Investments eligible under subsection (a), except investments acquired under  
26 G.S. 58-7-183, are subject to the following limitations:

27 (1) The cost of investments made by insurers in stock authorized by G.S.  
28 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's  
29 admitted assets, provided that no more than twenty percent (20%) of  
30 the insurer's admitted assets shall be invested in common stock; and  
31 the cost of an investment in stock of any one corporation shall not  
32 exceed three percent (3%) of the insurer's admitted assets.  
33 Notwithstanding any other provision in this Chapter, the financial  
34 statement carrying value of all stock investments shall be used for the  
35 purpose of determining the asset value against which the percentage  
36 limitations are to be applied.

37 (2) Other limitations, if any, that are expressly provided for in any  
38 provision under which the investment is authorized.

39 (c) The cost of investments made by insurers in a mortgage loan authorized by  
40 G.S. 58-7-179 shall not exceed the lesser of five percent (5%) of the insurer's admitted  
41 assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not  
42 invest in additional mortgage loans without the Commissioner's consent if the admitted  
43 value of all mortgage loans held by the insurer exceeds an aggregate of sixty percent  
44 (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage

1 pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five  
2 percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other  
3 mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the  
4 admitted assets of the insurer.

5 An insurer that, as of October 1, 1991, has mortgage investments that exceed the  
6 aggregate limitation specified in this subsection shall submit to the Commissioner no  
7 later than January 31, 1992, a plan to bring the amount of mortgage investments into  
8 compliance with the limitations by January 1, 2001.

9 (d) Without the Commissioner's prior written approval, the cost of investments in  
10 bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed,  
11 or guaranteed by any solvent United States institution, and that are classified as medium  
12 to lower quality obligations, other than obligations of subsidiaries or affiliated  
13 corporations as that term is defined in G.S. 58-7-177, shall be limited to:

- 14 (1) No more than twenty percent (20%) of an insurer's admitted assets;
- 15 (2) No more than ten percent (10%) of an insurer's admitted assets in  
16 obligations that have been given a rating of 4, 5, or 6 by the Securities  
17 Valuation Office of the NAIC;
- 18 (3) No more than three percent (3%) of an insurer's admitted assets in  
19 obligations that have been given a rating of 5 or 6 by the Securities  
20 Valuation Office of the NAIC;
- 21 (4) No more than one percent (1%) of an insurer's admitted assets in  
22 obligations that have been given a rating of 6 by the Securities  
23 Valuation Office of the NAIC;
- 24 (5) No more than ten percent (10%) of an insurer's admitted assets, if the  
25 investments are in issuers from any one industry; and
- 26 (6) No more than two percent (2%) of an insurer's admitted assets or ten  
27 percent (10%) of an insurer's capital and surplus, whichever is greater,  
28 if the investment is in any one issuer.

29 (e) As used in subsections (d), (f), (g), and (h) of this section, 'medium to lower  
30 quality obligations' means obligations that have been given a rating of 3, 4, 5, or 6 by  
31 the Securities Valuation Office of the NAIC. As used in subsection (d) of this section,  
32 'industry' means a distinct and recognized area of economic activity that consists of the  
33 production, manufacture, or distribution of common goods, products, commodities, or  
34 services.

35 (f) Each insurer shall possess and maintain adequate documentation to establish  
36 that its investments in medium to lower quality obligations do not exceed the limitations  
37 under subsection (d).

38 (g) The provisions of subsections (d), (e), and (f) of this section apply to any  
39 investment made after December 31, 1991. If an insurer's investments in medium to  
40 lower quality obligations equal or exceed the maximum amounts permitted by  
41 subsection (d) as of December 31, 1991, the insurer shall not acquire any additional  
42 medium to lower quality obligations without the Commissioner's prior written approval.  
43 An insurer that is not in compliance with subsection (d) of this section as of December  
44 31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner,

1 only those medium to lower quality obligations it owns on that date, if the obligations  
2 were obtained in compliance with the law in effect when the investments were made. If  
3 the insurer sells, transfers, or otherwise disposes of the securities before maturity, the  
4 insurer may not acquire any medium to lower quality obligations as substitutions or  
5 replacements without the Commissioner's prior approval.

6 (h) An insurer that is not in compliance with subsection (d) of this section on  
7 December 31, 1991, shall file with its annual statement a separate schedule of the  
8 medium to lower quality obligations it owns on December 31, 1991. Until it is in  
9 compliance with subsection (d) of this section, the insurer shall file with each  
10 succeeding annual and quarterly statement a separate schedule of the medium to lower  
11 quality obligations it owns as of the reporting date of the filed statement.

12 (i) Failure to obtain the Commissioner's prior written approval shall result in any  
13 investments in excess of those permitted by subsection (d) of this section not being  
14 allowed as an asset of the insurer.

15 (j) The Commissioner may limit the extent of an insurer's deposits with any  
16 financial institution that does not meet its regulatory capital requirement if the  
17 Commissioner determines that the financial solvency of the insurer is threatened by a  
18 deposit in excess of insured limits.

19 (k) The provisions of this section supersede any inconsistent provision of section  
20 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to  
21 the extent permitted by that Act.

22 **§ 58-7-172. Cash and deposits.**

23 An insurer may have funds in coin or currency of the United States on hand or on  
24 deposit in any solvent national or state bank, savings and loan association, or trust  
25 company.

26 **§ 58-7-173. Permitted insurer investments.**

27 An insurer may invest in:

- 28 (1) Bonds, notes, warrants, and other evidences of indebtedness that are  
29 direct obligations of the U.S. Government or for which the full faith  
30 and credit of the U.S. Government is pledged for the payment of  
31 principal and interest.
- 32 (2) Loans insured or guaranteed as to principal and interest by the U.S.  
33 Government or by any agency or instrumentality of the U.S.  
34 Government to the extent of the insurance or guaranty.
- 35 (3) Student loans insured or guaranteed as to principal by the U.S.  
36 Government or by any agency or instrumentality of the U.S.  
37 Government to the extent of the insurance or guaranty.
- 38 (4) Bonds, notes, warrants, and other securities not in default that are the  
39 direct obligations of any state or United States territory or the  
40 government of Canada or any Canadian province, or for which the full  
41 faith and credit of such state, government, or province has been  
42 pledged for the payment of principal and interest.
- 43 (5) Bonds, notes, warrants, and other securities not in default of any  
44 county, district, incorporated city, or school district in any state of the

1 United States, or the District of Columbia, or in any Canadian  
2 province, that are the direct obligations of the county, district, city, or  
3 school district and for payment of the principal and interest of which  
4 the county, district, city, or school district has lawful authority to levy  
5 taxes or make assessments.

6 (6) Bonds, notes, certificates of indebtedness, warranties, or other  
7 evidences of indebtedness that are payable from revenues or earnings  
8 specifically pledged therefor of any public toll bridge, structure, or  
9 improvement owned by any state, incorporated city, or legally  
10 constituted public corporation or commission, all within the United  
11 States or Canada, for the payment of the principal and interest of  
12 which a lawful sinking fund has been established and is being  
13 maintained and if no default by the issuer in payment of principal or  
14 interest has occurred on any of its bonds, notes, warrants, or other  
15 securities within five years prior to the date of investment therein.

16 (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences  
17 of indebtedness that are valid obligations issued, assumed, or  
18 guaranteed by the United States, any state, any county, city, district,  
19 political subdivision, civil division, or public instrumentality of any  
20 such government or unit thereof, or in any province of Canada; if by  
21 statute or other legal requirements the obligations are payable as to  
22 both principal and interest from revenues or earnings from the whole  
23 or any part of any utility supplying water, gas, a sewage disposal  
24 facility, electricity, or any other public service, including but not  
25 limited to a toll road or toll bridge.

26 (8) Bonds, debentures, or other securities of the following agencies,  
27 whether or not those obligations are guaranteed by the U.S.  
28 Government:

29 a. The Federal National Mortgage Association, and stock thereof  
30 when acquired in connection with the sale of mortgage loans to  
31 the Association.

32 b. Any federal land bank, when the securities are issued under the  
33 Farm Loan Act;

34 c. Any federal home loan bank, when the securities are issued  
35 under the Home Loan Bank Act;

36 d. The Home Owners' Loan Corporation, created by the Home  
37 Owners' Loan Act of 1933;

38 e. Any federal intermediate credit bank, created by the  
39 Agricultural Credits Act;

40 f. The Central Bank for Cooperatives and regional banks for  
41 cooperatives organized under the Farm Credit Act of 1933, or  
42 by any of such banks; and any notes, bonds, debentures, or  
43 other similar obligations, consolidated or otherwise, issued by  
44 farm credit institutions under the Farm Credit Act of 1971;

- 1                   g.     Any other similar agency of the U.S. Government that is of  
2                         similar financial quality.
- 3           (9)     Bonds, debentures, or other securities of public housing authorities,  
4                   issued under the Housing Act, of 1949, the Municipal Housing  
5                   Commission Act, or the Rural Housing Commission Act, or issued by  
6                   any public housing authority or agency in the United States, if the  
7                   bonds, debentures, or other securities are secured by a pledge of annual  
8                   contributions to be paid by the United States or any United States  
9                   agency; and the cost of investments made under this subdivision shall  
10                  not exceed the lesser of three percent (3%) of the insurer's admitted  
11                  assets or ten percent (10%) of the insurer's capital and surplus.
- 12          (10)    Obligations issued, assumed, or guaranteed by the International Bank  
13                  for Reconstruction and Development, the Inter-American  
14                  Development Bank, the Asian Development Bank, or the African  
15                  Development Bank; and the cost of investments made under this  
16                  subdivision shall not exceed the lesser of three percent (3%) of the  
17                  insurer admitted assets or ten percent (10%) of the insurer's capital and  
18                  surplus.
- 19          (11)    Bonds, notes, or other interest-bearing or interest-accruing obligations  
20                  of any solvent institution organized under the laws of the United  
21                  States, of any state, Canada or any Canadian province; provided such  
22                  instruments are rated and approved by the Securities Valuation Office  
23                  of the NAIC.
- 24          (12)    Secured obligations of duly constituted churches and of church-  
25                  holding companies; and the cost of investments made under this  
26                  subdivision shall not exceed the lesser of one percent (1%) of the  
27                  insurer's admitted assets or five percent (5%) of the insurer's capital  
28                  and surplus.
- 29          (13)    Equipment trust obligations or certificates adequately secured and  
30                  evidencing an interest in transportation equipment, wholly or in part  
31                  within the United States, and the right to receive determined portions  
32                  of rental, purchase, or other fixed obligatory payments for the use or  
33                  purchase of that transportation equipment; and the cost of investments  
34                  made under this subdivision shall not exceed twenty percent (20%) of  
35                  the insurer's admitted assets.
- 36          (14)    Share or savings accounts of savings and loan associations or building  
37                  and loan associations; and the cost of investments made under this  
38                  subdivision shall not exceed the lesser of three percent (3%) of the  
39                  insurer's admitted assets or five percent (5%) of the insurer's capital  
40                  and surplus.
- 41          (15)    Loans with a maturity not in excess of 12 years from the date thereof  
42                  that are secured by the pledge of securities eligible for investment  
43                  under this Chapter or by the pledge or assignment of life insurance  
44                  policies issued by other insurers authorized to transact insurance in this



1           State. On the date made, no such loan shall exceed in amount  
2           seventy-five percent (75%) of the market value of the collateral  
3           pledged, except that loans upon the pledge of U.S. Government bonds  
4           and loans upon the pledge or assignment of life insurance policies shall  
5           not exceed ninety-five percent (95%) of the market value of the bonds  
6           or the cash surrender value of the policies pledged. The market value  
7           of the collateral pledge shall at all times during the continuance of the  
8           loans meet or exceed the minimum percentages herein. Loans made  
9           under this section shall not be renewable beyond a period of 12 years  
10           from the date of the loan.

11           (16) Stocks, common or preferred, of any corporation created or existing  
12           under the laws of the United States, any U.S. territory, Canada or any  
13           Canadian province, or of any state. An insurer may invest in stocks,  
14           common or preferred, of any corporation created or existing under the  
15           laws of any foreign country other than Canada if the stocks are listed  
16           and traded on a national securities exchange in the United States or if  
17           the investment in stocks of any corporation created or existing under  
18           the laws of any foreign country are first approved by the  
19           Commissioner. Nothing in this section applies to qualifying  
20           investments made by an insurer in a foreign country under authority of  
21           G.S. 58-7-178.

22           (17) Mortgage pass-through securities and derivatives thereof, including,  
23           without limitation, collateral mortgage obligations backed by a pool of  
24           mortgages of the kind, class, and investment quality as those eligible  
25           for investment under G.S. 58-7-179, but not including investments  
26           permitted under G.S. 58-7-173(2), (8), or (11).

27           **§ 58-7-175. Policy loans.**

28           A life insurer may lend to its policyholder, upon pledge of the policy as collateral  
29           security, any sum not exceeding the cash loan value of the policy; or may lend against  
30           pledge or assignment of any of its supplementary contracts or other contracts or  
31           obligations, as long as the loan is adequately secured by the pledge or assignment.  
32           Loans so made are eligible investments of the insurer.

33           **§ 58-7-177. Investments in subsidiaries and affiliated corporations.**

34           (a) Any insurer, either by itself or in cooperation with one or more persons, may  
35           organize or acquire one or more subsidiaries, subject to the limitations of this Chapter.  
36           The subsidiaries may conduct any kind of business, and their authority to do so shall not  
37           be limited because they are subsidiaries of an insurer, except where in conflict with  
38           Article 19 of this Chapter.

39           (b) In addition to investments in common stock, preferred stock, debt obligations,  
40           and other securities permitted under this Chapter, an insurer may also invest and  
41           maintain investments in common stock, preferred stock, debt obligations, and other  
42           securities of one or more subsidiaries or affiliated corporations under the provisions and  
43           limitations outlined in G.S. 58-19-10.

44           (c) For purposes of this section:

1           (1) 'Subsidiary' has the same meaning as in G.S. 58-19-5(7).

2           (2) 'Affiliated' has the same meaning as in G.S. 58-19-5(1).

3           (d) Debt obligations, other than mortgage loans, made under the authority of this  
4 section must meet amortization requirements in accordance with the latest edition of the  
5 NAIC publication entitled 'Valuation of Securities'; provided that the amortization  
6 methodology is acceptable to the Commissioner.

7           (e) For purposes of this section, an insurer's investment in a subsidiary or  
8 affiliated corporation shall be considered to include all sums lent to the subsidiary or  
9 affiliated corporation.

10 **"§ 58-7-178. Foreign or territorial investments.**

11 An insurer authorized to transact insurance in a foreign country or any U.S. territory  
12 may have funds invested in securities that may be required for that authority and for the  
13 transaction of that business. Canadian securities eligible for investment under other  
14 provisions of this Chapter are not subject to this section. Unless disapproved by the  
15 Commissioner:

16           (1) An insurer may invest in Eurodollar certificates of deposit issued by  
17 foreign branches of United States commercial banks.

18           (2) In addition to Canadian securities eligible for investment and to  
19 investments in countries in which an insurer transacts insurance, an  
20 insurer may invest in bonds, notes, or stocks of any foreign country or  
21 alien corporation if the security meets the general requirements of G.S.  
22 58-7-167 and does not exceed, in total, five percent (5%) of admitted  
23 assets.

24 **"§ 58-7-179. Mortgage loans.**

25           (a) An insurer may invest any of its funds in bonds, notes, or other evidences of  
26 indebtedness that are secured by first mortgages or deeds of trust upon improved real  
27 property located in the United States, any U.S. territory, or Canada, or that are secured  
28 by first mortgages or deeds of trust upon leasehold estates having an unexpired term of  
29 not less than 30 years, inclusive of the terms that may be provided by enforceable  
30 options of renewal, as long as the loan matures at least 20 years before the expiration of  
31 such lease, in improved real property located in the United States, any U.S. territory, or  
32 Canada. In all cases the security for the loan must be a first lien upon the real property,  
33 and there must not be any condition or right of reentry or forfeiture not insured against  
34 under which, in the case of real property other than leaseholds, the lien can be cut off or  
35 subordinated or otherwise disturbed, or under which, in the case of leaseholds, the  
36 insurer cannot continue the lease in force for the duration of the loan. Nothing herein  
37 prohibits any investment because of the existence of any prior lien for ground rents,  
38 taxes, assessments, or other similar charges not yet delinquent. This section does not  
39 prohibit investment in mortgages or similar obligations when made under G.S. 58-7-  
40 180.

41           (b) 'Improved real property' means all farmlands used for tillage, crops, or  
42 pasture; timberlands; and all real property on which permanent improvements, and  
43 improvements under construction or in process of construction, suitable for residential,  
44 institutional, commercial, or industrial use are situated.

1 (c) No such mortgage loan or loans made or acquired by an insurer on any one  
2 property shall, at the time of investment by the insurer, exceed the larger of the  
3 following amounts, as applicable:

4 (1) Ninety-five percent (95%) of the value of the real property or  
5 leasehold securing the real property in the case of a mortgage on a  
6 dwelling primarily intended for occupancy by not more than four  
7 families if they insure down to seventy-five percent (75%) with a  
8 licensed mortgage insurance company, or seventy-five percent (75%)  
9 of the value in the case of other real estate mortgages;

10 (2) The amount of any insurance or guaranty of the loan by the United  
11 States or by an agency or instrumentality thereof; or

12 (3) The percentage-of-value limit on the amount of the loan applicable  
13 under subdivision (1) of this subsection, plus the amount by which the  
14 excess of the loan over the percentage-of-value limit is insured or  
15 guaranteed by the United States or by any agency or instrumentality  
16 thereof.

17 (d) In the case of a purchase money mortgage given to secure the purchase price  
18 of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid  
19 part of the purchase price and shall be valued in accordance with G.S. 58-7-195.

20 (e) Nothing in this section prohibits an insurer from renewing or extending a loan  
21 for the original or a lesser amount where a shrinkage in value of the real estate securing  
22 the loan would cause its value to be less than the amount otherwise required in relation  
23 to the amount of the loan.

24 **"§ 58-7-180. Chattel mortgages.**

25 (a) In connection with a mortgage loan on the security of real estate designed and  
26 used primarily for residential purposes only, where the mortgage loan was acquired  
27 under G.S. 58-7-179, an insurer may lend or invest an amount not exceeding twenty  
28 percent (20%) of the amount lent on or invested in such real estate mortgage on the  
29 security of a chattel mortgage to be amortized by regular periodic payments with a term  
30 of not more than five years, and representing a first and prior lien, except for taxes not  
31 then delinquent, on personal property constituting durable equipment owned by the  
32 mortgagor and kept and used in the mortgaged premises.

33 (b) For the purposes of this section, the term 'durable equipment' includes only  
34 mechanical refrigerators, air-conditioning equipment, mechanical laundering machines,  
35 heating and cooking stoves and ranges, and, in addition, in the case of apartment houses  
36 and hotels, room furniture and furnishings.

37 (c) Before the acquisition of a chattel mortgage under this section, items of  
38 property to be included therein shall be separately appraised by a qualified appraiser and  
39 the fair market value determined. No such chattel mortgage loan shall exceed in  
40 amount the same ratio of loan to the value of the property as is applicable to the  
41 companion loan on the real property.

42 (d) This section does not prohibit an insurer from taking liens on personal  
43 property as additional security for any investment otherwise eligible under this Chapter.

44 **"§ 58-7-182. Special investments by title insurers.**

1 In addition to other investments eligible under this Chapter, a title insurer may invest  
2 and have invested an amount not exceeding the greater of three hundred thousand  
3 dollars (\$300,000) or fifty percent (50%) of that part of its policyholders' surplus that  
4 exceeds the minimum surplus required by G.S. 58-7-75 in its abstract plant and  
5 equipment, in loans secured by mortgages on abstract plants and equipment, and, with  
6 the Commissioner's consent, in stocks of abstract companies.

7 **"§ 58-7-183. Special consent investments.**

8 (a) After satisfying the requirements of this Chapter, any funds of an insurer in  
9 excess of its reserves and policyholders' surplus required to be maintained may be  
10 invested:

- 11 (1) Without limitation in any investments otherwise authorized by this  
12 Chapter; or  
13 (2) In such other investments not specifically authorized by this Chapter  
14 as long as any single interest investment does not exceed two percent  
15 (2%) of admitted assets and the aggregate of the investments does not  
16 exceed the lesser of five percent (5%) of the insurer's total admitted  
17 assets or twenty percent (20%) of the amount by which the insurer's  
18 policyholders' surplus exceeds the minimum required to be  
19 maintained.

20 The limitations in subdivision (2) of this subsection may be exceeded if approved in  
21 writing by the Commissioner.

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

25 (c) Notwithstanding the provisions of this section, an insurer may not invest in  
26 investments prohibited by this Chapter.

27 **"§ 58-7-185. Prohibited investments and investment underwriting.**

28 (a) In addition to investments excluded under other provisions of this Chapter,  
29 except with prior approval by the Commissioner, an insurer shall not directly or  
30 indirectly invest in or lend its funds upon the security of:

- 31 (1) Issued shares of its own capital stock, except in connection with a plan  
32 for purchase of the shares by the insurer's officers, employees, or  
33 agents. No such stock shall, however, constitute an asset of the insurer  
34 in any determination of its financial condition.  
35 (2) Except with the Commissioner's consent, securities issued by any  
36 corporation or enterprise, the controlling interest of which is or will  
37 after acquisition by the insurer be held directly or indirectly by the  
38 insurer or any combination of the insurer and the insurer's directors,  
39 officers, parent corporation, subsidiaries, or controlling stockholders.  
40 Investments in subsidiaries under G.S. 58-7-177 are not subject to this  
41 provision.  
42 (3) Any note or other evidence of indebtedness of any director, officer, or  
43 controlling stockholder of the insurer, except as to policy loans

1 authorized under G.S. 58-7-175 and loans authorized under G.S. 58-7-  
2 200(e).

3 (b) No insurer shall underwrite or participate in the underwriting of an offering of  
4 securities or property by any other person.

5 **"§ 58-7-187. Real estate, in general.**

6 (a) An insurer shall not directly or indirectly acquire or hold real estate except as  
7 authorized in this section.

8 (b) An insurer may acquire and hold:

9 (1) Land and buildings thereon used or acquired for use as its principal  
10 home office and branch offices, or used in conjunction with such  
11 offices, for the convenient transaction of its own business.

12 (2) Real property acquired in satisfaction in whole or in part of loans,  
13 mortgages, liens, judgments, decrees, or debts previously owing to the  
14 insurer, in the course of its business.

15 (3) Real property acquired in part payment of the consideration on the sale  
16 of other real property owned by it, if the transaction effects a net  
17 reduction in the insurer's investment in real estate.

18 (4) Real property acquired by gift or devise or through merger,  
19 consolidation, or bulk reinsurance of another insurer under this  
20 Chapter.

21 (5) Additional real property and equipment incident to real property, if  
22 necessary or convenient for the enhancement of the marketability or  
23 sale value of real property previously acquired or held by it under  
24 subdivisions (2) through (4) of this subsection.

25 (c) An insurer may acquire and hold real property for investment, subject to the  
26 following conditions:

27 (1) The amount shall not exceed in the aggregate the lesser of five percent  
28 (5%) of the insurer's admitted assets or fifteen percent (15%) of the  
29 insurer's capital and surplus.

30 (2) The amount in any one property shall not exceed one percent (1%) of  
31 the insurer's admitted assets.

32 (3) The amount in unimproved land shall not exceed one-half of one  
33 percent (0.5%) of the insurer's admitted assets.

34 (4) There shall be no time limit for the disposal of investment real estate.

35 (d) The amount in real property acquired and held by an insurer shall not exceed  
36 fifteen percent (15%) of the insurer's admitted assets; but the Commissioner may permit  
37 an insurer to invest in real property in such increased amount as the Commissioner  
38 considers to be proper.

39 **"§ 58-7-188. Time limit for disposal of ineligible property and securities; effect of**  
40 **failure to dispose.**

41 (a) Any property or securities lawfully acquired by an insurer that it could not  
42 otherwise have invested in or lent its funds upon at the time of the acquisition shall be  
43 disposed of within three years from the date of acquisition, unless within that period the  
44 security has attained to the standard of eligibility; except that any security or property

1 acquired under any agreement of bulk reinsurance, merger, or consolidation may be  
2 retained for a longer period if so provided in the plan for the reinsurance, merger, or  
3 consolidation as approved by the Commissioner under this Chapter. Upon application  
4 by the insurer and proof that forced sale of any such property or security would  
5 materially injure the insurer's interests, the Commissioner may extend the disposal  
6 period for an additional reasonable time.

7 (b) Any property or securities lawfully acquired and held by an insurer after  
8 expiration of the period for their disposal or any extension of the period granted by the  
9 Commissioner shall not be allowed as an asset of the insurer.

10 **"§ 58-7-190. Valuation of bonds and other evidences of indebtedness.**

11 (a) All bonds or fully secured indebtedness having a stated term and a rate of  
12 interest that are held by an insurer, if fully secured and not in default as to principal or  
13 interest, shall be valued as follows: (i) if purchased at par, at par value; (ii) if purchased  
14 above or below par, on the basis of the purchase price adjusted so as to bring the value  
15 to par at maturity and so as to yield in the meantime the effective rate of interest at  
16 which the purchase was made or, in lieu of that method, according to an accepted  
17 method of valuation approved by the Commissioner; except that the purchase price shall  
18 in no case be taken at a higher figure than the actual market value at the time of  
19 purchase.

20 (b) The Commissioner may, after notice and opportunity for hearing, determine  
21 the method of calculating any values under this section.

22 **"§ 58-7-192. Valuation of other securities and investments.**

23 (a) All securities, investments, and evidences of debt, other than those for which  
24 valuation methodologies are specifically set forth in this Chapter, that are held by an  
25 insurer shall be valued at their market values, at their appraised values, or at prices  
26 determined by the insurer as representing their fair market values, subject to the  
27 Commissioner's approval.

28 (b) Preferred or guaranteed stocks or shares while paying full dividends may be  
29 carried at a fixed value in lieu of market value, in the Commissioner's discretion and in  
30 accordance with a method of valuation that the Commissioner approves.

31 (c) Stock of a subsidiary corporation of an insurer shall not be valued at an  
32 amount in excess of its net value as based upon those assets only of the subsidiary that  
33 would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of  
34 the insurer direct.

35 (d) No valuations under this section shall be greater than any applicable valuation  
36 or method contained in the latest edition of the NAIC publication entitled 'Valuations of  
37 Securities', unless the Commissioner determines that another valuation method is  
38 appropriate when it results in a more conservative valuation.

39 **"§ 58-7-193. Valuation of property.**

40 (a) Real property acquired pursuant to a mortgage loan or contract for sale shall  
41 be valued at the net realizable value, but in no event shall the property be valued at an  
42 amount greater than the unpaid principal of the defaulted loan or contract at the date of  
43 the acquisition and the cost of improvements thereafter made by the insurer and any

1 amounts thereafter paid by the insurer on assessments levied for improvements in  
2 connection with the property.

3 (b) Other real property held by an insurer shall not be valued at an amount in  
4 excess of fair market value as determined by recent appraisal and as approved by the  
5 Commissioner. If valuation is based on an appraisal more than three years old, the  
6 Commissioner may call for and require a new appraisal in order to determine fair value.

7 (c) Personal property acquired pursuant to chattel mortgages made in accordance  
8 with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of  
9 principal on the defaulted loan at the date of acquisition, or the fair market value of the  
10 property, whichever amount is less.

11 (d) If the Commissioner and an insurer do not agree on the value of real or  
12 personal property of an insurer, in carrying out the Commissioner's responsibilities  
13 under this section, the Commissioner may retain the services of a qualified real or  
14 personal property appraiser. The insurer shall reimburse the Commissioner for the costs  
15 of the services of any appraiser incurred with respect to the Commissioner's  
16 responsibilities under this section.

17 **"§ 58-7-195. Valuation of purchase money mortgages.**

18 Purchase money mortgages on real property referred to in G.S. 58-7-193(a) shall  
19 be valued in an amount not exceeding the greater of seventy-five percent (75%) of the  
20 acquisition cost to the insurer, or seventy-five percent (75%) of the fair market value, of  
21 the real property covered thereby.

22 **"§ 58-7-197. Replacing certain assets; reporting certain liabilities.**

23 (a) The Commissioner, upon determining that an insurer's asset has not been  
24 valued according to this Chapter or that it does not qualify as an asset, shall require the  
25 insurer to properly revalue an improperly valued asset or replace a nonadmitted asset  
26 with an asset suitable to the Commissioner within 90 days after the determination.

27 (b) The Commissioner, upon determining that an insurer has failed to report  
28 certain liabilities that should have been reported, shall require that the insurer report  
29 those liabilities to the Commissioner within 90 days after notice to the insurer.

30 (c) When the Commissioner determines that an admitted asset held by any  
31 insurer is of doubtful value or is without ascertainable value on a public exchange,  
32 unless the insurer establishes a value by placing the asset upon the market and obtaining  
33 a bona fide offer for the asset, the Commissioner may have the asset appraised, and the  
34 appraisal shall be the true value of the asset. No asset may be carried in an insurer's  
35 financial statement under G.S. 58-2-165 at an appraised value established by the insurer  
36 unless the Commissioner's prior written approval is obtained.

37 (d) When any admitted asset defaults as to principal or in the payment of interest  
38 or dividends after it has been purchased by an insurer, the asset shall subsequently be  
39 carried at its market value or, after notice and opportunity for hearing, at a value  
40 determined by the Commissioner.

41 (e) Whenever it appears to the Commissioner that an insurer has acquired any  
42 asset in violation of this Chapter, the Commissioner shall disallow, in whole or in part,  
43 the amount of the asset that is prohibited by this Chapter. In any determination of the

1 financial position of the insurer, that amount shall be deducted as a nonadmitted asset of  
2 the insurer.

3 **"§ 58-7-198. Assets of foreign or alien insurers.**

4 The Commissioner may refuse a new or renewal license to any foreign or alien  
5 insurer upon finding that its assets do not comply in substance with the investment  
6 requirements and limitations imposed by this Chapter upon like domestic insurers  
7 whenever authorized to do the same kinds of insurance business.

8 **"§ 58-7-200. Investment transactions.**

9 (a) The transactions specified in subsections (b) through (e) of this section are  
10 expressly allowed or prohibited as provided in this section and to the extent they are not  
11 in conflict with other provisions of this Chapter.

12 (b) Notwithstanding any expressed or implied prohibitions, an insurer may effect  
13 or maintain bona fide hedging transactions pertaining to securities otherwise eligible for  
14 investment under this section, including, but not limited to (i) financial futures  
15 contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other  
16 rights to require another person to purchase the securities. The contracts, options, calls,  
17 puts and rights shall be traded on a securities exchange or board of trade regulated under  
18 the laws of the United States. For the purposes of this subsection, 'bona fide hedging  
19 transaction' means a purchase or sale of such a contract, warrant, option, call, put or  
20 right, entered into for the purpose of offsetting changes in the market value of a security  
21 held by the company.

22 (c) No insurer shall make any direct or indirect loan to any of its directors,  
23 officers, or controlling stockholders; nor shall the insurer make any loan to any other  
24 person in which the officer, director, or stockholder is substantially interested; nor shall  
25 any such director, officer, or stockholder directly or indirectly accept any such loan.

26 (d) No director, officer, or controlling stockholder of any insurer shall receive  
27 any money or valuable thing, either directly or indirectly or through any substantial  
28 interest in any other person, for negotiating, procuring, recommending, or aiding in any  
29 purchase or sale of property or loan from the insurer; or be monetarily interested either  
30 as principal, corporation, agent, or beneficiary, in any such purchase, sale, or loan; and  
31 no financial obligation of any such director, officer, or stockholder shall be guaranteed  
32 by the insurer. 'Substantial interest in any other person' means an interest equivalent to  
33 ownership or control by a director, officer, or controlling stockholder or the aggregate  
34 ownership or control by all directors, officers, and controlling stockholders of the same  
35 insurer of those percentages or more of the stock of the person, as defined under  
36 'control' in G.S. 58-19-5(2).

37 (e) Nothing in this section prohibits:

38 (1) A director or officer of any insurer from receiving the usual salary,  
39 compensation, or emoluments for services rendered in the ordinary  
40 course of that person's duties as a director or officer, if the salary,  
41 compensation, or emolument is authorized by vote of the board of  
42 directors of the insurer;

43 (2) Any insurer in connection with the relocation of the place of  
44 employment of an officer, including any relocation in connection with



1           the initial employment of the officer, from (i) making, or the officer  
 2           from accepting therefrom, a mortgage loan to the officer on real  
 3           property owned by the officer that is to serve as the officer's residence  
 4           or (ii) acquiring, or the officer from selling thereto, at not more than its  
 5           fair market value, the officer's prior residence;

6           (3) The payment to a director or officer of any such insurer who is a  
 7           licensed attorney-at-law of fees in connection with loans made by the  
 8           insurer if and when the fees are paid by the borrower and do not  
 9           constitute a charge against the insurer; or

10          (4) An insurer from making a loan upon a policy held therein by the  
 11          borrower not in excess of the policy's net value."

12          Sec. 30. G.S. 58-7-85, 58-7-90, and 58-7-100 are repealed.

13          Sec. 30.1. G.S. 58-13-5 reads as rewritten:

14       **"§ 58-13-5. Purposes.**

15          The purposes of this Article are to require insurers to maintain unencumbered assets  
 16          in amounts equal to reserve ~~liabilities;~~ liabilities and minimum required capital and  
 17          minimum required surplus; to provide preferential claims against insurers' assets in  
 18          favor of owners, beneficiaries, assignees, and holders of insurance policies and  
 19          certificates; and to prevent the pledging, hypothecation, or encumbrance of assets ~~in~~  
 20          ~~excess of certain amounts without a prior written order of the Commissioner."~~

21          Sec. 30.2. G.S. 58-13-10 reads as rewritten:

22       **"§ 58-13-10. Scope.**

23          This Article applies to all domestic insurers and to all kinds of insurance written by  
 24          those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to  
 25          comply in substance with the requirements and limitations of this section. This Article  
 26          does not apply to variable contracts for which separate accounts are required to be  
 27          maintained nor to county farm mutual companies."

28          Sec. 30.3. G.S. 58-13-25(a) and (b) read as rewritten:

29          "(a) Every insurer subject to this Article shall at all times have and maintain free  
 30          and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall  
 31          pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the  
 32          amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise  
 33          encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon  
 34          application made to him, may issue a written order approving the pledging,  
 35          hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a  
 36          finding that the pledging, hypothecation, or encumbrance will not adversely affect the  
 37          solvency of the insurer. Every insurer subject to this Article shall at all times have and  
 38          maintain free and unencumbered reserve assets equal to an amount that is at least ten  
 39          percent (10%) more than the total of its reserve liabilities and its required minimum  
 40          capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber  
 41          those reserve assets. The Commissioner, upon application made to the Commissioner,  
 42          may issue a written order approving the pledging, hypothecation, or encumbrance of  
 43          any of the assets of an insurer not otherwise prohibited upon a finding that the pledging,  
 44          hypothecation, or encumbrance will not adversely affect the insurer's solvency.

1 (b) ~~Any insurer that pledges, hypothecates, or otherwise encumbers any of its~~  
2 ~~assets shall within 10 days thereafter report in writing to the Commissioner the amount~~  
3 ~~and identity of the assets so pledged, hypothecated, or encumbered and the terms and~~  
4 ~~conditions of the transaction. In addition, the Every insurer shall file, along with its~~  
5 ~~statement under G.S. 58-2-165, a statement sworn to by the chief executive officer of~~  
6 ~~the insurer that: (i) Title to assets in an amount equal to the reserve liability and~~  
7 ~~minimum required capital and minimum required surplus of the insurer that are not~~  
8 ~~pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only~~  
9 ~~assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as~~  
10 ~~identified and reported in the sworn statement and no other assets of the insurer are~~  
11 ~~pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of~~  
12 ~~the transaction of the pledge, hypothecation, or encumbrance are as reported in ~~such~~the~~  
13 ~~sworn statement."~~

14 Sec. 31. G.S. 58-19-15(e) reads as rewritten:

15 "(e) The public hearing referred to in subsection (d) of this section shall be held  
16 within 120 days after the statement required by subsection (a) of this section is filed,  
17 and the Commissioner shall give at least 60-30 days notice thereof shall be given by the  
18 ~~Commissioner of the hearing~~ to the person filing the statement, to the insurer, and to such  
19 other persons as may be designated by the Commissioner. The Commissioner shall  
20 make a determination as expeditiously as is reasonably practicable after the conclusion  
21 of ~~such the~~ hearing. At ~~such the~~ hearing, the person filing the statement, the insurer, any  
22 person to whom notice of hearing was sent, and any other person whose interest may be  
23 affected ~~thereby by the hearing~~ shall have the right to present evidence, examine and  
24 cross-examine witnesses, and offer oral or written arguments; and in connection  
25 therewith shall be entitled to conduct discovery proceedings at any time after the  
26 statement is filed with the Commissioner ~~pursuant to under~~ this section and in the same  
27 manner as is presently allowed in the superior courts of this State. In connection with  
28 discovery proceedings authorized by this section, the Commissioner ~~is authorized to may~~  
29 issue such protective orders and other orders governing the timing and scheduling of  
30 discovery proceedings as might otherwise have been issued by a superior court of this  
31 State in connection with a civil proceeding. ~~In the event~~ If any party fails to make  
32 reasonable and adequate response to discovery on a timely basis or fails to comply with  
33 any order of the Commissioner with respect to discovery, the Commissioner on ~~his the~~  
34 Commissioner's own motion or on motion of any other party or person may order that  
35 the hearing be postponed-postponed, or recessed, shall be convened-convened, or  
36 reconvened, as the case may be, following proper completion of discovery and  
37 reasonable notice to the person filing the statement, to the insurer, and to such other  
38 persons as may be designated by the Commissioner."

39 Sec. 32. G.S. 58-19-15(h) reads as rewritten:

40 "(h) The provisions of this section do not apply to any offer, request, invitation,  
41 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not  
42 having been made or entered into for the purpose and not having the effect of changing  
43 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended

1 within the purposes of this section. Nor does this section apply to any transaction that is  
2 subject to the provisions of G.S. 58-7-150."

3 Sec. 33. G.S. 58-19-25(a) reads as rewritten:

4 "(a) Every insurer that is licensed to do business in this State and that is a member  
5 of an insurance holding company system shall register with the Commissioner, except a  
6 foreign insurer subject to registration requirements and standards adopted by statute or  
7 regulation in the jurisdiction of its domicile that are substantially similar to those  
8 contained in this section and G.S. 58-19-30(a). ~~Such~~The insurer shall also file a copy of  
9 its registration statement and any amendments thereto to the statement in each state in  
10 which that insurer is authorized to do business if requested by the insurance regulator of  
11 that state. Any insurer that is subject to registration under this section shall register  
12 within 30 days after it becomes subject to registration, and an amendment to the  
13 registration statement shall be filed by March 1-31 of each year for any changes that  
14 may have occurred during the previous calendar year; unless the Commissioner for  
15 good cause shown extends the time for registration or filing, and then within such that  
16 extended time. All registration statements shall contain a summary, on a form  
17 prescribed by the Commissioner, outlining all items in the current registration statement  
18 representing changes from the prior registration statement. The Commissioner may  
19 require any insurer that is a member of a holding company system that is not subject to  
20 registration under this section to furnish a copy of the registration statement or other  
21 information filed by such the insurance company with the insurance regulator of its  
22 domiciliary jurisdiction."

23 Sec. 34. G.S. 58-19-25(d) reads as rewritten:

24 "(d) Subject to G.S. ~~58-19-30(b), 58-19-30(c)~~, each registered insurer shall report  
25 to the Commissioner all dividends and other distributions to shareholders within 15  
26 business days following the declaration thereof. The Commissioner may prescribe the  
27 form to be used to report that information."

28 Sec. 35. G.S. 58-19-30(b) reads as rewritten:

29 "(b) The following transactions involving a domestic insurer and any person in its  
30 holding company system may not be entered into unless the insurer has notified the  
31 Commissioner in writing of its intention to enter into ~~such the~~ transaction at least 30  
32 days ~~prior thereto, before the transaction,~~ or such shorter period as the Commissioner  
33 permits, and the Commissioner has not disapproved it within such that period:

34 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,  
35 or investments, provided ~~such the~~ transactions equal or exceed: (i)  
36 with respect to nonlife insurers, the lesser of three percent (3%) of the  
37 insurer's admitted assets or twenty-five percent (25%) of surplus as  
38 regards policyholders; (ii) with respect to life insurers, three percent  
39 (3%) of the insurer's admitted assets; each as of the preceding 31st day  
40 of December 31, next preceding.

41 (2) Loans or extensions of credit to any person who is not affiliated, where  
42 the insurer makes ~~such the~~ loans or extensions of credit with the  
43 agreement or understanding that the proceeds of ~~such the~~ transactions,  
44 in whole or in substantial part, are to be used to make loans or

1 extensions of credit to, to purchase assets of, or to make investments  
 2 in, any affiliate of the insurer making ~~such the~~ loans or extensions of  
 3 credit provided ~~such the~~ transactions equal or exceed: (i) with respect  
 4 to nonlife insurers, the lesser of three percent (3%) of the insurer's  
 5 admitted assets or twenty-five percent (25%) of surplus as regards  
 6 policyholders; (ii) with respect to life insurers, three percent (3%) of  
 7 the insurer's admitted assets; each as of the preceding 31st day of  
 8 December 31, next preceding.

9 (3) Reinsurance agreements or modifications ~~thereto to the agreements in~~  
 10 which the reinsurance premium or a change in the the insurer's  
 11 liabilities equals or exceeds five percent (5%) of the insurer's surplus  
 12 as regards policyholders, as of the preceding 31st day of December 31,  
 13 ~~next preceding,~~ including those agreements that may require as  
 14 consideration the transfer of assets from an insurer to a nonaffiliate, if  
 15 an agreement or understanding exists between the insurer and  
 16 nonaffiliate that any portion of ~~such the~~ assets will be transferred to  
 17 one or more affiliates of the insurer.

18 (4) All management ~~agreements that would place control of the insurer outside~~  
 19 ~~of the insurance holding company system. agreements, service contracts,~~  
 20 or cost-sharing arrangements wherein the annual aggregate cost to the  
 21 insurer would equal or exceed the amounts specified in subdivision (1)  
 22 of this subsection.

23 (5) ~~All service contracts or cost sharing arrangements wherein the annual~~  
 24 ~~aggregate cost to the insurer would equal or exceed the amounts~~  
 25 ~~specified in subdivision (1) of this subsection.~~

26 (6)(5) Any material transactions, specified by rule, that the Commissioner  
 27 determines may adversely affect the interests of the insurer's  
 28 policyholders.

29 Nothing in this section authorizes or permits any transactions that, in the case of an  
 30 insurer, not a member of the same holding company system, would be otherwise  
 31 contrary to law. A domestic insurer may not enter into transactions that are part of a  
 32 plan or series of like transactions with persons within the holding company system if the  
 33 purpose of those separate transactions is to avoid the statutory threshold amount and  
 34 thus avoid the review that would otherwise occur. If the Commissioner determines that  
 35 such separate transactions were entered into over any 12-month period for ~~such that~~  
 36 purpose, ~~he the~~ Commissioner may exercise ~~his the~~ Commissioner's authority under  
 37 G.S. 58-19-50. The Commissioner, in reviewing transactions pursuant to this  
 38 subsection, shall consider whether the transactions comply with the standards set forth  
 39 in subsection (a) of this section and whether they may adversely affect the interests  
 40 of policyholders. The Commissioner shall be notified within 30 days after any  
 41 investment of a domestic insurer in any one corporation if, as a result of ~~any such the~~  
 42 investment, the total investment in ~~such the~~ corporation by the insurance holding  
 43 company system exceeds ten percent (10%) of ~~such the~~ corporation's voting securities."

44 Sec. 36. G.S. 58-19-30(c) reads as rewritten:

1       "(c) No domestic insurer shall pay any extraordinary dividend or make any other  
2 extraordinary distribution to its shareholders until (i) 30 days after the Commissioner  
3 has received notice of the declaration thereof and has not within ~~such that~~ period  
4 disapproved ~~such the~~ payment or (ii) the Commissioner has approved ~~such the~~ payment  
5 within ~~such the~~ 30-day period.

6       For the purposes of this section, an 'extraordinary dividend' or 'extraordinary  
7 distribution' includes any dividend or distribution of cash or other property, whose fair  
8 market value together with that of other dividends or distributions made within the  
9 preceding 12 months exceeds the ~~greater lesser~~ of (i) ten percent (10%) of ~~such the~~  
10 insurer's surplus as regards policyholders as of the ~~preceding 31st day of December 31,~~  
11 ~~next preceding~~, or (ii) the net gain from operations of ~~such the~~ insurer, if ~~such the~~ insurer  
12 is a life ~~insurer, insurer,~~ or the ~~greater of (i) the net income or (ii) the net investment income,~~  
13 if ~~such the~~ insurer is not a life insurer, not including realized capital gains, for the 12-  
14 month period ending the ~~preceding 31st day of December 31; next preceding;~~ but does not  
15 include pro rata distributions of any class of the insurer's own securities. In determining  
16 whether a dividend or distribution is extraordinary, an insurer other than a life insurer  
17 may carry forward net income from the previous two calendar years that has not already  
18 been paid out as dividends. This carryforward shall be computed by taking the net  
19 income from the second and third preceding calendar years, not including realized  
20 capital gains, less dividends paid in the second and immediate preceding calendar years.

21       Notwithstanding any other provision of law, an insurer may declare an extraordinary  
22 dividend or distribution that is conditional upon the Commissioner's ~~approval thereof,~~  
23 approval, and ~~such a the~~ declaration shall confer no rights upon shareholders until (i)  
24 the Commissioner has approved the payment of ~~such a the~~ dividend or  
25 distribution or (ii) the Commissioner has not disapproved ~~such the~~ payment within the  
26 30-day period referred to above."

27       Sec. 37. G.S. 58-19-45(c) reads as rewritten:

28       "(c) In any case where a person has acquired or is proposing to acquire any voting  
29 securities in violation of this Article or any rule or order of the Commissioner under this  
30 Article, the Superior Court of Wake County may, on such notice as the court considers  
31 appropriate and upon the application of the insurer or the Commissioner, seize or  
32 sequester any voting securities of the insurer owned directly or indirectly by ~~such the~~  
33 person, and issue ~~such an~~ order with respect thereto as may be appropriate to effectuate  
34 the provisions of this Article. Notwithstanding any other provision of law, for the  
35 purposes of this Article the sites of the ownership of the securities of domestic insurers  
36 are in this State."

37       Sec. 38. Article 19 of Chapter 58 of the General Statutes is amended by  
38 adding a new section to read:

39       "**§ 58-19-17. Foreign or alien insurer's report of change of control.**

40       (a) As used in this section, 'controlling capital stock' means enough of an  
41 insurer's shares of the issued and outstanding stock, as defined in G.S. 58-19-5(2), to  
42 give its owner the power to exercise a controlling influence over the management or  
43 policies of the insurer.

1       (b) If there is a change in the controlling capital stock or a change of twenty-five  
2 percent (25%) or more of the assets of a foreign or alien insurer, the insurer shall report  
3 the change in writing to the Commissioner within 30 days after the effective date of the  
4 change. The report shall be in a form prescribed by the Commissioner and shall contain  
5 the name and address of the new owners of the controlling stock or assets, the nature  
6 and value of the new assets, and other relevant information that the Commissioner  
7 requires."

8       Sec. 39. G.S. 58-21-20(a)(2) reads as rewritten:

9       "(2) Qualifies under one of the following subdivisions:

- 10       a. Has capital and surplus or its equivalent under the laws of its  
11       domiciliary jurisdiction, which equals either:  
12       1. ~~this~~ This State's minimum capital and surplus requirements  
13       under ~~G.S. 58-7-75~~. G.S. 58-7-75, or  
14       2. Fifteen million dollars (\$15,000,000),  
15       whichever is greater, except that nonadmitted insurers already  
16       qualified under this Article must have ten million dollars  
17       (\$10,000,000) by December 31, 1991, twelve million five  
18       hundred thousand dollars (\$12,500,000) by December 31, 1992,  
19       and fifteen million dollars (\$15,000,000) by December 31,  
20       1993. The requirements of this sub-subdivision may be  
21       satisfied by an insurer possessing less than the commitment  
22       capital and surplus upon an affirmative finding of acceptability  
23       by the Commissioner. The finding shall be based upon such  
24       factors as quality of management, capital and surplus of any  
25       parent company, company underwriting profit and investment  
26       income trends, and the insurer's record and reputation within the  
27       industry. In no event shall the Commissioner make an  
28       affirmative finding of acceptability when the insurer's capital  
29       and surplus is less than four million five hundred thousand  
30       dollars (\$4,500,000).

31       In addition, an alien insurer qualifies under this subdivision if  
32       it maintains in the United States an irrevocable trust fund in  
33       either a national bank or a member of the Federal Reserve  
34       System, in an amount not less than ~~one million five hundred~~  
35       ~~thousand dollars (\$1,500,000)~~ two million five hundred thousand  
36       dollars (\$2,500,000) for the protection of all of its policyholders  
37       in the ~~United States~~ United States, and ~~such~~ the trust fund  
38       consists of cash, securities, letters of credit, or of investment of  
39       substantially the same character and quality as those which are  
40       eligible investments for the capital and statutory reserves of  
41       admitted insurers authorized to write like kinds of insurance in  
42       this State. ~~Such~~ The trust fund, which shall be included in any  
43       calculation of capital and surplus or its equivalent, shall have an  
44       expiration date which at no time shall be less than five years; or

- 1                   b.     In the case of any Lloyd's plans or other similar unincorporated  
 2                   group of ~~alien~~ individual insurers, maintains a trust fund of not  
 3                   less than fifty million dollars (\$50,000,000) as security to the  
 4                   full amount thereof for all policyholders and creditors in the  
 5                   United States of each member of the group, and ~~such~~ the trust  
 6                   shall likewise comply with the terms and conditions established  
 7                   in subdivision (2)a. of this section for alien insurers; and  
 8                   c.     In the case of an 'insurance exchange' created by the laws of  
 9                   individual states, maintain capital and surplus, or the substantial  
 10                  equivalent thereof, of not less than ~~fifteen million dollars~~  
 11                  (\$15,000,000) fifty million dollars (\$50,000,000) in the  
 12                  aggregate. For insurance exchanges which maintain funds for  
 13                  the protection of all insurance exchange policyholders, each  
 14                  individual syndicate shall maintain minimum capital and  
 15                  surplus, or the substantial equivalent thereof, of not less than  
 16                  ~~one million five hundred thousand dollars (\$1,500,000).~~ three  
 17                  million dollars (\$3,000,000). ~~In the event~~ If the insurance  
 18                  exchange does not maintain funds for the protection of all  
 19                  insurance exchange policyholders, each individual syndicate  
 20                  shall meet the minimum capital and surplus requirements of  
 21                  subdivision (2)a. of this section."

22                  Sec. 40. Article 30 of Chapter 58 of the General Statutes is amended by  
 23                  adding a new section to read:

24                  "**§ 58-30-12. Duty to report insurer impairment; violations; penalties.**

25                  (a)     As used in this section:

- 26                  (1)     'Chief executive officer', as used in subsection (b) of this section,  
 27                  means the person, irrespective of title, designated by the board of  
 28                  directors or trustees of an insurer as the person charged with  
 29                  administering and implementing an insurer's policies and procedures.  
 30                  (2)     'Impaired', as used in subsections (b) and (c) of this section, means a  
 31                  financial condition in which the assets of an insurer are less than the  
 32                  sum of the insurer's minimum required capital, minimum required  
 33                  surplus, and all liabilities as determined in accordance with the  
 34                  requirements for the preparation and filing of a financial statement  
 35                  under G.S. 58-2-165 and under other provisions of this Chapter.  
 36                  (3)     'Insolvent', as used in subsection (c) of this section, has the same  
 37                  meaning as set forth in G.S. 58-30-10(13).

38                  (b)     Whenever an insurer is impaired, its chief executive officer shall, as soon as  
 39                  is reasonably possible, notify the Commissioner in writing of the impairment and shall  
 40                  at the same time notify in writing all of the members of the board of directors or trustees  
 41                  of the insurer, if the chief executive officer knows or has reason to know of the  
 42                  impairment. An officer, director, or trustee of an insurer shall notify the chief executive  
 43                  officer of the impairment of the insurer if the officer, director, or trustee knows or has  
 44                  reason to know that the insurer is impaired. Any person who knowingly violates this

1 subsection shall, upon conviction, be guilty of a misdemeanor and fined not more than  
2 fifty thousand dollars (\$50,000) or imprisoned for not more than two years, or both.

3 (c) Any person who willfully:

4 (1) Conceals any property belonging to an insurer; or

5 (2) Transfers or conceals in contemplation of a delinquency proceeding  
6 the person's own property or property belonging to an insurer; or

7 (3) Conceals, destroys, mutilates, alters, or makes a false entry in any  
8 document that affects or relates to the property of an insurer or  
9 withholds any such document from a receiver, trustee, or other officer  
10 of a court entitled to its possession; or

11 (4) Gives, obtains, or receives a thing of value for acting or forbearing to  
12 act in any court proceedings;

13 and any such act results in or contributes to an insurer becoming impaired or insolvent;  
14 shall be guilty of a Class H felony."

15 Sec. 41. G.S. 58-30-15(c) reads as rewritten:

16 "(c) In addition to other grounds for jurisdiction provided by the laws of this State,  
17 the Court has jurisdiction over a person served pursuant to Chapter 1A of the General  
18 Statutes or other applicable provisions of law in an action brought by the receiver of a  
19 domestic insurer or an alien insurer domiciled in this State:

20 (1) If the person served is obligated to the insurer in any way as an  
21 incident to any agency or brokerage arrangement that may exist or has  
22 existed between the insurer and the agent or broker, in any action on or  
23 incident to the obligation; or

24 (2) If the person served is a reinsurer who has at any time entered into a  
25 contract of reinsurance with an insurer against which a rehabilitation  
26 or liquidation order is in effect when the action is commenced, or is an  
27 agent or broker of or for the reinsurer, in any action on or incident to  
28 the reinsurance contract; or

29 (3) If the person served is or has been an officer, manager, trustee,  
30 organizer, promoter, or person in a position of comparable authority or  
31 influence, in an insurer against which a rehabilitation or liquidation  
32 order is in effect when the action is commenced, in any action  
33 resulting from such a relationship with the ~~insurer~~-insurer; or

34 (4) If the person served is or was, when the delinquency proceeding was  
35 begun against the insurer, holding assets in which the receiver claims  
36 an interest on behalf of the insurer, in any action concerning the assets;  
37 or

38 (5) If the person served is obligated to the insurer in any way whatsoever,  
39 in any action on or incident to the obligation."

40 Sec. 42. Article 30 of Chapter 58 of the General Statutes is amended by  
41 adding a new section to read:

42 "**§ 58-30-22. Powers of Commissioner and receiver to examine or audit books or**  
43 **records.**



1 (a) As used in this section, 'person' includes an agent of the insurer; a broker,  
2 ceding or assuming reinsurer, or reinsurance intermediary that has done business with  
3 the insurer; or any affiliate of the insurer.

4 (b) In addition to other powers granted under this Chapter, the Commissioner in  
5 any supervision proceeding under this Article and a receiver in any delinquency  
6 proceeding under this Article has the power to examine or audit the books or records of  
7 any person insofar as those books or records relate to the business activities of the  
8 insurer that is under supervision or subject to a delinquency proceeding.

9 (c) In any examination or audit authorized under this section, the person  
10 examined or audited shall reimburse the Commissioner or receiver for the cost of the  
11 examination or audit."

12 Sec. 43. G.S. 58-30-60(b) reads as rewritten:

13 "(b) The Commissioner may consider any or all of the following standards to  
14 determine whether the continued operation of any licensed insurer is hazardous to its  
15 policyholders, creditors, or the general public:

16 (1) Adverse findings reported in financial condition and market conduct  
17 examination reports;

18 (2) The NAIC Insurance Regulatory Information System and its related  
19 reports;

20 (3) The ratios of commission expense, general insurance expense, policy  
21 benefits, and reserve increases as to annual premium and net  
22 investment income that could lead to an impairment of capital and  
23 surplus;

24 (4) Whether an insurer's asset portfolio, when viewed in light of current  
25 economic conditions, is not of sufficient value, liquidity, or diversity to  
26 assure the insurer's ability to meet its outstanding obligations as they  
27 mature;

28 (5) The ability of an assuming reinsurer to perform and whether the ceding  
29 insurer's reinsurance program provides sufficient protection for the  
30 insurer's remaining surplus, after taking into account the insurer's cash  
31 flow and the classes of business written as well as the financial  
32 condition of the assuming reinsurer;

33 (6) Whether an insurer's operating loss in the last 12-month period or any  
34 shorter time, including net capital gain or loss, changes in nonadmitted  
35 assets, and cash dividends paid to shareholders, is greater than fifty  
36 percent (50%) of the insurer's remaining policyholders' surplus in  
37 excess of the minimum required;

38 (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened  
39 with insolvency, or delinquent in payment of its monetary or any other  
40 obligation;

41 (8) Contingent liabilities, pledges, or guaranties that either individually or  
42 collectively involve a total amount that in the Commissioner's opinion  
43 may affect an insurer's solvency;

- 1           (9) Whether any controlling person of an insurer is delinquent in the  
2 transmitting to or payment of net premiums to the insurer;
- 3           (10) The age and collectibility of receivables;
- 4           (11) Whether the management of an insurer, including officers, directors, or  
5 any other person who directly or indirectly controls the operation of  
6 the insurer, fails to possess or demonstrate the competence, fitness, or  
7 reputation considered by the Commissioner to be necessary to serve  
8 the insurer in that position;
- 9           (12) Whether the management of an insurer has failed to respond to the  
10 Commissioner's inquiries about the condition of the insurer or has  
11 furnished false and misleading information in response to an inquiry  
12 by the Commissioner;
- 13           (13) Whether the management of an insurer has filed any false or  
14 misleading sworn financial statement, has released a false or  
15 misleading financial statement to a lending institution or to the general  
16 public, or has made a false or misleading entry or omitted an entry of  
17 material amount in the insurer's books;
- 18           (14) Whether the insurer has grown so rapidly and to such an extent that it  
19 lacks adequate financial and administrative capacity to meet its  
20 obligations in a timely manner; or
- 21           (15) Whether the insurer has experienced or will experience in the  
22 foreseeable future cash flow or liquidity problems.

23           To determine an insurer's financial condition under this Article, the Commissioner  
24 may: disregard any credit or amount receivable resulting from transactions with a  
25 reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;  
26 make appropriate adjustments to asset values attributable to investments in or  
27 transactions with parents, subsidiaries, or affiliates of an insurer; refuse to recognize the  
28 stated value of accounts receivable if the insurer's ability to collect receivables is highly  
29 speculative in view of the age of the account or the financial condition of the debtor; or  
30 increase the insurer's liability in an amount equal to any contingent liability, pledge, or  
31 guarantee not otherwise included if there is a substantial risk that the insurer will be  
32 called upon to meet the obligation undertaken within the next 12-month period.

33           If upon examination or at any other time the Commissioner has reasonable cause to  
34 believe that any domestic insurer is in such condition as to render the continuance of its  
35 business hazardous to the public or to holders of its policies or certificates of insurance,  
36 or if ~~such~~ the domestic insurer gives its consent, then the Commissioner shall upon ~~his~~  
37 the Commissioner's determination:

- 38           (1) Notify the insurer of ~~his~~ that determination; and
- 39           (2) Furnish to the insurer a written list of the Commissioner's requirements  
40 to abate ~~his~~ that determination.

41 The written list may include requirements that the insurer: reduce the total amount of  
42 present and potential liability for policy benefits by reinsurance; reduce, suspend, or  
43 limit the volume of insurance being accepted or renewed; reduce general insurance and  
44 commission expenses by specified methods; increase its capital and surplus; suspend or

1 limit its declaration and payment of dividends to its stockholders or policyholders; file  
2 reports in a form acceptable to the Commissioner concerning the market value of its  
3 assets; limit or withdraw from certain investments or discontinue certain investment  
4 practices to the extent the Commissioner considers to be necessary; document the  
5 adequacy of premium rates in relation to the risks insured; or file, in addition to regular  
6 annual financial statements, interim financial reports on the form adopted by the NAIC  
7 or on such format prescribed by the Commissioner. Notwithstanding any other  
8 provision of law limiting the frequency or amount of premium rate adjustments, the  
9 Commissioner may include in his the list of requirements such any rate adjustments for  
10 any kinds of insurance written by the insurer that the Commissioner considers necessary  
11 to improve the financial condition of the insurer."

12           Sec. 44. Article 30 of Chapter 58 of the General Statutes is amended by  
13 adding a new section to read:

14 **"§ 58-30-62. Administrative supervision of insurers.**

15           (a) As used in this section, an insurer has 'exceeded its powers' when it: has  
16 refused to permit examination of its books, papers, accounts, records or affairs by the  
17 Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers,  
18 accounts or records necessary for an examination of the insurer; has failed to comply  
19 promptly with applicable financial reporting statutes or rules and related Department  
20 requests; continues to transact the business of insurance after its license has been  
21 revoked, suspended, or not renewed by the Commissioner; by contract or otherwise, has  
22 unlawfully, or has in violation of an order of the Commissioner, or has without first  
23 having obtained any legally required written approval of the Commissioner, totally  
24 reinsured its entire outstanding business or merged or consolidated substantially its  
25 entire property or business with another insurer; has engaged in any transaction in  
26 which it is not authorized to engage under the laws of this State; or has refused to  
27 comply with a lawful order of the Commissioner. As used in this section,  
28 'Commissioner' includes an authorized representative or designee of the Commissioner.

29           (b) This section applies to all domestic insurers and any other insurer doing  
30 business in this State whose state of domicile has asked the Commissioner to apply the  
31 provisions of this section to that insurer.

32           (c) An insurer may be subject to administrative supervision by the Commissioner  
33 if upon examination or at any other time it appears to the Commissioner that the insurer:  
34 has exceeded its powers; has failed to comply with applicable provisions of this  
35 Chapter; is conducting its business in a manner that is hazardous to the public or to its  
36 insureds; or consents to administrative supervision.

37           (d) If the Commissioner determines that the conditions set forth in subsection (c)  
38 of this section exist, the Commissioner shall: notify the insurer of that determination;  
39 furnish to the insurer a written list of the requirements to abate those conditions; and  
40 notify the insurer that it is under the supervision of the Commissioner and that the  
41 Commissioner is applying and effectuating the provisions of this section.

42           (e) If placed under administrative supervision, the insurer shall have 60 days, or a  
43 different period of time determined by the Commissioner, to comply with the  
44 requirements of the Commissioner under this section. If the Commissioner determines

1 after notice and hearing that the conditions giving rise to the supervision still exist at the  
2 end of the supervision period specified in this subsection, the Commissioner may extend  
3 the period; or if the Commissioner determines that none of the conditions giving rise to  
4 the supervision exist, the Commissioner shall release the insurer from supervision.

5 (f) Notwithstanding any other provision of law and except as set forth in this  
6 section, all proceedings, hearings, notices, correspondence, reports, records, and other  
7 information in the possession of the Commissioner or the Department relating to the  
8 supervision of any insurer are confidential. The Department shall have access to such  
9 proceedings, hearings, notices, correspondence, reports, records, or other information as  
10 permitted by the Commissioner. The Commissioner may open the proceedings or  
11 hearings or disclose the notices, correspondence, reports, records, or information to a  
12 department, agency or instrumentality of this or another state of the United States if the  
13 Commissioner determines that the disclosure is necessary or proper for the enforcement  
14 of the laws of this or another state of the United States. The Commissioner may open  
15 the proceedings or hearings or make public the notices, correspondence, reports,  
16 records, or other information if the Commissioner considers that it is in the best interest  
17 of the insurer, its insureds or creditors, or the general public. This section does not  
18 apply to hearings, notices, correspondence, reports, records, or other information  
19 obtained upon the appointment of a receiver for the insurer by a court of competent  
20 jurisdiction.

21 (g) During the period of supervision, the Commissioner shall serve as the  
22 administrative supervisor. The Commissioner may provide that the insurer shall not do  
23 any of the following during the period of supervision, without the Commissioner's prior  
24 approval: dispose of, convey, or encumber any of its assets or its business in force;  
25 withdraw from any of its bank accounts; lend or invest any of its funds; transfer any of  
26 its property; incur any debt, obligation, or liability; merge or consolidate with another  
27 company; establish new premiums or renew any policies; enter into any new  
28 reinsurance contract or treaty; terminate, surrender, forfeit, convert, or lapse any  
29 insurance coverage, except for nonpayment of premiums due; release, pay, or refund  
30 premium deposits, accrued cash, or loan values, unearned premiums, or other reserves  
31 on any insurance coverage; make any material change in management; increase salaries  
32 or benefits of officers or directors or make preferential payment of bonuses, dividends,  
33 or other payments considered preferential; or make any other change in its operations  
34 that the Commissioner considers to be material.

35 (h) During the period of supervision the insurer may contest an action taken or  
36 proposed to be taken by the Commissioner, specifying why the action being complained  
37 of would not result in improving the insurer's condition.

38 (i) This section does not limit powers granted to the Commissioner by any other  
39 provision of law. This section does not preclude the Commissioner from initiating  
40 judicial proceedings to place an insurer in a delinquency proceeding under this Article,  
41 regardless of whether the Commissioner has previously initiated administrative  
42 supervision proceedings under this section or under G.S. 58-30-60 against the insurer.  
43 The determination as to actions under this section is in the Commissioner's discretion.

1       (j) Notwithstanding any other provision of law, the Commissioner may meet  
2 with a supervisor appointed under this section and with the attorney or other  
3 representative of the supervisor, without the presence of any other person, at the time of  
4 any proceeding or during the pendency of any proceeding held under the authority of  
5 this section, to carry out the Commissioner's duties under this section or for the  
6 supervisor to carry out the supervisor's duties under this section.

7       (k) There is no liability by, and no cause of action of any nature arises against,  
8 the Commissioner for any acts or omissions by the Commissioner in the performance of  
9 the Commissioner's powers and duties under this section."

10           Sec. 45. Article 30 of Chapter 58 of the General Statutes is amended by  
11 adding a new subsection to read:

12 **"§ 58-30-127. Duties of agents.**

13       (a) Every person who receives notice in the form prescribed in G.S. 58-30-125  
14 that an insurer that person represents as an agent is the subject of a liquidation order  
15 shall, upon request of the liquidator and within 60 days after receipt of the request,  
16 provide to the liquidator the information in the agent's records related to any policy  
17 issued by the insurer through the agent; and if the agent is a general agent, the  
18 information in the general agent's records related to any policy issued by the insurer  
19 through a subagent under contract with the general agent, including the name and  
20 address of the subagent.

21       (b) For the purpose of this section, a policy is issued through an agent if the agent  
22 has a property interest in the expiration of the policy or if the agent has had in the  
23 agent's possession a copy of the declarations of the policy at any time during the life of  
24 the policy, except where the ownership of the expiration of the policy has been  
25 transferred to another person.

26       (c) Any agent failing to provide information to the liquidator as required by this  
27 section is to be subject to G.S. 58-2-70.

28       (d) The provisions of this section are in addition to any other duties in this  
29 Chapter that are placed on agents."

30           Sec. 46. G.S. 58-30-140 is amended by adding a new subsection to read:

31       "(d) Every person receiving any property from the insurer or any benefit thereof as  
32 the result of a fraudulent transfer under subsection (a) of this section is personally liable  
33 therefor and is bound to account to the liquidator."

34           Sec. 47. G.S. 58-30-160 reads as rewritten:

35 **"§ 58-30-160. ~~Setoffs and counterclaims.~~ Setoffs.**

36       (a) Mutual debts or mutual ~~credits~~ credits, whether arising out of one or more  
37 contracts between the insurer and another person in connection with any action or  
38 proceeding under this Article shall be set off and the balance only shall be allowed or  
39 paid, except as provided in ~~subsection (b)~~ subsections (b), (d), and (e) of this section and  
40 in G.S. 58-30-175.

41       (b) No setoff or ~~counterclaim~~ shall be allowed in favor of any person where:

42           (1) The obligation of the insurer to the person would not at the date of the  
43 filing of a petition for liquidation entitle the person to share as a  
44 claimant in the assets of the insurer;

- 1           (2) The obligation of the insurer to the person was purchased by or  
2 transferred to the person with a view to its being used as a setoff;
- 3           (3) The obligation of the person is to pay an assessment levied against the  
4 members or subscribers of the insurer, or is to pay a balance upon a  
5 subscription to the capital stock of the insurer, or is in any other way in  
6 the nature of a capital contribution; ~~or~~
- 7           (4) The obligation of the person is to pay earned premiums to the ~~insurer.~~  
8 insurer;
- 9           (5) The obligation of the insurer is owed to an affiliate of the person, or to  
10 any other entity or association other than the person;
- 11           (6) The obligation of the person is owed to an affiliate of the insurer, or to  
12 any other entity or association other than the insurer;
- 13           (7) The obligations between the person and the insurer arise out of  
14 transactions where either the person or the insurer has assumed risks  
15 and obligations from the other party and then has ceded back to that  
16 party substantially the same risks and obligations;
- 17           (8) The obligation of the person is to pay to the insurer sums held in a  
18 fiduciary capacity for the insurer; or
- 19           (9) The person alone or together with any other member of its insurance  
20 company holding system owns fifty percent (50%) or more of the  
21 voting stock of the insurer.

22       (c) A setoff shall be permitted to local agents against agents' balances otherwise  
23 payable to the domiciliary or ancillary receiver for the amount expended by ~~such~~the  
24 agents to replace insurance coverage of their insureds and the reasonable expenses  
25 incident thereto as a result of any domestic, foreign or alien insurer being placed in  
26 delinquency proceedings. Agents claiming ~~such~~a setoff shall within 60 days of  
27 replacing ~~such~~coverage provide a verified accounting of the replacement of ~~such~~the  
28 insurance to the domiciliary receiver, the ancillary receiver, if any, and the North  
29 Carolina Insurance Guaranty Association or similar organization in the state of  
30 residence of the policyholder. The verified accounting shall include the name of the  
31 agent, the name of the insured, the policy number, the replacement policy number, the  
32 cost of the replacement policy, the amount of unearned premium under each policy as to  
33 which setoff is claimed, any claimed expenses and a verification that the accounting has  
34 been provided to each of the persons and entities described herein. Unearned premiums  
35 set off as provided above in any amount shall be deemed paid in full by the insurer and  
36 no person shall have a claim for ~~such~~the unearned premiums against the North Carolina  
37 Insurance Guaranty Association or similar organization in the state of residence of the  
38 policyholder.

39       (d) The receiver shall provide persons with accounting statements identifying  
40 debts which are currently due and payable. Where a person owes to the insurer  
41 currently due and payable balances, against which the person asserts setoff of mutual  
42 credits which may become due and payable from the insurer in the future, the person  
43 shall promptly pay to the receiver the currently due and payable amount; provided that,  
44 notwithstanding any other provision of this Article, the receiver shall promptly and fully

1 refund, to the extent of the person's prior payments, any mutual credits that become due  
2 and payable to the person by the insurer.

3 (e) Notwithstanding any other provision of this section, a setoff of sums due on  
4 obligations in the nature of those set forth in subdivision (b)(7) of this section shall be  
5 allowed for those sums accruing from business written where the contracts were entered  
6 into, renewed, or extended with the express written approval of the insurance regulator  
7 of the state of domicile of the now insolvent insurer, when in the judgment of the  
8 regulator it was necessary to provide reinsurance in order to prevent or mitigate a  
9 threatened impairment or insolvency of the insurer in connection with the exercise of  
10 the regulator's official responsibilities."

11 Sec. 48. Section 47 of this act becomes effective January 1, 1992, and applies  
12 to all contracts entered into, renewed, extended, or amended on or after that date, and to  
13 debts or credits arising from any business written or transactions occurring on or after  
14 January 1, 1992, pursuant to any contract, including those in existence prior to January  
15 1, 1992; and shall supersede any agreements or contractual provisions that might be  
16 construed to enlarge the setoff rights of any person under any contract with the insurer.  
17 For purposes of this section any change in the terms of, or consideration from, any such  
18 contract shall be deemed to be an amendment.

19 Sec. 49. The title of Article 34 of Chapter 58 of the General Statutes reads as  
20 rewritten:

21 "~~Managing General Agents. Agency and Management Contracts.~~"

22 Sec. 50. G.S. 58-34-1 is repealed.

23 Sec. 51. Article 34 of Chapter 58 of the General Statutes is amended by  
24 adding a new section to read:

25 "**§ 58-34-2. Managing general agents.**

26 (a) As used in this Article:

27 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under  
28 common control', means the direct or indirect possession of the power  
29 to direct or cause the direction of the management and policies of a  
30 person, whether through the ownership of voting securities, by contract  
31 other than a commercial contract for goods or nonmanagement  
32 services, or otherwise, unless the power is the result of an official  
33 position with or corporate office held by the person.

34 (2) 'Insurer' means a domestic insurer but does not mean a reciprocal  
35 regulated under Article 15 of this Chapter.

36 (3) 'Managing general agent' or 'MGA' means any person who negotiates  
37 and binds ceding reinsurance contracts on behalf of an insurer or  
38 manages all or part of the insurance business of an insurer (including  
39 the management of a separate division, department, or underwriting  
40 office) and acts as an agent for the insurer, whether known as a  
41 managing general agent, manager, or other similar term, who, with or  
42 without the authority, either separately or together with persons under  
43 common control, produces, directly or indirectly, and underwrites an  
44 amount of gross direct written premium equal to or more than five

1           percent (5%) of the policyholder surplus as reported in the last annual  
2           statement of the insurer in any one quarter or year. 'MGA' does not  
3           mean an employee of the insurer; an underwriting manager who,  
4           pursuant to contract, manages all the insurance operations of the  
5           insurer, is under common control with the insurer, is subject to Article  
6           19 of this Chapter, and whose compensation is not based on the  
7           volume of premiums written; or a person who, under Article 15 of this  
8           Chapter, is designated and authorized by subscribers as the attorney-  
9           in-fact for a reciprocal having authority to obligate them on reciprocal  
10           and other insurance contracts.

11           (4) 'Qualified actuary' means a person who meets the standards of a  
12           qualified actuary as specified in the NAIC Annual Statement  
13           Instructions, as amended or clarified by rule, order, directive, or  
14           bulletin of the Department, for the type of insurer for which the MGA  
15           is establishing loss reserves.

16           (5) 'Underwrite' means the authority to accept or reject risk on behalf of  
17           the insurer.

18           (b) Control is presumed to exist if any person directly or indirectly owns,  
19           controls, holds with the power to vote, or holds proxies representing ten percent (10%)  
20           or more of the voting securities of any other person. The Commissioner may determine,  
21           after furnishing all persons in interest notice and opportunity to be heard and making  
22           specific findings of fact to support the determination, that control exists in fact,  
23           notwithstanding the absence of a presumption to that effect. The Commissioner may  
24           determine upon application that any person does not or will not upon the taking of some  
25           proposed action control another person. The Commissioner may prospectively revoke  
26           or modify that determination, after the notice and opportunity to be heard, whenever, in  
27           the Commissioner's judgment, revocation, or modification is consistent with this  
28           Article.

29           (c) No person shall act as an MGA with respect to risks located in this State for  
30           an insurer unless that person is a licensed agent in this State. No person shall act as an  
31           MGA representing an insurer with respect to risks located outside of this State unless  
32           that person is licensed as an agent in this State; and the license may be a nonresident  
33           license. The Commissioner may require a bond in an amount acceptable to the  
34           Commissioner for the protection of the insurer. The Commissioner may require the  
35           MGA to maintain an errors and omissions policy.

36           (d) No person acting as an MGA shall place business with an insurer unless there  
37           is in force a written contract between the MGA and the insurer that sets forth the  
38           responsibilities of each party and, where both parties share responsibility for a particular  
39           function, specifies the division of such responsibilities, and that contains the following  
40           minimum provisions:

41           (1) The insurer may terminate the contract for cause upon written notice to  
42           the MGA. The insurer may suspend the underwriting authority of the  
43           MGA during the pendency of any dispute regarding the cause for  
44           termination.



- 1           (2)    The MGA will render accounts to the insurer detailing all transactions  
2                   and remit all funds due under the contract to the insurer on not less  
3                   than a monthly basis.
- 4           (3)    All funds collected for the account of an insurer will be held by the  
5                   MGA in a fiduciary capacity in a bank that is a member of the Federal  
6                   Reserve System. This account shall be used for all payments on behalf  
7                   of the insurer. The MGA may retain no more than three months  
8                   estimated claims payments and allocated loss adjustment expenses.
- 9           (4)    Separate records of business written by the MGA will be maintained.  
10                   The insurer shall have access to and right to copy all accounts related  
11                   to its business in a form usable by the insurer, and the Commissioner  
12                   shall have access to all books, bank accounts, and records of the MGA  
13                   in a form usable to the Commissioner. The records shall be retained  
14                   according to the provisions of 11 NCAC 11C.0105.
- 15           (5)    The contract may not be assigned in whole or part by the MGA.
- 16           (6)    Appropriate underwriting guidelines, including: the maximum annual  
17                   premium volume; the basis of the rates to be charged; the types of risks  
18                   that may be written; maximum limits of liability; applicable  
19                   exclusions; territorial limitations; policy cancellation provisions; and  
20                   the maximum policy period. The insurer shall have the right to cancel  
21                   or nonrenew any policy of insurance subject to applicable laws and  
22                   rules.
- 23           (7)    If the contract permits the MGA to settle claims on behalf of the  
24                   insurer:
- 25                   a.    All claims must be reported to the MGA in a timely manner.
- 26                   b.    A copy of the claim file will be sent to the insurer at its request  
27                   or as soon as it becomes known that the claim: has the potential  
28                   to exceed an amount determined by the insurer and approved by  
29                   the Commissioner; involves a coverage dispute; may exceed the  
30                   MGA's claims settlement authority; is open for more than six  
31                   months; or is closed by payment of an amount set by the insurer  
32                   and approved by the Commissioner.
- 33                   c.    All claim files will be the joint property of the insurer and  
34                   MGA. However, upon an order of liquidation of the insurer the  
35                   files shall become the sole property of the insurer or its estate;  
36                   the MGA shall have reasonable access to and the right to copy  
37                   the files on a timely basis.
- 38                   d.    Any settlement authority granted to the MGA may be  
39                   terminated for cause upon the insurer's written notice to the  
40                   MGA or upon the termination of the contract. The insurer may  
41                   suspend the settlement authority during the pendency of any  
42                   dispute regarding the cause for termination.
- 43           (8)    Where electronic claims files are in existence, the contract must  
44                   address the timely transmission of the data.

1           (9) If the contract provides for a sharing of interim profits by the MGA,  
2 and the MGA has the authority to determine the amount of the interim  
3 profits by establishing loss reserves, controlling claim payments, or by  
4 any other manner, interim profits will not be paid to the MGA until  
5 one year after they are earned for property insurance business and five  
6 years after they are earned on casualty business and not until the  
7 profits have been verified under subsection (m) of this section.

8           (10) The MGA shall not:

- 9           a. Bind reinsurance or retrocessions on behalf of the insurer,  
10 except that the MGA may bind facultative reinsurance contracts  
11 pursuant to obligatory facultative agreements if the contract  
12 with the insurer contains reinsurance underwriting guidelines  
13 including, for both reinsurance assumed and ceded, a list of  
14 reinsurers with which such automatic agreements are in effect,  
15 the coverages and amounts or percentages that may be  
16 reinsured, and commission schedules;
- 17           b. Commit the insurer to participate in insurance or reinsurance  
18 syndicates;
- 19           c. Appoint any producer without assuring that the producer is  
20 lawfully licensed to transact the type of insurance for which the  
21 producer is appointed;
- 22           d. Without prior approval of the insurer, pay or commit the insurer  
23 to pay a claim over a specified amount, net of reinsurance,  
24 which shall not exceed one percent (1%) of the insurer's  
25 policyholder's surplus as of December 31 of the last completed  
26 calendar year;
- 27           e. Collect any payment from a reinsurer or commit the insurer to  
28 any claim settlement with a reinsurer, without the insurer's prior  
29 approval. If prior approval is given, a report must be promptly  
30 forwarded to the insurer;
- 31           f. Permit its subproducer to serve on the insurer's board of  
32 directors;
- 33           g. Jointly employ an individual who is employed with the insurer;  
34 or
- 35           h. Appoint a sub-MGA.

36           (e) An insurer shall have on file by June 1 of each year an audited financial  
37 report of each MGA with which it is doing business. The report shall include the  
38 opinion of an independent certified public accountant, report the financial position of  
39 the MGA as of the most recent year-end and the results of its operations and cash flows,  
40 and include appropriate notes to financial statements. The insurer shall provide a copy  
41 of the report to the Commissioner within 15 days of receipt by the insurer.

42           (f) If an MGA establishes loss reserves, the insurer shall provide with its annual  
43 statement, in addition to any other required statement of actuarial opinion, the statement  
44 of a qualified actuary attesting to the adequacy of loss reserves established on business

1 produced by the MGA. The statement shall comply in all respects with the NAIC  
2 Annual Statement Instructions regarding the Statement of Actuarial Opinion.

3 (g) The insurer shall periodically, at least semiannually, conduct an on-site  
4 review of the underwriting and claims processing operations of the MGA. The insurer  
5 shall prepare and maintain a written report on the review and make it available to the  
6 Commissioner upon the Commissioner's request.

7 (h) Binding authority for all reinsurance contracts, except those contracts  
8 expressly permitted under sub-subdivision (d)(10)a. of this section, or participation in  
9 insurance or reinsurance syndicates, shall rest with an officer of the insurer, who shall  
10 not be affiliated with the MGA.

11 (i) Within 15 days after entering into or termination of a contract with an MGA,  
12 the insurer shall provide written notification of the appointment or termination to the  
13 Commissioner. Notices of appointment of an MGA shall include a copy of the contract,  
14 a statement of duties that the MGA is expected to perform on behalf of the insurer, the  
15 kinds of insurance for which the MGA is to be authorized to act, whether any affiliation  
16 exists between the insurer and the MGA and the basis for the affiliation, and any other  
17 information the Commissioner may request. The Commissioner may prescribe the form  
18 to be used for notification of the information required by this item.

19 (j) The Commissioner shall disapprove any such contract that:

- 20 (1) Does not contain the required contract provisions specified in  
21 subsection (d) of this section;
- 22 (2) Subjects the insurer to excessive charges for expenses or commission;
- 23 (3) Vests in the MGA any control over the management of the affairs of  
24 the insurer to the exclusion of the board of directors of the insurer;
- 25 (4) Is entered into with any person if the person or its officers and  
26 directors are of known bad character or have been affiliated directly or  
27 indirectly through ownership, control, management, reinsurance  
28 transactions, or other insurance or business relationships with any  
29 person known to have been involved in the improper manipulation of  
30 assets, accounts, or reinsurance; or
- 31 (5) Is determined by the Commissioner to contain provisions that are not  
32 fair and reasonable to the insurer.

33 Failure of the Commissioner to disapprove any such contract within 30 days after the  
34 contract has been filed with the Commissioner constitutes the Commissioner's approval  
35 of the contract. An insurer may continue to accept business from such person until the  
36 Commissioner disapproves the contract. Any disapproval shall be in writing. The  
37 Commissioner may, after a hearing held under G.S. 58-2-50, withdraw approval of any  
38 contract the Commissioner has previously approved upon finding that the basis of the  
39 original approval no longer exists or that the contract has, in actual operation, shown  
40 itself to be subject to disapproval on any of the grounds in this subsection.

41 (k) An insurer shall review its books and records each quarter to determine if any  
42 agent has become an MGA. If the insurer determines that an agent has become an  
43 MGA, the insurer shall promptly notify the agent of that determination and the insurer  
44 and agent must fully comply with the provisions of this Article within 15 days.

1       (l) An insurer shall not appoint to its board of directors an officer, director,  
2 employee, subagent, or controlling shareholder of its MGAs. This subsection does not  
3 apply to relationships governed by Article 19 of this Chapter or, if applicable, G.S. 58-  
4 7-157.

5       (m) The acts of an MGA are considered to be the acts of the insurer on whose  
6 behalf it is acting. An MGA may be examined by the Commissioner under G.S. 58-2-  
7 131, 58-2-132, or 58-2-133 as if it were an insurer.

8       (n) If the Commissioner finds after a hearing conducted in accordance with G.S.  
9 58-2-50 that any person has violated any provision of this Article, the Commissioner  
10 may order:

11           (1) For each separate violation, a penalty in an amount of one thousand  
12 dollars (\$1,000);

13           (2) Revocation or suspension of the agent's license; or

14           (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of  
15 the insurer for any losses incurred by the insurer caused by a violation  
16 of this Article committed by the MGA.

17       (o) Nothing in this section affects the Commissioner's right to impose any other  
18 penalties provided for in this Chapter. Nothing in this Article limits or restricts the  
19 rights of policyholders, claimants, and creditors."

20           Sec. 52. G.S. 58-34-5(c) reads as rewritten:

21           "(c) The standards for approval shall be as set forth under ~~G.S. 58-34-1.~~ G.S. 58-  
22 34-2(d)(5)."

23           Sec. 53. G.S. 58-34-10(b) reads as rewritten:

24           "(b) There shall be exempted from the filing requirement of this section contracts  
25 by groups of affiliated insurers on a pooled funds basis or service company management  
26 basis, where costs to the individual member insurers are charged on an actually incurred  
27 or closely estimated basis. However, these contracts must be reduced to written form.

28           ~~G.S. 58-34-5, 58-34-10, and 58-34-15 do not apply to any power of attorney or other~~  
29 ~~authority authorized by G.S. 58-138."~~

30           Sec. 54. G.S. 58-34-15(a) reads as rewritten:

31           "(a) The Commissioner must disapprove any ~~such~~ management contract or service  
32 agreement ~~filed under G.S. 58-34-10~~ if, at any time, ~~he~~ the Commissioner finds:

33           (1) That the service or management charges are based upon criteria  
34 unrelated either to the managed insurer's profits or to the reasonable  
35 customary and usual charges for such services or are based on factors  
36 unrelated to the value of such services to the insurer; or

37           (2) That management personnel or other employees of the insurer are to be  
38 performing management functions and receiving any remuneration  
39 therefor through the management or service contract in addition to the  
40 compensation by way of salary received directly from the insurer for  
41 their services; or

42           (3) That the contract would transfer substantial control of the insurer or  
43 any of the powers vested in the board of directors, by statute, articles

1 of incorporation, or bylaws, or substantially all of the basic functions  
2 of the insurance company management; or

3 (4) That the contract contains provisions that would be clearly detrimental  
4 to the best interest of policyholders, stockholders, or members of the  
5 insurer; or

6 (5) That the officers and directors of the management firm are of known  
7 bad character or have been affiliated, directly or indirectly, through  
8 ownership, control, management, reinsurance transactions, or other  
9 insurance or business relations with any person ~~or persons~~ known to  
10 have been involved in the improper manipulation of assets, accounts,  
11 or reinsurance."

12 Sec. 55. The title of Article 62 of Chapter 58 of the General Statutes reads as  
13 rewritten:

14 **"~~LIFE AND ACCIDENT-AND HEALTH INSURANCE GUARANTY~~**  
15 **ASSOCIATION."**

16 Sec. 56. Article 62 of Chapter 58 of the General Statutes is amended by  
17 adding the following new sections:

18 **"§ 58-62-2. Title.**

19 This Article shall be known and may be cited as the North Carolina Life and Health  
20 Insurance Guaranty Association Act.

21 **"§ 58-62-6. Purpose.**

22 (a) The purpose of this Article is to protect, subject to certain limitations, the  
23 persons specified in G.S. 58-62-21(a) against failure in the performance of contractual  
24 obligations, under life and health insurance policies and annuity contracts specified in  
25 G.S. 58-62-21(b), because of the delinquency of the member insurer that issued the  
26 policies.

27 (b) To provide this protection, an association of insurers is created to pay benefits  
28 and to continue coverages as limited herein, and members of the Association are subject  
29 to assessment to provide funds to carry out the purpose of this Article.

30 **"§ 58-62-11. Construction.**

31 This Article shall be liberally construed to effect the purpose under G.S. 58-62-6,  
32 which shall constitute an aid and guide to interpretation.

33 **"§ 58-62-16. Definitions.**

34 As used in this Article:

- 35 (1) 'Account' means any of the two accounts created under G.S. 58-62-26.  
36 (2) 'Association' means the North Carolina Life and Health Insurance  
37 Guaranty Association created under G.S. 58-62-26.  
38 (3) 'Board' means the board of directors of the Association established  
39 under G.S. 58-62-31.  
40 (4) 'Contractual obligation' means any obligation under a policy or  
41 certificate under a group policy, or part thereof, for which coverage is  
42 provided under G.S. 58-62-21.  
43 (5) 'Covered policy' means any policy within the scope of this Article  
44 under G.S. 58-62-21.

- 1           (6)   'Delinquent insurer' means an impaired insurer or an insolvent insurer;  
2           and 'delinquency' means an insurer impairment or insolvency.
- 3           (7)   'Health insurance' includes accident and health insurance, accident  
4           insurance, and disability insurance.
- 5           (8)   'Impaired insurer' means a member insurer that, after the effective date  
6           of this Article, is not an insolvent insurer, and (i) is deemed by the  
7           Commissioner to be potentially unable to fulfill its contractual  
8           obligations or (ii) is placed under an order of rehabilitation or  
9           conservation by a court of competent jurisdiction.
- 10          (9)   'Insolvent insurer' means a member insurer that, after the effective  
11          date of this Article, is placed under an order of liquidation with a  
12          finding of insolvency by a court of competent jurisdiction.
- 13          (10)  'Insurance regulator' means the official or agency of another state that  
14          is responsible for the regulation of a foreign insurer.
- 15          (11)  'Member insurer' means any insurer licensed or that holds a license to  
16          transact in this State any kind of insurance for which coverage is  
17          provided under G.S. 58-62-21; and includes any insurer whose license  
18          in this State may have been suspended, revoked, not renewed or  
19          voluntarily withdrawn, but does not include an entity governed by  
20          Articles 65 through 67 of this Chapter; fraternal order or fraternal  
21          benefit society; mandatory State pooling plan; mutual assessment  
22          company or any entity that operates on an assessment basis; insurance  
23          exchange; or any entity similar to any of the foregoing.
- 24          (12)  'Moody's Corporate Bond Yield Average' means the Monthly Average  
25          Corporates as published by Moody's Investors Service, Inc., or any  
26          successor thereto.
- 27          (13)  'Person' includes an individual, corporation, company, partnership,  
28          association, or aggregation of individuals.
- 29          (14)  'Plan' means the plan of operation established under G.S. 58-62-46.
- 30          (15)  'Policy' includes a contract of insurance and an annuity contract.
- 31          (16)  'Premiums' means amounts received in any calendar year on covered  
32          policies less premiums, considerations, and deposits returned thereon,  
33          and less dividends and experience credits thereon. 'Premiums' does  
34          not include any amounts received for any policies or for the parts of  
35          any policies for which coverage is not provided under G.S. 58-62-  
36          21(b); except that assessable premium shall not be reduced on account  
37          of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-  
38          21(d)(2) relating to limitations with respect to any one individual, any  
39          one participant, and any one contract holder; provided that 'premiums'  
40          does not include any premiums in excess of five million dollars  
41          (\$5,000,000) on any unallocated annuity contract not issued under a  
42          governmental retirement plan established under section 401, 403(b), or  
43          457 of the United States Internal Revenue Code.

1           (17) 'Resident' means any person who resides in this State when a member  
2 insurer is determined to be a delinquent insurer and to whom a  
3 contractual obligation is owed. A person may be a resident of only  
4 one state, which in the case of a person other than a natural person  
5 shall be its principal place of business.

6           (18) 'Unallocated annuity contract' means any annuity contract or group  
7 annuity certificate that is not issued to and owned by an individual,  
8 except to the extent of any annuity benefits guaranteed to an individual  
9 by an insurer under the contract or certificate.

10 **"§ 58-62-21. Coverage and limitations.**

11           (a) This Article provides coverage for the policies and contracts specified in  
12 subsection (b) of this section:

13           (1) To persons who, regardless of where they reside (except for  
14 nonresident certificate holders under group policies), are the  
15 beneficiaries, assignees, or payees of the persons covered under  
16 subdivision (2) of this subsection, and

17           (2) To persons who are owners or certificate holders under the policies, or  
18 in the case of unallocated annuity contracts to the persons who are the  
19 contract holders, and who are residents of this State, or who are not  
20 residents of this State, but only under all of the following conditions:  
21 (i) the insurers that issued the policies are domiciled in this State; (ii)  
22 the insurers never held a license in the states in which the persons  
23 reside; (iii) the states have associations similar to the association  
24 created by this Article; and (iv) the persons are not eligible for  
25 coverage by the associations.

26           (b) This Article provides coverage to the persons specified in subsection (a) of  
27 this section for direct, nongroup life, health, annuity, and supplemental policies, for  
28 certificates under direct group policies and contracts, and for unallocated annuity  
29 contracts issued by member insurers, except as limited by this Article. Annuity  
30 contracts and certificates under group annuity contracts include guaranteed investment  
31 contracts, deposit administration contracts, unallocated funding agreements, allocated  
32 funding agreements, structured settlement agreements, lottery contracts, and any  
33 immediate or deferred annuity contracts.

34           (c) This Article does not provide coverage for:

35           (1) Any part of a policy not guaranteed by the insurer, or under which the  
36 risk is borne by the policyholder;

37           (2) Any policy or contract of reinsurance, unless assumption certificates  
38 have been issued;

39           (3) Any part of a policy to the extent that the rate of interest on which it is  
40 based:

41           a. Averaged over the period of four years before the date on which  
42 the Association becomes obligated with respect to the policy,  
43 exceeds a rate of interest determined by subtracting two  
44 percentage points from Moody's Corporate Bond Yield Average

- 1                   averaged for that same four-year period or for a lesser period if  
2                   the policy was issued less than four years before the  
3                   Association became obligated; and  
4                   b. On and after the date on which the Association becomes  
5                   obligated with respect to the policy, exceeds the rate of interest  
6                   determined by subtracting three percentage points from  
7                   Moody's Corporate Bond Yield Average as most recently  
8                   available;
- 9                   (4) Any plan or program of an employer, association, or similar entity to  
10                  provide life, health, or annuity benefits to its employees or members to  
11                  the extent that the plan or program is self-funded or uninsured,  
12                  including benefits payable by an employer, association, or similar  
13                  entity under:
- 14                  a. A multiple employer welfare arrangement as defined in section  
15                  514 of the Employee Retirement Income Security Act of 1974,  
16                  as amended;  
17                  b. A minimum premium group insurance plan;  
18                  c. A stop-loss group insurance plan; or  
19                  d. An administrative services only contract;
- 20                  (5) Any part of a policy to the extent that it provides dividends or  
21                  experience-rating credits, or provides that any fees or allowances be  
22                  paid to any person, including the policyholder, in connection with the  
23                  service to or administration of the policy;
- 24                  (6) Any policy issued in this State by a member insurer at a time when it  
25                  was not licensed to issue the policy in this State;
- 26                  (7) Any unallocated annuity contract issued to an employee benefit plan  
27                  protected under the federal Pension Benefit Guaranty Corporation; and
- 28                  (8) Any part of any unallocated annuity contract that is not issued to or in  
29                  connection with a specific employee, union, or association of natural  
30                  persons benefit plan or a government lottery.
- 31                  (d) The benefits for which the Association is liable do not, in any event, exceed  
32                  the lesser of:
- 33                          (1) The contractual obligations for which the insurer is liable or would  
34                          have been liable if it were not a delinquent insurer; or
- 35                          (2) With respect to any one individual, regardless of the number of  
36                          policies, three hundred thousand dollars (\$300,000) for all benefit,  
37                          including cash values.
- 38                  (e) In no event is the Association liable to expend more than three hundred  
39                  thousand dollars (\$300,000) in the aggregate with respect to any one individual under  
40                  this section.
- 41                  "**§ 58-62-26. Creation of the Association.**"
- 42                  (a) There is created a nonprofit legal entity to be known as the North Carolina  
43                  Life and Health Insurance Guaranty Association. All member insurers shall be and  
44                  remain members of the Association as a condition of their authority to transact



1 insurance in this State. The Association shall perform its functions under the Plan  
2 established and approved under G.S. 58-62-46 and shall exercise its powers through the  
3 Board established under G.S. 58-62-31. For purposes of administration and assessment,  
4 the Association shall maintain two accounts:

5 (1) The life insurance and annuity account, which includes the following  
6 subaccounts:

7 a. Life insurance account;

8 b. Annuity account; and

9 c. Unallocated annuity account, which includes contracts qualified  
10 under section 403(b) of the Internal Revenue Code.

11 (2) The health insurance account.

12 (b) The Association is under the immediate supervision of the Commissioner and  
13 is subject to the applicable provisions of this Chapter. Meetings or records of the  
14 Association may be opened to the public upon majority vote of the Board.

15 **"§ 58-62-31. Board of directors.**

16 (a) The Board shall consist of not less than five nor more than nine member  
17 insurers serving terms as established in the Plan. The members of the Board shall be  
18 selected by member insurers, subject to the Commissioner's approval. Vacancies on the  
19 Board shall be filled for the remaining period of the term by a majority vote of the  
20 remaining Board members, subject to the Commissioner's approval. To select the initial  
21 Board, and initially organize the Association, the Board's predecessor shall notify all  
22 member insurers of the time and place of the organizational meeting. In determining  
23 voting rights at the organizational meeting, each member insurer is entitled to one vote  
24 in person or by proxy. If the Board is not selected within 60 days after notice of the  
25 organizational meeting, the Commissioner may appoint the initial members.

26 (b) In approving selections or in appointing members to the Board, the  
27 Commissioner shall consider, among other things, whether all member insurers are  
28 fairly represented.

29 (c) Members of the Board may be reimbursed from the assets of the Association  
30 for expenses they incur as members of the Board, but they shall not otherwise be  
31 compensated by the Association for their services.

32 **"§ 58-62-36. Powers and duties of the Association.**

33 (a) If a member insurer is an impaired domestic insurer, the Association may,  
34 subject to any conditions imposed by the Association and approved by the  
35 Commissioner that do not impair the contractual obligations of the impaired insurer and  
36 that are, except in cases of court-ordered conservation or rehabilitation, also approved  
37 by the impaired insurer:

38 (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or  
39 reinsured, any or all of the policies of the impaired insurer;

40 (2) Provide such monies, pledges, notes, guarantees, or other means as are  
41 proper to carry out subdivision (1) of this subsection and assure  
42 payment of the contractual obligations of the impaired insurer pending  
43 action under subdivision (1) of this subsection; or

44 (3) Lend money to the impaired insurer.

1       **(b)** If a member insurer is an impaired insurer, whether domestic, foreign, or  
2 alien, and the insurer is not paying claims in a timely manner, then subject to the  
3 preconditions specified in subsection (c) of this section, the Association shall, in its  
4 discretion, either:

5           **(1)** Take any of the actions specified in subsection (a) of this section,  
6 subject to the conditions therein; or

7           **(2)** Provide substitute benefits in lieu of the contractual obligations of the  
8 impaired insurer solely for health claims, periodic annuity benefit  
9 payments, death benefits, supplemental benefits, and cash withdrawals  
10 for policyowners who petition therefor under claims of emergency or  
11 hardship in accordance with standards proposed by the Association  
12 and approved by the Commissioner.

13       **(c)** The Association is subject to the requirements of subsection (b) of this  
14 section only if:

15           **(1)** The laws of the impaired insurer's state of domicile provide that until  
16 all payments of or on account of the impaired insurer's contractual  
17 obligations by all guaranty associations, along with all expenses  
18 thereof and interest on all the payments and expenses, have been  
19 repaid to the guaranty associations or a plan of repayment by the  
20 impaired insurer has been approved by the guaranty associations, the  
21 delinquency proceeding shall not be dismissed; neither the impaired  
22 insurer nor its assets may be returned to the control of its shareholders  
23 or private management; and the impaired insurer may not solicit or  
24 accept new business or have any suspended or revoked license  
25 restored; and

26           **(2)** The impaired insurer is a domestic insurer that has been placed under  
27 an order of rehabilitation by a court of competent jurisdiction in this  
28 State; or the impaired insurer is a foreign or alien insurer that has been  
29 prohibited from soliciting or accepting new business in this State, its  
30 license has been suspended or revoked in this State, and a petition for  
31 rehabilitation or liquidation has been filed in a court of competent  
32 jurisdiction in its state of domicile by that state's insurance regulator.

33       **(d)** If a member insurer is an insolvent insurer, the Association shall, in its  
34 discretion, either:

35           **(1)** Guarantee, assume or reinsure, or cause to be guaranteed, assumed or  
36 reinsured, the policies of the insolvent insurer; or

37           **(2)** Assure payment of the contractual obligations of the insolvent insurer;  
38 and

39           **(3)** Provide such monies, pledges, guarantees, or other means as are  
40 reasonably necessary to discharge those duties; or

41           **(4)** With respect only to life and health insurance policies, provide benefits  
42 and coverages in accordance with subsection (e) of this section.

43       **(e)** When proceeding under subdivision (b)(2) or (d)(4), the Association shall,  
44 with respect to only life and health insurance policies:

- 1           (1) Assure payment of benefits for premiums identical to the premiums  
2 and benefits (except for terms of conversion and renewability) that  
3 would have been payable under the policies of the insolvent insurer,  
4 for claims incurred:
- 5           a. With respect to group policies, not later than the earlier of the  
6 next renewal date under the policies or 45 days, but in no event  
7 less than 30 days after the date on which the Association  
8 becomes obligated with respect to the policies;
- 9           b. With respect to individual policies, not later than the earlier of  
10 the next renewal date (if any) under the policies or one year, but  
11 in no event less than 30 days from the date on which the  
12 Association becomes obligated with respect to the policies;
- 13       (2) Make diligent efforts to provide all known insureds or group  
14 policyholders with respect to group policies 30 days' notice of the  
15 termination of the benefits provided; and
- 16       (3) With respect to individual policies, make available to each known  
17 insured, or owner if other than the insured, and with respect to an  
18 individual formerly insured under a group policy who is not eligible  
19 for replacement group coverage, make available substitute coverage on  
20 an individual basis in accordance with the provisions of subsection (f)  
21 of this section, if the insured had a right under law or the terminated  
22 policy to convert coverage to individual coverage or to continue an  
23 individual policy in force until a specified age or for a specified time,  
24 during which the insurer had no right unilaterally to make changes in  
25 any provision of the policy or had a right only to make changes in  
26 premium by class.
- 27       (f) In providing the substitute coverage required under subdivision (e)(3) of this  
28 section, the Association may offer either to reissue the terminated coverage or to issue  
29 an alternative policy. An alternative or reissued policy shall be offered without  
30 requiring evidence of insurability, and shall not provide for any waiting period or  
31 exclusion that would not have applied under the terminated policy. The Association  
32 may reinsure any alternative or reissued policy.
- 33       (g) Alternative life or health insurance policies adopted by the Association are  
34 subject to the Commissioner's approval. The Association may adopt alternative policies  
35 of various types for future issuance without regard to any particular delinquency.  
36 Alternative policies shall contain at least the minimum statutory provisions required in  
37 this State and provide benefits that are not unreasonable in relation to the premium  
38 charged. The Association shall set the premium in accordance with a table of rates,  
39 which it shall adopt. The premium shall reflect the amount of insurance to be provided  
40 and the age and class of risk of each insured, but it shall not reflect any changes in the  
41 health of the insured after the original policy was last underwritten. Any alternative  
42 policy issued by the Association shall provide coverage of a type similar to that of the  
43 policy issued by the delinquent insurer, as determined by the Association.

1       (h) If the Association elects to reissue terminated coverage at a premium rate  
2 different from that charged under the terminated life or health insurance policy, the  
3 premium shall be set by the Association in accordance with the amount of insurance  
4 provided and the age and class of risk, subject to the approval of the Commissioner or  
5 by a court of competent jurisdiction.

6       (i) The Association's obligations with respect to coverage under any life or  
7 health insurance policy of the delinquent insurer or under any reissued or alternative  
8 policy cease on the date the coverage or policy is replaced by another similar policy by  
9 the policyholder, the insured, or the Association.

10       (j) When proceeding under subdivision (b)(2) of this section or under subsection  
11 (c) of this section with respect to any policy carrying guaranteed minimum interest  
12 rates, the Association shall assure the payment or crediting of a rate of interest  
13 consistent with G.S. 58-62-21(c)(3).

14       (k) Nonpayment of premiums within 31 days after the date required under the  
15 terms of any guaranteed, assumed, alternative, or reissued policy or substitute coverage  
16 terminates the Association's obligations under the policy or coverage under this Article  
17 with respect to the policy or coverage, except with respect to any claims incurred or any  
18 net cash surrender value that may be due under this Article.

19       (l) Premiums due for coverage after an entry of an order of liquidation of an  
20 insolvent insurer belong to and are payable at the direction of the Association; and the  
21 Association is liable for unearned premiums owed to policyowners arising after the  
22 entry of the order.

23       (m) The protection provided by this Article does not apply where any similar  
24 guaranty protection is provided to residents of this State by the laws of the domiciliary  
25 state or jurisdiction of a delinquent foreign or alien insurer.

26       (n) In carrying out its duties under subsections (b) through (d) of this section, the  
27 Association may, subject to approval by the court:

28           (1) Impose permanent policy liens in connection with any guarantee,  
29 assumption, or reinsurance agreement, if the Association finds that the  
30 amounts that can be assessed under this Article are less than the  
31 amounts needed to assure full and prompt performance of the  
32 Association's duties under this Article, or that the economic or  
33 financial conditions as they affect member insurers are sufficiently  
34 adverse to render the imposition of the permanent policy liens to be in  
35 the public interest;

36           (2) Impose temporary moratoria or liens on payments of cash values and  
37 policy loans, or any other right to withdraw funds held in conjunction  
38 with policies, in addition to any contractual provisions for deferral of  
39 cash or policy loan value.

40       (o) If the Association fails to act within a reasonable period of time as provided  
41 in subdivision (b)(2) of this section and subsections (d) and (e) of this section, the  
42 Commissioner has the powers and duties of the Association under this Article with  
43 respect to delinquent insurers.

1       (p) The Association may render assistance and advice to the Commissioner, upon  
2 the Commissioner's request concerning rehabilitation, payment of claims, continuance  
3 of coverage, or the performance of other contractual obligations of any delinquent  
4 insurer.

5       (q) The Association has standing to appear before any court in this State with  
6 jurisdiction over a delinquent insurer for which the Association is or may become  
7 obligated under this Article. This standing extends to all matters germane to the powers  
8 and duties of the Association, including, but not limited to, proposals for reinsuring,  
9 modifying, or guaranteeing the policies of the delinquent insurer and the determination  
10 of the policies and contractual obligations. The Association also has the right to appear  
11 or intervene before a court in another state with jurisdiction over a delinquent insurer for  
12 which the Association is or may become obligated or with jurisdiction over a third party  
13 against whom the Association may have rights through subrogation of the insurer's  
14 policyholders.

15       (r) Any person receiving benefits under this Article is considered to have been  
16 assigned the rights under, and any causes of action relating to, the covered policy to the  
17 Association to the extent of the benefits received because of this Article, whether the  
18 benefits are payments of or on account of contractual obligations, continuation of  
19 coverage, or provision of substitute or alternative coverages. The Association may  
20 require an assignment to it of such rights and cause of action by any payee,  
21 policyowner, beneficiary, insured or annuitant as a condition precedent to the receipt of  
22 any right or benefits conferred by this Article upon the person. The subrogation rights  
23 of the Association under this subsection have the same priority against the delinquent  
24 insurer's assets as that possessed by the person entitled to receive benefits under this  
25 Article. In addition to other provisions of this subsection, the Association has all  
26 common-law rights of subrogation and any other equitable or legal remedy that would  
27 have been available to the delinquent insurer or holder of a policy with respect to the  
28 policy.

29       (s) The Association may:

- 30       (1) Enter into contracts that are necessary or proper to carry out the  
31 provisions and purposes of this Article;
- 32       (2) Sue or be sued, including taking any legal actions necessary or proper  
33 to recover any unpaid assessments under G.S. 58-62-41 and to settle  
34 claims or potential claims against it;
- 35       (3) Borrow money to effect the purposes of this Article; any notes or other  
36 evidence of indebtedness of the Association not in default shall be  
37 legal investments for domestic insurers and may be carried as admitted  
38 assets;
- 39       (4) Employ or retain persons that are necessary to handle the financial  
40 transactions of the Association, and to perform other functions that  
41 become necessary or proper under this Article;
- 42       (5) Take legal action that may be necessary to avoid payment of improper  
43 claims;

1           (6) Exercise, for the purposes of this Article and to the extent approved by  
2 the Commissioner, the powers of a domestic life or health insurer, but  
3 in no case may the Association issue insurance policies or annuity  
4 contracts other than those issued to perform its obligations under this  
5 Article.

6           (t) The Association may join an organization of one or more other state  
7 associations of similar purposes, in order to further the purposes of this Article and  
8 administer the powers and duties of the Association.

9 **"§ 58-62-41. Assessments.**

10          (a) To provide the funds necessary to carry out the powers and duties of the  
11 Association, the Board shall assess the member insurers, separately for each account, at  
12 such time and for such amounts as the Board finds necessary. Assessments are due not  
13 less than 30 days after prior written notice to the member insurers and shall accrue  
14 interest at eight percent (8%) per annum on and after the due date.

15          (b) There shall be two classes of assessments, as follows:

16           (1) Class A assessments shall be made for the purpose of meeting  
17 administrative and legal costs and other expenses and examinations  
18 conducted under the authority of G.S. 58-62-56(e). Class A  
19 assessments may be made whether or not they are related to a  
20 particular delinquent insurer.

21           (2) Class B assessments shall be made to the extent necessary to carry out  
22 the powers and duties of the Association under G.S. 58-62-36 with  
23 regard to a delinquent insurer.

24          (c) The amount of any Class A assessment shall be determined by the Board and  
25 may or may not be prorated. If prorated, the Board may provide that it be credited  
26 against future Class B assessments. If not prorated, the assessment shall not exceed one  
27 hundred fifty dollars (\$150.00) per member insurer in any one calendar year. The  
28 amount of any Class B assessment shall be allocated for assessment purposes among the  
29 accounts pursuant to an allocation formula, which may be based on the premiums or  
30 reserves of the delinquent insurer or any other standard considered by the Board in its  
31 sole discretion to be fair and reasonable under the circumstances.

32          (d) Class B assessments against member insurers for each account and  
33 subaccount shall be in the proportion that the premiums received on business in this  
34 State by each assessed member insurer or policies covered by each account for the three  
35 most recent calendar years for which information is available preceding the year in  
36 which the insurer became delinquent, as the case may be, bears to the premiums  
37 received on business in this State for those calendar years by all assessed member  
38 insurers.

39          (e) Assessments for funds to meet the requirements of the Association with  
40 respect to a delinquent insurer shall not be made until necessary to implement the  
41 purposes of this Article. Classification of assessments under subsection (b) of this  
42 section and computation of assessments under this subsection shall be made with a  
43 reasonable degree of accuracy.

1       (f) The Association may abate or defer, in whole or in part, the assessment of a  
2 member insurer if, in the Board's opinion, payment of the assessment would endanger  
3 the member insurer's ability to fulfill its contractual obligations. If an assessment  
4 against a member insurer is abated, or deferred in whole or in part, the amount by which  
5 the assessment is abated or deferred may be assessed against the other member insurers  
6 in a manner consistent with the basis for assessments set forth in this section,  
7 recognizing that exact determinations may not always be possible.

8       (g) The total of all assessments upon a member insurer for the life and annuity  
9 account and for each subaccount thereunder shall not in any one calendar year exceed  
10 two percent (2%) and for the health account shall not in any one calendar year exceed  
11 two percent (2%) of the insurer's average premiums received in this State on the policies  
12 and contracts covered by the account during the three calendar years preceding the year  
13 in which an insurer became a delinquent insurer. If the maximum assessment, together  
14 with the other assets of the Association in any account, does not provide in any one year  
15 in either account an amount sufficient to carry out the Association's responsibilities, the  
16 necessary additional funds shall be assessed as soon thereafter as permitted by this  
17 Article.

18       (h) The Board may provide in the Plan a method of allocating funds among  
19 claims, whether relating to one or more delinquent insurers, when the maximum  
20 assessment will be insufficient to cover anticipated claims.

21       (i) If a one percent (1%) assessment for any subaccount of the life and annuity  
22 account in any one year does not provide an amount sufficient to carry out the  
23 Association's responsibilities, then under subsection (d) of this section, the Board shall  
24 access all subaccounts of the life and annuity account for the necessary additional  
25 amount, subject to the maximum stated in subsection (g) of this section.

26       (j) The Board may, by an equitable method as established in the Plan, refund to  
27 member insurers, in proportion to the contribution of each insurer to that account, the  
28 amount by which the assets of the account exceed the amount the Board finds is  
29 necessary to carry out during the coming year the obligations of the Association with  
30 regard to that account, including assets accruing from assignment, subrogation, net  
31 realized gains, and income from investments. A reasonable amount may be retained in  
32 any account to provide funds for the continuing expenses of the Association and for  
33 future losses.

34       (k) It is proper for any member insurer, in determining its premium rates and  
35 policyowner dividends as to any kind of insurance within the scope of this Article, to  
36 consider the amount reasonably necessary to meet its assessment obligations under this  
37 Article.

38       (l) The Association shall issue to each insurer paying an assessment under this  
39 Article, other than a Class A assessment, a certificate of contribution, in a form  
40 prescribed by the Commissioner, for the amount of the assessment so paid. All  
41 outstanding certificates shall be of equal dignity and priority without reference to  
42 amounts or dates of issue. A certificate of contribution may be shown by the insurer in  
43 its financial statement as an asset in the form and for the amount, if any, and period of  
44 time as the Commissioner approves.

1 **"§ 58-62-46. Plan of operation.**

2 (a) The Association shall submit to the Commissioner a Plan and any  
3 amendments necessary or suitable to assure the fair, reasonable, and equitable  
4 administration of the Association. The Plan and any amendments shall become  
5 effective upon the Commissioner's written approval or unless the Commissioner has not  
6 disapproved it within 30 days.

7 (b) If the Association fails to submit a suitable Plan within 120 days after the  
8 effective date of this Article or if at any time thereafter the Association fails to submit  
9 suitable amendments to the Plan, the Commissioner shall, after notice and hearing,  
10 adopt rules that are necessary or advisable to carry out the provisions of this Article.  
11 The rules shall continue in force until modified by the Commissioner or superseded by a  
12 Plan submitted by the Association and approved by the Commissioner.

13 (c) All member insurers shall comply with the Plan.

14 (d) The Plan shall, in addition to other requirements specified in this Article,  
15 establish:

16 (1) Procedures for handling the assets of the Association;

17 (2) The amount and method of reimbursing members of the Board under  
18 G.S. 58-62-31;

19 (3) Regular places and times for meetings, including telephone conference  
20 calls, of the Board;

21 (4) Procedures for records to be kept of all financial transactions of the  
22 Association, its agents, and the Board;

23 (5) The procedures whereby selections for the Board will be made and  
24 submitted to the Commissioner;

25 (6) Any additional procedures for assessments under G.S. 58-62-41;

26 (7) Additional provisions necessary or proper for the execution of the  
27 powers and duties of the Association.

28 (e) The Plan may provide that any or all powers and duties of the Association,  
29 except those under G.S. 58-62-36(r) and G.S. 58-62-41, may be delegated to a  
30 corporation, association, or other organization that performs or will perform functions  
31 similar to those of the Association, or its equivalent, in two or more states. Such a  
32 corporation, association, or organization shall be reimbursed for any payments made on  
33 behalf of the Association and shall be paid for its performance of any function of the  
34 Association. A delegation under this subsection is effective only with the approval of  
35 both the Board and the Commissioner, and may be made only to a corporation,  
36 association, or organization that extends protection not substantially less favorable and  
37 effective than that provided by this Article.

38 **"§ 58-62-51. Duties and powers of the Commissioner.**

39 (a) In addition to other duties and powers specified in this Article, the  
40 Commissioner shall:

41 (1) Upon request of the Board, provide the Association with a statement of  
42 the premiums in this State and any other appropriate states for each  
43 member insurer;



1           (2) When an impairment is declared and the amount of the impairment is  
2 determined, serve a demand upon the impaired insurer to make good  
3 the impairment within a reasonable time; notice to the impaired insurer  
4 shall constitute notice to its shareholders, if any; the failure of the  
5 insurer to comply promptly with the demand does not excuse the  
6 Association from the performance of its powers and duties under this  
7 Article; and

8           (3) In any liquidation or rehabilitation proceeding involving a domestic  
9 insurer, be appointed as the liquidator or rehabilitator as provided in  
10 Article 30 of this Chapter.

11           (b) The Commissioner may suspend or revoke, after notice and hearing, the  
12 license to transact insurance in this State of any member insurer that fails to pay an  
13 assessment when due or fails to comply with the Plan. As an alternative the  
14 Commissioner may levy a forfeiture on any member insurer that fails to pay an  
15 assessment when due. The forfeiture shall not exceed five percent (5%) of the unpaid  
16 assessment per month, but no forfeiture shall be less than one hundred dollars (\$100.00)  
17 per month.

18           (c) Any action of the Board or the Association may be appealed to the  
19 Commissioner by any member insurer if the appeal is taken within 60 days of the final  
20 action being appealed. If a member company is appealing an assessment, the amount  
21 assessed shall be paid to the Association and available to meet Association obligations  
22 during the pendency of an appeal. If the appeal on the assessment is upheld, the amount  
23 paid in error or excess shall be returned to the member company. No later than 20 days  
24 before each hearing, the appellant shall file with the Commissioner or the  
25 Commissioner's designated hearing officer and shall serve on the appellee a written  
26 statement of the appellant's case and any evidence the appellant intends to offer at the  
27 hearing. No later than five days before the hearing, the appellee shall file with the  
28 Commissioner or the Commissioner's designated hearing officer and shall serve on the  
29 appellant a written statement of the appellee's case and any evidence the appellee  
30 intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost  
31 of the recording and transcribing shall be borne equally by the appellant and appellee;  
32 however, upon any final adjudication the prevailing party shall be reimbursed for that  
33 party's share of the costs by the other party. Each party shall, on a date determined by  
34 the Commissioner or the Commissioner's designated hearing officer, but not sooner than  
35 15 days after delivery of the completed transcript to the party, submit to the  
36 Commissioner or the Commissioner's designated hearing officer and serve on the other  
37 party, a proposed order. The Commissioner or the Commissioner's designated hearing  
38 officer shall then issue an order. Any final action or order of the Commissioner or the  
39 Commissioner's designated hearing officer is subject to judicial review under G.S. 58-2-  
40 75.

41           (d) The liquidator, rehabilitator, or conservator of any impaired insurer may  
42 notify all interested persons of the effect of this Article.

43 **"§ 58-62-56. Prevention of delinquencies.**

1       (a) To aid in the detection and prevention of insurer delinquencies, it is the  
2 Commissioner's duty to:

3           (1) Notify insurance regulators when revoking or suspending the license  
4 of a member insurer, or making any formal order that the insurer  
5 restrict its premium writing, obtain additional contributions to surplus,  
6 withdraw from this State, reinsure all or any part of its business, or  
7 increase capital, surplus, or any other account for the security of  
8 policyholders or creditors. That notice shall be sent electronically  
9 through the NAIC headquarters and mailed to all insurance regulators  
10 within 30 days following the action taken or the date on which the  
11 action occurs.

12           (2) Report to the Board when the Commissioner has taken any of the  
13 actions in subdivision (1) of this subsection or has received a report  
14 from another insurance regulator indicating that any such action has  
15 been taken in another state. The report to the Board shall contain all  
16 significant details of the action taken or the report received from  
17 another insurance regulator.

18           (3) Report to the Board when the Commissioner has reasonable cause to  
19 believe from any examination, whether completed or in process, of any  
20 member insurer that the insurer may be delinquent.

21           (4) Furnish the Board with the NAIC Insurance Regulatory Information  
22 System financial test ratios and a listing of companies that are not  
23 included in the ratios developed by the NAIC; and the Board may use  
24 that data in carrying out its duties and responsibilities under this  
25 section. The data shall be kept confidential by the Board until it is  
26 made public by the Commissioner or another lawful authority.

27       (b) The Commissioner may seek the advice and recommendations of the Board  
28 concerning any matter affecting the Commissioner's duties and responsibilities  
29 regarding the financial condition of member insurers and other entities seeking  
30 admission to transact insurance business in this State.

31       (c) The Board may, upon majority vote, make reports and recommendations to  
32 the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation,  
33 or conservation of any member insurer or germane to the solvency of any company  
34 seeking to do an insurance business in this State. The reports and recommendations are  
35 not public records.

36       (d) The Board shall, upon majority vote, notify the Commissioner of any  
37 information indicating that any member insurer may be delinquent.

38       (e) The Board may, upon majority vote, request that the Commissioner order an  
39 examination of any member insurer that the Board in good faith believes may be  
40 delinquent. Within 30 days of the receipt of the request, the Commissioner shall begin  
41 the examination. The examination may be conducted as an NAIC examination or may  
42 be conducted by persons the Commissioner designates. The cost of the examination  
43 shall be paid by the Association; and the examination report shall be treated as are other  
44 examination reports. In no event shall the examination report be released to the Board

1 before its release to the public; but this does not preclude the Commissioner from  
2 complying with subsection (a) of this section. The Commissioner shall notify the Board  
3 when the examination is completed. The request for an examination shall be kept on  
4 file by the Commissioner, but shall not be open to public inspection before the release  
5 of the examination report to the public.

6 (f) The Board may, upon majority vote, make recommendations to the  
7 Commissioner for the detection and prevention of insurer delinquencies.

8 (g) The Board shall, at the conclusion of any insurer insolvency in which the  
9 Association was obligated to pay covered claims, prepare a report to the Commissioner  
10 containing any information that it has in its possession bearing on the history and causes  
11 of the insolvency. The Board shall cooperate with the boards of directors of guaranty  
12 associations in other states in preparing a report on the history and causes of insolvency  
13 of a particular insurer, and the Board may adopt by reference any report prepared by  
14 such other associations.

15 **"§ 58-62-61. Miscellaneous provisions.**

16 (a) Nothing in this Article reduces the liability for unpaid assessments of the  
17 insureds of a delinquent insurer operating under an insurance plan with assessment  
18 liability.

19 (b) Records shall be kept of all negotiations and meetings in which the  
20 Association or its representatives are involved and in which the activities of the  
21 Association in carrying out its powers and duties under G.S. 58-62-36 are discussed.  
22 Records of those negotiations or meetings shall be made public only upon the  
23 termination of a liquidation, rehabilitation, or conservation proceeding involving the  
24 delinquent insurer, upon the termination of the delinquency of the insurer, or upon the  
25 order of a court of competent jurisdiction. Nothing in this subsection limits the duty of  
26 the Association to render a report of its activities under G.S. 58-62-66.

27 (c) For the purpose of carrying out its obligations under this Article, the  
28 Association is a creditor of the delinquent insurer to the extent of assets attributable to  
29 covered policies reduced by any amounts to which the Association is entitled as  
30 subrogee under G.S. 58-62-36(r). Assets of the delinquent insurer attributable to  
31 covered policies shall be used to continue all covered policies and pay all contractual  
32 obligations of the delinquent insurer as required by this Article. Assets attributable to  
33 covered policies, as used in this subsection, are that proportion of the assets that the  
34 reserves that should have been established for the policies bear to the reserves that  
35 should have been established for all policies of insurance written by the delinquent  
36 insurer.

37 (d) Before the termination of any liquidation, rehabilitation, or conservation  
38 proceeding, the court may take into consideration the contributions of the respective  
39 parties, including the Association, the shareholders, and policyowners of the insolvent  
40 insurer, and any other party with a bona fide interest, in making an equitable distribution  
41 of the ownership rights of the insolvent insurer. In making such a determination,  
42 consideration shall be given to the welfare of the policyholders of the continuing or  
43 successor insurer.

1 (e) No distribution to stockholders, if any, of a delinquent insurer shall be made  
2 until and unless the Association has fully recovered the total amount of its valid claims  
3 with interest thereon for funds expended in carrying out its powers and duties under  
4 G.S. 58-62-36 with respect to the insurer.

5 (f) If an order for liquidation or rehabilitation of an insurer domiciled in this  
6 State has been entered, the receiver appointed under the order has a right to recover on  
7 behalf of the insurer, from any affiliate that controlled it, the amount of distributions,  
8 other than stock dividends paid by the insurer on its capital stock, made at any time  
9 during the five years preceding the petition for liquidation or rehabilitation subject to  
10 the limitations of subsections (g) through (i) of this section.

11 (g) No such distribution is recoverable if the insurer shows that when paid the  
12 distribution was lawful and reasonable, and that the insurer did not know and could not  
13 reasonably have known that the distribution might adversely affect the insurer's ability  
14 to fulfill its contractual obligations.

15 (h) Any person who was an affiliate that controlled the insurer when the  
16 distributions were paid is liable up to the amount of distributions it received. Any  
17 person who was an affiliate that controlled the insurer when the distributions were  
18 declared is liable up to the amount of distributions it would have received if they had  
19 been paid immediately. If two or more persons are liable with respect to the same  
20 distributions, they are jointly and severally liable.

21 (i) The maximum amount recoverable under this subsection is the amount  
22 needed in excess of all other available assets of the insolvent insurer to pay the insolvent  
23 insurer's contractual obligations.

24 (j) If any person liable under subsection (h) of this section is insolvent, all of its  
25 affiliates that controlled it when the distribution was paid are jointly and severally liable  
26 for any resulting deficiency in the amount recovered from the insolvent affiliate.

27 **"§ 58-62-66. Examination of the Association; annual report.**

28 The Association is subject to examination and regulation by the Commissioner. The  
29 Board shall submit to the Commissioner each year, not later than 120 days after the  
30 Association's fiscal year, a financial report in a form approved by the Commissioner and  
31 a report of its activities during the preceding fiscal year.

32 **"§ 58-62-76. Immunity.**

33 There is no liability by, and no cause of action of any nature arises against, any  
34 member insurer or its agents or employees, the Association or its agents or employees,  
35 members of the Board, the Commissioner or the Commissioner's representatives, or  
36 insurance regulators or their representatives, for any act or omission by them in the  
37 performance of their powers and duties under this Article. This immunity extends to the  
38 participation in any organization of one or more other state associations of similar  
39 purposes and to any such organization and its agents or employees.

40 **"§ 58-62-81. Stay of proceedings; reopening default judgments.**

41 All proceedings in which the insolvent insurer is a party in any court in this State  
42 shall be stayed 60 days from the date an order of liquidation, rehabilitation, or  
43 conservation is final to permit proper legal action by the Association on any matters  
44 germane to its powers or duties. As to a judgment under any decision, order, verdict or

1 finding based on default, the Association may apply to have the judgment set aside by  
2 the same court that made the judgment and may defend against such suit on the merits.

3 **"§ 58-62-86. Prohibited advertisement of Article in insurance sales; notice to**  
4 **policyholders.**

5 (a) No person shall make, publish, disseminate, circulate, or place before the  
6 public, or cause directly or indirectly to be made, published, disseminated, circulated, or  
7 placed before the public, in any newspaper, magazine, or other publication, or in the  
8 form of a notice, circular, pamphlet, letter, or poster, or over any radio station or  
9 television station, or in any other way, any oral or written advertisement, announcement,  
10 or statement that uses the existence of the Association or this Article for the purpose of  
11 sale or solicitation of or inducement to purchase any kind of insurance covered by this  
12 Article. However, this subsection does not apply to the Association or any other person  
13 who does not sell or solicit insurance.

14 (b) Within 180 days after the effective date of this Article, the Association shall  
15 prepare a summary document that describes the general purposes and current limitations  
16 of this Article and that complies with subsection (c) of this section. This document shall  
17 be submitted to the Commissioner for the Commissioner's approval. Sixty days after  
18 receiving approval, no insurer may deliver a policy described in G.S. 58-62-21(b) to any  
19 person unless the document is delivered to that person before or at the time of delivery  
20 of the policy, unless subsection (d) of this section applies. The document shall also be  
21 available upon request by a policyholder. The distribution, delivery, contents, or  
22 interpretation of this document does not mean that either the policy or the policyholder  
23 would be covered in the event of the delinquency of a member insurer. The document  
24 shall be revised by the Association as amendments to this Article require. Failure to  
25 receive this document does not give any person greater rights than those stated in this  
26 Article.

27 (c) The document prepared under subsection (b) of this section shall contain a  
28 clear and conspicuous disclaimer on its face. The Commissioner shall prescribe the  
29 form and content of the disclaimer. The disclaimer shall:

- 30 (1) State the name and addresses of the Association and Department;
- 31 (2) Prominently warn the policyholder that the Association may not cover  
32 the policy or, if coverage is available, it will be subject to substantial  
33 limitations and exclusions and conditioned on continued residence in  
34 this State;
- 35 (3) State that the insurer and its agents are prohibited by law from using  
36 the existence of the Association for the purpose of sale or solicitation  
37 of or inducement to purchase any kind of insurance;
- 38 (4) Emphasize that the applicant or policyholder should not rely on  
39 coverage under the Association when selecting an insurer; and
- 40 (5) Provide other information as directed by the Commissioner.

41 (d) No insurer or agent may deliver a policy described in G.S. 58-62-21(b) and  
42 excluded under G.S. 58-62-21(c) from coverage under this Article unless the insurer or  
43 agent, before or at the time of delivery, gives the policyholder a separate written notice

1 that clearly and conspicuously discloses that the policy is not covered by the  
2 Association. The Commissioner shall prescribe the form and content of the notice."

3           Sec. 57. G.S. 58-62-1, 58-62-5, 58-62-10, 58-62-15, 58-62-20, 58-62-25, 58-  
4 62-30, 58-62-35, 58-62-40, 58-62-45, 58-62-50, 58-62-55, 58-62-60, 58-62-65, 58-62-  
5 70, 58-62-80, 58-62-85, and 58-62-90 are repealed.

6           Sec. 58. The Commissioner and the Commissioner's staff shall maintain  
7 close relations with the insurance regulators of other states and shall actively participate  
8 in the activities and affairs of the National Association of Insurance Commissioners, the  
9 National Conference of Insurance Legislators, and other organizations or successor  
10 organizations insofar as it will, in the Commissioner's judgment, enhance the purposes  
11 of the regulation of insurance. The actual and necessary travel and related expenses  
12 incurred by the Commissioner and members of the Commissioner's staff in attending  
13 meetings of such organizations, their committees, subcommittees, hearings, and other  
14 official activities, as well as the general expenses of participation in such organizations  
15 shall be a charge on available funds and the appropriation of the Department.

16           Sec. 59. Sections 56 and 57 of this act do not apply to any insurer that is in a  
17 delinquency proceeding, as defined in G.S. 58-30-10(5), in this State or any other state  
18 on the effective date of Sections 56 and 57 of this act.

19           Sec. 60. Sections 9, and 49 through 54 of this act become effective  
20 September 1, 1991. Sections 28 and 40 of this act become effective October 1, 1991.  
21 Sections 29 and 30 of this act become effective January 1, 1992. The remainder of this  
22 act is effective upon ratification.