

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 622*
Committee Substitute Favorable 5/24/93

Short Title: Insurer Financial Solvency.

(Public)

Sponsors:

Referred to:

March 29, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE LAWS RELATING TO NORTH CAROLINA'S
3 MONITORING OF INSURANCE COMPANY FINANCES AND THE
4 PRESERVATION OF INSURANCE COMPANY SOLVENCY AND TO
5 MAINTAIN NORTH CAROLINA'S ACCREDITATION BY THE NATIONAL
6 ASSOCIATION OF INSURANCE COMMISSIONERS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 3 of Chapter 58 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 58-3-71. Unearned premium reserves.**

11 (a) Every insurance company, other than a life or real estate title insurance
12 company, shall maintain reserves equal to the unearned portions of the gross premiums
13 charged on unexpired or unexpired risks and policies.

14 (b) No deductions may be made from the gross premiums in force except for
15 original premiums canceled on risks terminated or reduced before expiration, or except
16 for premiums paid or credited for risks reinsured with other solvent assuming insurers
17 authorized to transact business in this State.

18 (c) Premiums charged for bulk or portfolio reinsurance assumed from other
19 insurers shall be included as premiums in force on the basis of the original premiums
20 and original terms of the policies of the ceding insurer.

21 (d) Reinsurance ceded to an authorized assuming insurer may be deducted on the
22 basis of original premiums and original terms, except in the case of excess loss or

1 catastrophe reinsurance, which may be deducted only on the basis of actual reinsurance
2 premiums and actual reinsurance terms.

3 (e) The reserve for unearned premiums shall be computed on an actual basis or
4 may be computed on the monthly pro rata fractional basis if in the opinion of the
5 Commissioner this method produces an adequate reserve.

6 (f) With respect to marine insurance, premiums on trip risks not terminated shall
7 be deemed unearned; and the Commissioner may require a reserve to be carried thereon
8 equal to one hundred percent (100%) of the premiums on trip risks written during the
9 month ended as of the statement date.

10 (g) The Commissioner may adopt rules for the unearned premium reserve
11 computation for premiums covering indefinite terms."

12 Sec. 2. G.S. 58-3-75 reads as rewritten:

13 "**§ 58-3-75. Loss and loss expense reserves of fire and marine insurance companies.**

14 In any determination of the financial condition of any fire or marine or fire and
15 marine insurance company authorized to do business in this State, such company shall
16 be charged, in addition to its unearned premium liability as prescribed in G.S. 58-3-70,
17 with a liability for loss reserves in an amount equal to the aggregate of the estimated
18 amounts payable on all outstanding claims reported to it which arose out of any contract
19 of insurance or reinsurance made by it, and in addition thereto an amount fairly
20 estimated as necessary to provide for unreported losses incurred on or prior to the date
21 of such determination, as defined in G.S. 58-3-81(a), and including, both as to reported
22 and unreported claims, an amount estimated as necessary to provide for the expense of
23 adjusting such claims, and there shall be deducted, in determining such liability for loss
24 reserves, the amount of reinsurance recoverable by such company, in respect to such
25 claims, from assuming insurers in accordance with G.S. 58-7-21. Such loss and loss
26 expense reserves shall be calculated in accordance with any method adopted or
27 approved by the NAIC, unless the Commissioner determines that another more
28 conservative method is appropriate."

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

31 "**§ 58-3-81. Loss and loss expense reserves of casualty insurance and surety**
32 **companies.**

33 (a) In determining the financial condition of any casualty insurance or surety
34 company and in any financial statement or report of any such company, there shall be
35 included in the liabilities of such company loss reserves and loss expense reserves at
36 least equal to the amounts required under the provisions of this section, and the amount
37 of such reserves shall be diminished by an allowance or credit for reinsurance
38 recoverable from assuming insurers in accordance with G.S. 58-7-21. The date as of
39 which such determination, statement, or report is made is hereinafter referred to as the
40 date of determination.

41 (b) For all outstanding losses and loss expenses, the reserves shall include the
42 following:

43 (1) The aggregate estimated amounts due or to become due on account of
44 all known losses and claims and loss expenses incurred but not paid,

1 including the estimated liability on any notice received by the
2 company of the occurrence of any event which may result in a loss;
3 and

4 (2) The aggregate amounts of liability for all losses and loss expenses
5 incurred but on which no notice has been received, estimated in
6 accordance with the company's prior experience, if any, otherwise in
7 accordance with the experience of similar companies under similar
8 contracts of insurance. The estimated liabilities for such losses under
9 all its bonds, policies, or contracts of fidelity insurance, shall be not
10 less than ten percent (10%) of the net premiums in force thereon, and
11 the estimated liabilities for all such losses under all its surety contracts
12 shall be not less than five percent (5%) of the net premium in force
13 thereon.

14 (c) Except as provided in subsection (e) of this section, the minimum reserves for
15 outstanding losses and loss expenses under policies of personal injury liability insurance
16 and under policies of employers' liability insurance, where the losses were incurred
17 during the three years immediately preceding the date of determination, shall be
18 calculated in accordance with any method adopted or approved by the NAIC and shall
19 be not less than the aggregate of the estimated unpaid losses and loss expenses for
20 claims incurred computed in accordance with subsection (b) of this section.

21 (d) The minimum reserves for outstanding losses and loss expenses under
22 policies of workers' compensation insurance, except as provided in subsection (e) of this
23 section, shall be computed as follows:

24 (1) For all such compensation policies where losses were incurred more
25 than three years prior to the date of determination, such reserves shall
26 be the sum of the present values, at three and one-half percent (3
27 1/2%) interest per annum, of the determined and estimated unpaid
28 losses computed on an individual case basis plus the estimated unpaid
29 loss expenses computed in accordance with subsection (b) of this
30 section.

31 (2) Where losses were incurred during the three years immediately
32 preceding the date of determination, such reserves shall be the sum of
33 the reserves for each year, which shall be calculated in accordance
34 with any method adopted or approved by the NAIC and shall be not
35 less than the sum of the present values, at three and one-half percent (3
36 1/2%) interest per annum, of the determined and estimated unpaid
37 losses computed on an individual case basis plus the estimated unpaid
38 loss expenses computed in accordance with subsection (b) of this
39 section.

40 (e) Whenever in the judgment of the Commissioner the loss and loss expense
41 reserves of any casualty or surety company doing business in this State calculated in
42 accordance with the foregoing provisions are inadequate or excessive, he may prescribe
43 any other basis that will produce adequate and reasonable reserves.

1 (f) Every casualty insurance and every surety company doing business in this
2 State shall keep a complete and itemized record showing all losses and claims on which
3 it has received notices, including all notices received by it of the occurrence of any
4 event that may result in a loss."

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

7 **"§ 58-7-31. Life and health reinsurance agreements.**

8 (a) This section applies to every domestic life and accident and health insurer, to
9 every other licensed life and accident and health insurer that is not subject to a
10 substantially similar statute or administrative rule in its domiciliary state, and to every
11 licensed property and casualty insurer with respect to its accident and health business.
12 This section does not apply to assumption reinsurance, yearly renewable term
13 reinsurance, nor to certain nonproportional reinsurance, such as stop loss or catastrophe
14 reinsurance.

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

- 18 (1) Renewal expense allowances provided or to be provided to the ceding
19 insurer by the reinsurer in any accounting period, are not sufficient to
20 cover anticipated allocable renewal expenses of the ceding insurer on
21 the portion of the business reinsured, unless a liability is established
22 for the present value of the shortfall, using assumptions equal to the
23 applicable statutory reserve basis on the business reinsured. Those
24 expenses include commissions, premium taxes, and direct expenses
25 including, but not limited to, billing, valuation, claims, and
26 maintenance expected by the company at the time the business is
27 reinsured.
- 28 (2) The ceding insurer can be deprived of surplus or assets at the
29 reinsurer's option or automatically upon the occurrence of some event,
30 such as the insolvency of the ceding insurer; except that termination of
31 the reinsurance agreement by the reinsurer for nonpayment of
32 reinsurance premiums or other amounts due, such as modified
33 coinsurance reserve adjustments, interest, and adjustments on funds
34 withheld, and tax reimbursements, are not a deprivation of surplus or
35 assets.
- 36 (3) The ceding insurer is required to reimburse the reinsurer for negative
37 experience under the reinsurance agreement; except that neither
38 offsetting experience refunds against current and prior years' losses
39 under the reinsurance agreement nor payment by the ceding insurer of
40 an amount equal to the current and prior years' losses under the
41 reinsurance agreement upon voluntary termination of in-force
42 reinsurance by the ceding insurer are a reimbursement to the reinsurer
43 for negative experience. Voluntary termination does not include
44 situations where termination occurs because of unreasonable

1	<u>Health Insurance - LTC/LTD*</u>	<u>±</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>±</u>
2	<u>0</u>					
3	<u>Immediate Annuities</u>	<u>0</u>	<u>±</u>	<u>0</u>	<u>±</u>	<u>±</u>
4	<u>Single Premium Deferred Annuities</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>
5	<u>±</u>	<u>±</u>				
6	<u>Flexible Premium Deferred Annuities</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>
7	<u>±</u>	<u>±</u>				
8	<u>Guaranteed Interest Contracts</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>
9	<u>±</u>					
10	<u>Other Annuity Deposit Business</u>	<u>0</u>		<u>0</u>	<u>±</u>	<u>±</u>
11	<u>±</u>	<u>±</u>				
12	<u>Single Premium Whole Life</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
13	<u>±</u>					
14	<u>Traditional Non-Par Permanent</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
15	<u>±</u>	<u>±</u>				
16	<u>Traditional Non-Par Term</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>0</u>
17	<u>0</u>					<u>0</u>
18	<u>Traditional Par Permanent</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
19	<u>±</u>					
20	<u>Traditional Par Term</u>	<u>0</u>	<u>±</u>	<u>±</u>	<u>0</u>	<u>0</u>
21	<u>Adjustable Premium Permanent</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
22	<u>±</u>	<u>±</u>				
23	<u>Indeterminate Premium Permanent</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
24	<u>±</u>	<u>±</u>				
25	<u>Universal Life Flexible Premium</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
26	<u>±</u>	<u>±</u>				
27	<u>Universal Life Fixed Premium</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
28	<u>±</u>					
29	<u>Universal Life Fixed Premium</u>	<u>0</u>		<u>±</u>	<u>±</u>	<u>±</u>
30	<u>±</u>					

(dump-in premiums allowed)

*LTC = Long-Term Care Insurance

*LTD = Long-Term Disability Insurance

- (7)a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision (7)b. of this section either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner that legally segregates, by contract or contractual provisions, the underlying assets.)
- b. Notwithstanding the requirements of subdivision (7)a. of this section, the assets supporting the reserves for the following classes of business and any classes of business that do not

1 have a significant credit quality, reinvestment, or
 2 disintermediation risk may be held by the ceding company
 3 without segregation of those assets:

- 4 - Health Insurance - LTC/LTD
 5 - Traditional Non-Par Permanent
 6 - Traditional Par Permanent
 7 - Adjustable Premium Permanent
 8 - Indeterminate Premium Permanent
 9 - Universal Life Fixed Premium
 10 (no dump-in premiums allowed)

11 The associated formula for determining the reserve interest rate
 12 adjustment must use a formula that reflects the ceding company's
 13 investment earnings and incorporates all realized and unrealized gains
 14 and losses reflected in the statutory statement. The following is an
 15 acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

18 Where: I is the net investment income.

19 CG is capital gains less capital losses.

20 X is the current year cash and invested assets plus investment income
 21 due and accrued less borrowed money.

22 Y is the same as X but for the prior year.

23 (8) Settlements are made less frequently than quarterly or payments due
 24 from the reinsurer are not made in cash within 90 days after the
 25 settlement date.

26 (9) The ceding insurer is required to make representations or warranties
 27 not reasonably related to the business being reinsured.

28 (10) The ceding insurer is required to make representations or warranties
 29 about future performance of the business being reinsured.

30 (11) The reinsurance agreement is entered into for the principal purpose of
 31 producing significant surplus aid for the ceding insurer, typically on a
 32 temporary basis, while not transferring all of the significant risks
 33 inherent in the business reinsured and, in substance or effect, the
 34 expected potential liability to the ceding insurer remains basically
 35 unchanged.

36 (c) Notwithstanding subsection (a) of this section, an insurer may, with the prior
 37 approval of the Commissioner, take such reserve credit or establish such asset as the
 38 Commissioner deems to be consistent with the insurance laws or rules of this State,
 39 including actuarial interpretations or standards adopted by the Commissioner.

40 (d) (1) Reinsurance agreements entered into after October 1, 1993,
 41 that involve the reinsurance of business issued prior to the effective
 42 date of the reinsurance agreements, along with any subsequent
 43 amendments thereto, shall be filed by the ceding company with the
 44 Commissioner within 30 days after its date of execution. Each filing

1 shall include data detailing the final impact of the transaction. The
2 ceding insurer's actuary who signs the financial statement actuarial
3 opinion with respect to valuation of reserves shall consider this
4 statute and any applicable actuarial standards of practice when
5 determining the proper credit in financial statements filed with the
6 Commissioner. The actuary should maintain adequate
7 documentation and be prepared upon request to describe the
8 actuarial work performed for inclusion in the financial statements
9 and to demonstrate that such work conforms to this statute.

10 (2) Any increase in surplus net of federal income tax resulting from
11 arrangements described in subdivision (d)(1) of this section shall be
12 identified separately on the insurer's statutory financial statement as a
13 surplus item (aggregate write-ins for gains and losses in surplus in the
14 Capital and Surplus Account, page 4 of the Annual Statement) and
15 recognition of the surplus increase as income shall be reflected on a
16 net of tax basis in the 'Reinsurance Ceded' line, page 4 of the Annual
17 Statement as earnings emerge from the business reinsured.

18 (e) No reinsurance agreement or amendment to any reinsurance agreement may
19 be used to reduce any liability or to establish any asset in any financial statement filed
20 with the Commissioner, unless the reinsurance agreement, amendment, or a binding
21 letter of intent has been duly executed by both parties no later than the 'as of date' of the
22 financial statement.

23 (f) In the case of a letter of intent, a reinsurance agreement, or an amendment to
24 a reinsurance agreement must be executed within a reasonable period of time, not
25 exceeding 90 days after the execution date of the letter of intent, in order for credit to be
26 granted for the reinsurance ceded.

27 (g) The reinsurance agreement shall contain provisions that provide that:

28 (1) The reinsurance agreement shall constitute the entire reinsurance
29 agreement between the parties with respect to the business being
30 reinsured thereunder and that there are no understandings between the
31 parties other than as expressed in the reinsurance agreement; and

32 (2) Any change or modification to the reinsurance agreement shall be null
33 and void unless made by amendment to the reinsurance agreement and
34 signed by both parties.

35 (h) Insurers subject to this section shall reduce to zero by December 31, 1994,
36 any reserve credits or assets established with respect to reinsurance agreements entered
37 into prior to the effective date of this statute that, under the provisions of this section,
38 would not be entitled to recognition of such reserve credits or assets; provided,
39 however, that such reinsurance agreements shall have been in compliance with laws or
40 regulations in existence immediately preceding October 1, 1993."

41 Sec. 5. G.S. 58-7-50 reads as rewritten:

42 "**§ 58-7-50. Maintenance and removal of records and assets.**

43 (a) Every domestic insurer ~~that has~~ shall maintain its home or principal office in
44 a ~~location outside this State shall nevertheless maintain an office or offices in this State~~

1 and keep therein for such period as the Commissioner may by regulation require
2 complete records of its assets, transactions, and affairs, specifically including:

- 3 (1) Financial records;
- 4 (2) Corporate records;
- 5 (3) Reinsurance ~~document;~~ documents;
- 6 (4) ~~Access to all~~ All accounting transactions and access in this State, upon
7 ~~demand by the Commissioner, to all original accounting documents;~~
8 transactions;
- 9 (5) Claim files; and
- 10 (6) Payment of claims, in accordance with such methods and systems as
11 are customary or suitable as to the kind or kinds of insurance
12 transacted.

13 (b) Every domestic insurer ~~that has its home or principal office in a location outside~~
14 ~~this State~~ shall have and maintain its assets in this State, except as to:

- 15 (1) Real property and personal property appurtenant thereto lawfully
16 owned by the insurer and located outside this State; and
- 17 (2) Such property of the insurer as may be customary, necessary, and
18 convenient to enable and facilitate the operation of its branch offices,
19 regional home offices, and operations offices, located outside this State
20 as referred to in G.S. 58-7-55.

21 (c) The removal from this State of all or a ~~material~~ part of the records or assets of
22 a domestic insurer ~~that has its home or principal office outside this State~~ except pursuant to
23 a plan of merger or consolidation approved by the Commissioner ~~under~~ or for such
24 reasonable purposes and periods of time as may be approved by the Commissioner in
25 writing in advance of such removal, or concealment of such records or assets or ~~material~~
26 part thereof from the Commissioner is prohibited. Any person who, without the prior
27 approval of the Commissioner, removes or attempts to remove such records or assets or
28 ~~such material~~ part thereof from the office or offices in which they are required to be kept
29 and maintained under subsection (a) of this section or who conceals or attempts to
30 conceal such records from the Commissioner, in violation of this subsection, shall be
31 guilty of a Class J felony. Upon any removal or attempted removal of such records or
32 assets or upon retention of such records or assets or ~~material~~ part thereof outside this
33 State, beyond the period therefor specified in the consent of the Commissioner under
34 which consent the records were so removed thereat, or upon concealment of or attempt
35 to conceal records or assets in violation of this section, the Commissioner may institute
36 delinquency proceedings against the insurer pursuant to the provisions of Article 30 of
37 this Chapter.

38 (d) Every domestic insurer that has its home or principal office in a location
39 outside this State on October 1, 1993, shall petition the Commissioner for approval to
40 continue to operate in that manner. The Commissioner, in determining whether to
41 approve or disapprove the petition, shall consider the exceptions of G.S. 58-7-55, as
42 well as any other factors that might affect the Commissioner's ability to regulate the
43 insurer, or that might affect the insurer's ability to service or protect its policyholders."

44 Sec. 6. G.S. 58-7-115 reads as rewritten:

1 **"§ 58-7-115. Increase of capital stock.**

2 Any company organized under the provisions of Articles 1 through 64 of this
3 Chapter may issue pro rata to its stockholders certificates of any portion of its ~~actual net~~
4 surplus ~~over and above the minimum required by law it deems fit to divide,~~ which shall be
5 considered an increase of its capital to the amount of such certificates. As used in this
6 section, 'surplus' means earned surplus; provided, however, issuance of certificates out
7 of paid-in and contributed surplus will be permitted on a case-by-case basis, with the
8 prior approval of the Commissioner. The issuance of those certificates shall not lower
9 the total surplus of the insurer to an amount less than that required to be maintained by
10 G.S. 58-7-75. The company may, at a meeting called for the purpose, vote to increase
11 the amount and number of shares of its capital stock, and to issue certificates therefor
12 when paid for in full. In whichever method the increase is made, the company shall,
13 within 30 days after the issue of such certificates, submit to the Commissioner a
14 certificate setting forth the amount of the increase and the facts of the transaction,
15 signed and sworn to by its president and secretary and a majority of its directors. If the
16 Commissioner finds that the facts conform to the law, he shall endorse his approval
17 thereof; and upon filing such certificate so endorsed with the Secretary of State, and the
18 payment of a fee of five dollars (\$5.00) for filing the same, the company may transact
19 business upon the capital as increased, and the Commissioner shall issue his certificate
20 to that effect."

21 Sec. 7. G.S. 58-7-150(a) reads as rewritten:

22 "(a) ~~Subject to the provisions of G.S. 58-10-1 and 58-10-5, relating to the~~
23 ~~mutualization of stock insurers, a~~ A domestic insurer may ~~merge or consolidate~~ with
24 another insurer, subject to the following conditions:

- 25 (1) The plan of ~~merger or consolidation~~ must be submitted to and be
26 approved by the Commissioner in advance of the ~~merger or~~
27 consolidation.
- 28 (2) The Commissioner shall not approve any such plan unless, after a
29 hearing, he finds that it is fair, equitable to policyholders, consistent
30 with law, and will not conflict with the public interest. If the
31 Commissioner fails to approve the plan, he shall state his reasons for
32 such failure in his order made on such hearing.
- 33 (3) No director, officer, member or subscriber of any such insurer, except
34 as is expressly provided by the plan of ~~merger or consolidation~~, shall
35 receive any fee, commission, other compensation or valuable
36 consideration whatever, for in any manner aiding, promoting or
37 assisting in the ~~merger or consolidation~~.
- 38 (4) Any ~~merger or consolidation~~ as to an incorporated domestic insurer
39 shall in other respects be governed by the general laws of this State
40 relating to business corporations, except that the ~~merger or~~
41 consolidation of a domestic mutual insurer may be effected by vote of
42 two thirds of the members voting thereon pursuant to such notice and
43 procedure as the Commissioner may prescribe."

44 Sec. 8. G.S. 58-7-162 reads as rewritten:

1 **"§ 58-7-162. Allowable or admitted assets.**

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

- 4 (1) Cash in the possession of the insurer, or in transit under its control, and
5 including the true balance of any deposit in a solvent United States
6 bank, savings and loan association, or trust company, and the balance
7 of any such deposit in an insolvent United States bank, savings and
8 loan association, or trust company, to the extent insured by a federal
9 agency.
- 10 (2) Investments, securities, properties, and loans acquired or held in
11 accordance with this Chapter, and in connection therewith the
12 following items:
- 13 a. Interest due or accrued on any bond or evidence of indebtedness
14 that is not in default.
- 15 b. Declared and unpaid dividends on stock and shares, unless that
16 amount has otherwise been allowed as an asset.
- 17 c. Interest due or accrued upon a collateral loan in an amount not
18 to exceed one year's interest thereon.
- 19 d. Interest due or accrued on deposits in solvent banks, savings
20 and loan associations, and trust companies, and interest due or
21 accrued on other assets, if the interest is, in the Commissioner's
22 judgment, a collectible asset.
- 23 e. Interest due or accrued on a current mortgage loan, in an
24 amount not exceeding in any event the amount, if any, of the
25 excess of the value of the property less delinquent taxes thereon
26 over the unpaid principal; but in no event shall interest accrued
27 for a period in excess of 90 days be allowed as an asset.
- 28 f. Rent due or accrued on real property if the rent is not in arrears
29 for more than three months, and rent more than three months in
30 arrears if the payment of the rent is adequately secured by
31 property held in the tenant's name and conveyed to the insurer
32 as collateral and the underlying collateral is admissible under
33 this Chapter.
- 34 g. The unaccrued portion of taxes paid before the due date on real
35 property.
- 36 (3) Premium notes, policy loans, and other policy assets and liens on
37 policies and certificates of life insurance and annuity contracts and
38 accrued interest thereon, in an amount not exceeding the legal reserve
39 and other policy liabilities carried on each individual policy.
- 40 (4) The net amount of uncollected and deferred premiums and annuity
41 considerations in the case of a life insurer.
- 42 (5) Premiums in the course of collection, other than for nonsingle
43 premium life insurance, not more than 90 days past due, less
44 commissions payable thereon, except for premiums payable directly or

1 indirectly by the United States government or by any of its
2 instrumentalities.

3 (6) All premiums not more than 90 days past due, excluding commissions
4 payable thereon, due from any person that solely or in combination
5 with the person's affiliates owes the insurer an amount that exceeds
6 five percent (5%) of the insurer's total premiums in course of
7 collection, but only if:

8 a. The premiums collected by the person or affiliates and not
9 remitted to the insurer are held in a trust account with a bank or
10 other depository approved by the Commissioner. The funds
11 shall be held as trust funds and may not be commingled with
12 any other funds of the person or affiliates. Disbursements from
13 the trust account may be made only to the insurer, the insured,
14 or, for the purpose of returning premiums, a person that is
15 entitled to returned premiums on behalf of the insured. A
16 written copy of the trust agreement shall be filed with and
17 approved by the Commissioner before becoming effective. The
18 Commissioner shall disapprove any trust agreement filed under
19 this sub-subdivision that does not assure the safety of the
20 premiums collected. The investment income derived from the
21 trust may be allocated as the parties consider to be proper. The
22 person or affiliates shall deposit premiums collected into the
23 trust account within 15 business days after collection; or

24 b. The person or affiliates shall provide to the insurer, and the
25 insurer shall maintain in its possession, an unexpired, clean,
26 irrevocable letter of credit, payable to the insurer, issued for a
27 term of no less than one year and in conformity with the
28 requirements set forth in this sub-subdivision, the amount of
29 which equals or exceeds the liability of the person or affiliates
30 to the insurer, at all times during the period that the letter of
31 credit is in effect, for premiums collected by the person or
32 affiliates. The letter of credit shall be issued under
33 arrangements satisfactory to the Commissioner and the letter
34 shall be issued by a banking institution that is a member of the
35 Federal Reserve System and that has a financial standing
36 satisfactory to the Commissioner; or

37 c. The person or affiliates shall provide to the insurer, and the
38 insurer shall maintain in its possession, evidence that the person
39 or affiliates have purchased and have currently in effect a
40 financial guaranty bond, payable to the insurer, issued for a
41 term of not less than one year and that is in conformity with the
42 requirements set forth in this sub-subdivision, the amount of
43 which equals or exceeds the liability of the person or affiliates
44 to the insurer, at all times during which the financial guaranty

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

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

- 15 (7) Installment premiums other than life insurance premiums to the extent
16 of the unearned premium reserve carried on the policy to which the
17 premiums apply.
- 18 (8) Notes and like written obligations not past due, taken for premiums
19 other than life insurance premiums, on policies permitted to be issued
20 on that basis, to the extent of the unearned premium reserves carried
21 thereon.
- 22 (9) The full amount of reinsurance which is recoverable by a ceding
23 insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.
- 24 (10) Amounts receivable by an assuming insurer representing funds
25 withheld by a solvent ceding insurer under a reinsurance treaty.
- 26 (11) Deposits or equities recoverable from underwriting associations,
27 syndicates, and reinsurance funds, or from any suspended banking
28 institution, to the extent considered by the Commissioner to be
29 available for the payment of losses and claims and at values to be
30 determined by the Commissioner.
- 31 (12) Electronic and mechanical machines, including operating and system
32 software constituting a management information system, if the cost of
33 the system is at least twenty-five thousand dollars (\$25,000) but not
34 more than two percent (2%) of total admitted assets; the cost shall be
35 amortized in full over a period not to exceed seven calendar years.
- 36 (13) Other assets, not inconsistent with the provisions of this section,
37 considered by the Commissioner to be available for the payment of
38 losses and claims, at values to be determined by the Commissioner."

39 Sec. 9. G.S. 58-7-163 reads as rewritten:

40 "**§ 58-7-163. Assets not allowed.**

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

- 44 (1) Goodwill, trade names, and other like intangible assets.

- 1 (2) Advances (other than policy loans) to officers, directors, and
2 controlling stockholders, whether secured or not, and advances to
3 employees, agents, and other persons on personal security only.
- 4 (3) Stock of the insurer or any material equity therein or loans secured
5 thereby, or any material proportionate interest in the stock acquired or
6 held through the ownership by the insurer of an interest in another
7 firm, corporation, or business unit.
- 8 (4) Furniture, fixtures, other equipment, safes, vehicles, libraries,
9 stationery, literature, and supplies, other than data processing and
10 accounting systems authorized under G.S. 58-7-162(12), except in the
11 case of title insurers the materials and plants which G.S. 58-7-182
12 expressly authorizes the insurer to invest in, and except, in the case of
13 any insurer, any personal property that the insurer is permitted to hold
14 under this Chapter, or that is acquired through foreclosure of chattel
15 mortgages acquired under G.S. 58-7-180, or that is reasonably
16 necessary for the maintenance and operation of real estate that the
17 insurer uses for a home office, branch office, and similar purposes.
- 18 (5) The amount, if any, by which the aggregate book value of investments
19 as carried in the ledger assets of the insurer exceeds the aggregate
20 value of the investments as determined under this Chapter.
- 21 (6) Bonds, notes, or other evidences of indebtedness that are secured by
22 mortgages or deeds of trust that are in default, to the extent of the cost
23 of carrying value that is in excess of the value as determined pursuant
24 to other provisions of this Chapter.
- 25 (7) Prepaid and deferred expenses.
- 26 (8) Certificates of contribution or other similar evidences of indebtedness.
- 27 (9) Any asset that is encumbered in any manner unless the asset is
28 authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

29 Sec. 10. G.S. 58-7-170(c) reads as rewritten:

30 "(c) The cost of investments made by insurers in ~~a mortgage loan~~ loans, authorized
31 by ~~G.S. 58-7-179~~ G.S. 58-7-179, with any one person shall not exceed the lesser of five
32 percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital
33 and surplus. An insurer shall not invest in additional mortgage loans with that person
34 without the Commissioner's consent if the admitted value of all mortgage loans held by
35 the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the
36 insurer, if (i) the admitted value of all mortgage pass-through securities permitted by
37 G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of
38 the insurer and (ii) the admitted value of other mortgage loans permitted by G.S. 58-7-
39 179 does not exceed forty percent (40%) of the admitted assets of the insurer.

40 An insurer that, as of October 1, 1991, has mortgage investments with any one
41 person that exceed the aggregate limitation specified in this subsection shall submit to
42 the Commissioner no later than January 31, 1992, a plan to bring the amount of
43 mortgage investments with that person into compliance with the limitations by January
44 1, 2001."

1 Sec. 11. G.S. 58-7-170(d) reads as rewritten:

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

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

23 Sec. 12. G.S. 58-7-170(e) reads as rewritten:

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

30 Sec. 13. G.S. 58-7-170(j) reads as rewritten:

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

35 Sec. 14. G.S. 58-7-173 reads as rewritten:

36 "**§ 58-7-173. Permitted insurer investments.**

37 An insurer may invest in:

- 38 (1) Bonds, notes, warrants, and other evidences of indebtedness that are
39 direct obligations of the U.S. Government or for which the full faith
40 and credit of the U.S. Government is pledged for the payment of
41 principal and interest.
42 (2) Loans insured or guaranteed as to principal and interest by the U.S.
43 Government or by any agency or instrumentality of the U.S.
44 Government to the extent of the insurance or guaranty.

- 1 (3) Student loans insured or guaranteed as to principal by the U.S.
2 Government or by any agency or instrumentality of the U.S.
3 Government to the extent of the insurance or guaranty.
- 4 (4) Bonds, notes, warrants, and other securities not in default that are the
5 direct obligations of any state or United States territory or the
6 government of Canada or any Canadian province, or for which the full
7 faith and credit of such state, government, or province has been
8 pledged for the payment of principal and interest.
- 9 (5) Bonds, notes, warrants, and other securities not in default of any
10 county, district, incorporated city, or school district in any state of the
11 United States, or the District of Columbia, or in any Canadian
12 province, that are the direct obligations of the county, district, city, or
13 school district and for payment of the principal and interest of which
14 the county, district, city, or school district has lawful authority to levy
15 taxes or make assessments.
- 16 (6) Bonds, notes, certificates of indebtedness, warranties, or other
17 evidences of indebtedness that are payable from revenues or earnings
18 specifically pledged therefor of any public toll bridge, structure, or
19 improvement owned by any state, incorporated city, or legally
20 constituted public corporation or commission, all within the United
21 States or Canada, for the payment of the principal and interest of
22 which a lawful sinking fund has been established and is being
23 maintained and if no default by the issuer in payment of principal or
24 interest has occurred on any of its bonds, notes, warrants, or other
25 securities within five years prior to the date of investment therein.
- 26 (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences
27 of indebtedness that are valid obligations issued, assumed, or
28 guaranteed by the United States, any state, any county, city, district,
29 political subdivision, civil division, or public instrumentality of any
30 such government or unit thereof, or in any province of Canada; if by
31 statute or other legal requirements the obligations are payable as to
32 both principal and interest from revenues or earnings from the whole
33 or any part of any utility supplying water, gas, a sewage disposal
34 facility, electricity, or any other public service, including but not
35 limited to a toll road or toll bridge.
- 36 (8) Bonds, debentures, or other securities of the following agencies,
37 whether or not those obligations are guaranteed by the U.S.
38 Government:
- 39 a. The Federal National Mortgage Association, and stock thereof
40 when acquired in connection with the sale of mortgage loans to
41 the Association.
- 42 b. Any federal land bank, when the securities are issued under the
43 Farm Loan Act;

- 1 c. Any federal home loan bank, when the securities are issued
2 under the Home Loan Bank Act;
- 3 d. The Home Owners' Loan Corporation, created by the Home
4 Owners' Loan Act of 1933;
- 5 e. Any federal intermediate credit bank, created by the
6 Agricultural Credits Act;
- 7 f. The Central Bank for Cooperatives and regional banks for
8 cooperatives organized under the Farm Credit Act of 1933, or
9 by any of such banks; and any notes, bonds, debentures, or
10 other similar obligations, consolidated or otherwise, issued by
11 farm credit institutions under the Farm Credit Act of 1971;
- 12 g. Any other similar agency of the U.S. Government that is of
13 similar financial quality.
- 14 (9) Bonds, debentures, or other securities of public housing authorities,
15 issued under the Housing Act, of 1949, the Municipal Housing
16 Commission Act, or the Rural Housing Commission Act, or issued by
17 any public housing authority or agency in the United States, if the
18 bonds, debentures, or other securities are secured by a pledge of annual
19 contributions to be paid by the United States or any United States
20 agency; and the cost of investments made under this subdivision shall
21 not exceed the lesser of three percent (3%) of the insurer's admitted
22 assets or ten percent (10%) of the insurer's capital and surplus.
- 23 (10) Obligations issued, assumed, or guaranteed by the International Bank
24 for Reconstruction and Development, the Inter-American
25 Development Bank, the Asian Development Bank, or the African
26 Development Bank; and the cost of investments made under this
27 subdivision shall not exceed the lesser of three percent (3%) of the
28 insurer admitted assets or ten percent (10%) of the insurer's capital and
29 surplus.
- 30 (11) Bonds, notes, or other interest-bearing or interest-accruing obligations
31 of any solvent institution organized under the laws of the United
32 States, of any state, Canada or any Canadian province; provided such
33 instruments are rated and ~~approved~~ valued by the Securities Valuation
34 Office of the NAIC. The cost of investments made under this
35 subdivision in issuers from any one industry shall not exceed ten
36 percent (10%) of an insurer's admitted assets, and the cost of
37 investments made in any one issuer shall not exceed three percent
38 (3%) of an insurer's admitted assets or ten percent (10%) of an
39 insurer's capital and surplus, whichever is greater. As used in this
40 subdivision, 'industry' means a distinct and recognized area of
41 economic activity that consists of the production, manufacture, or
42 distribution of common goods, products, commodities, or services.
- 43 (12) Secured obligations of duly constituted churches and of church-
44 holding companies; and the cost of investments made under this

- 1 subdivision shall not exceed the lesser of one percent (1%) of the
2 insurer's admitted assets or five percent (5%) of the insurer's capital
3 and surplus.
- 4 (13) Equipment trust obligations or certificates adequately secured and
5 evidencing an interest in transportation equipment, wholly or in part
6 within the United States, and the right to receive determined portions
7 of rental, purchase, or other fixed obligatory payments for the use or
8 purchase of that transportation equipment; and the cost of investments
9 made under this subdivision shall not exceed twenty percent (20%) of
10 the insurer's admitted assets.
- 11 (14) Share or savings accounts of savings and loan associations or building
12 and loan associations; and the cost of investments made under this
13 subdivision shall not exceed the lesser of three percent (3%) of the
14 insurer's admitted assets or five percent (5%) of the insurer's capital
15 and surplus.
- 16 (15) Loans with a maturity not in excess of 12 years from the date thereof
17 that are secured by the pledge of securities eligible for investment
18 under this Chapter or by the pledge or assignment of life insurance
19 policies issued by other insurers authorized to transact insurance in this
20 State. On the date made, no such loan shall exceed in amount seventy-
21 five percent (75%) of the market value of the collateral pledged,
22 except that loans upon the pledge of U.S. Government bonds and loans
23 upon the pledge or assignment of life insurance policies shall not
24 exceed ninety-five percent (95%) of the market value of the bonds or
25 the cash surrender value of the policies pledged. The market value of
26 the collateral pledge shall at all times during the continuance of the
27 loans meet or exceed the minimum percentages herein. Loans made
28 under this section shall not be renewable beyond a period of 12 years
29 from the date of the loan.
- 30 (16) Stocks, common or preferred, of any corporation created or existing
31 under the laws of the United States, any U.S. territory, Canada or any
32 Canadian province, or of any state. An insurer may invest in stocks,
33 common or preferred, of any corporation created or existing under the
34 laws of any foreign country other than Canada if the stocks are listed
35 and traded on a national securities exchange in the United States or if
36 the investment in stocks of any corporation created or existing under
37 the laws of any foreign country are first approved by the
38 Commissioner. Nothing in this section applies to qualifying
39 investments made by an insurer in a foreign country under authority of
40 G.S. 58-7-178.
- 41 (17) Mortgage pass-through securities and derivatives thereof, that have
42 been rated as investment grade by the Securities Valuation Office of
43 the NAIC and considered by the Federal Financial Institutions
44 Examination Council or its successor to be nonhigh risk mortgage

1 securities, including, without limitation, collateral mortgage
 2 obligations backed by a pool of mortgages of the kind, class, and
 3 investment quality as those eligible for investment under G.S. 58-7-
 4 179, but not including investments permitted under G.S. 58-7-173(2), (8), or
 5 (11), 58-7-179."

6 Sec. 14.1. G.S. 58-7-183 reads as rewritten:

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

8 (a) After ~~satisfying~~ satisfying the requirements of this Chapter, any funds of an
 9 insurer in excess of its reserves and policyholders' surplus required to be maintained
 10 may be 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%)~~ sixty percent (60%) of the amount by
 18 which the insurer's policyholders' surplus exceeds the minimum
 19 required to be 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 Sec. 15. The catch line of G.S. 58-7-192 reads as rewritten:

28 **"§ 58-7-192. Valuation of ~~other securities and investments.~~"**

29 Sec. 16. G.S. 58-7-192 is amended by adding a new subsection to read:

30 "(e) All bonds or fully secured indebtedness having a stated term and a rate of
 31 interest that are held by an insurer shall be valued in accordance with the procedures
 32 and instructions contained in the NAIC publication entitled 'Valuations of Securities',
 33 unless the Commissioner determines that a more conservative valuation is appropriate."

34 Sec. 17. G.S. 58-8-20 reads as rewritten:

35 **"§ 58-8-20. Mutual companies with a guaranty capital.**

36 (a) A mutual insurance company formed as provided in Articles 1 through 64 of
 37 this Chapter, in lieu of the contributed surplus required for the organization of mutual
 38 companies under the provisions of G.S. 58-7-75, or a mutual insurance company now
 39 existing, ~~may~~ may, with the prior approval of the Commissioner, establish a guaranty
 40 capital ~~or surplus~~ of not less than ~~twenty five thousand dollars (\$25,000),~~ fifty thousand
 41 dollars (\$50,000), divided into shares of one hundred dollars (\$100.00) each, which
 42 shall be invested in the same manner as is provided in this Chapter for the investment of
 43 the capital stock of insurance companies.

1 (b) The board of directors of a company may declare and pay dividends to the
2 stockholders of the guaranty capital of a company or owners of guaranty surplus if the
3 net profits or unused premiums left after all expenses, losses, and liabilities then
4 incurred, together with the reserve as provided for, are sufficient to pay the same,
5 company, subject to the notification requirements of G.S. 58-19-25(d) and the prior
6 approval requirements of G.S. 58-19-30(c).

7 (c) The guaranty capital or surplus shall be applied to the payment of losses only
8 when the company has exhausted its cash in hand and the invested assets, exclusive of
9 uncollected premiums, and when thus impaired, the directors may make good the whole
10 or any part of it by assessments upon the contingent funds of the company at the date of
11 such impairment. In the event of a merger, demutualization, or other event where the
12 entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate
13 holders to the extent that the guaranty capital had been contributed together with
14 accrued income as specified in the certificate. Any amounts in excess shall be for the
15 benefit of the policyholders.

16 (d) Shareholders and members of such companies are subject to the same
17 provisions of law in respect to their right to vote as apply respectively to shareholders in
18 stock companies and policyholders in purely mutual companies.

19 (e) This guaranty capital or surplus may be reduced or retired by vote of the
20 policyholders of the company and the assent of the ~~Commissioner of Insurance,~~
21 Commissioner, if the net assets of the company above its reserve and all other claims
22 and obligations, exclusive of guaranty ~~capital or surplus,~~ capital, for two years
23 immediately preceding and including the date of its last annual statement, is not less
24 than twenty-five ~~per centum~~ percent (25%) of the guaranty ~~capital or surplus,~~ capital. Due
25 notice of such proposed action on the part of the company must be mailed to each
26 policyholder of the company not less than 30 days before the meeting when the action
27 may be taken, and must also be advertised in two papers of general circulation,
28 approved by the ~~Commissioner of Insurance,~~ Commissioner, not less than three times a
29 week for a period of not less than four weeks before such meeting. No insurance
30 company with a guaranty capital or surplus, which has ceased to do new business, shall
31 divide to its stockholders any part of its assets or guaranty ~~capital or surplus,~~ capital,
32 except income from investments, until it has performed or canceled its policy
33 obligations. In the event of a merger, demutualization, or other event where the entity
34 ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders
35 to the extent that the guaranty capital had been contributed together with accrued
36 income as specified in the certificate. Any amounts in excess shall be for the benefit of
37 the policyholders."

38 Sec. 18. The catch line of Article 9 of Chapter 58 of the General Statutes
39 reads as rewritten:

40 "ARTICLE 9.

41 "~~EXCHANGE OF STOCK.~~ REINSURANCE INTERMEDIARIES."

42 Sec. 19. Article 9 of Chapter 58 of the General Statutes is amended by
43 adding a new section to read:

44 "§ 58-9-2. Reinsurance intermediaries.

1 (a) As used in this Article:

2 (1) 'Actuary' means a person who meets the standards of a qualified
3 actuary, as specified in the NAIC Annual Statement Instructions, as
4 amended or clarified by rule or order of the Commissioner, for the type
5 of insurer for which an intermediary is establishing loss reserves.

6 (2) 'Broker' means any person, other than an officer or employee of a
7 ceding insurer, who solicits, negotiates, or places reinsurance cessions
8 or retrocessions on behalf of a ceding insurer without the authority or
9 power to bind reinsurance on behalf of the ceding insurer.

10 (3) 'Commissioner' includes the Commissioner's authorized deputies and
11 employees.

12 (4) 'Controlling person' means any person who directly or indirectly has
13 the power to direct or cause to be directed the management, control, or
14 activities of an intermediary.

15 (5) 'Intermediary' means any person who acts as a broker, as defined in
16 G.S. 58-33-10(c), in soliciting, negotiating, or procuring the making of
17 any reinsurance contract or binder on behalf of a ceding insurer; or
18 acts as a broker, as defined in G.S. 58-33-10(c), in accepting any
19 reinsurance contract on behalf of an assuming insurer. 'Intermediary'
20 includes a broker or a manager, as those terms are defined in this
21 section.

22 (6) 'Manager' means any person who has authority to bind or manages all
23 or part of the assumed reinsurance business of a reinsurer (including
24 the management of a separate division, department, or underwriting
25 office) and acts as an agent for the reinsurer. The following persons
26 are not managers, with respect to a reinsurer:

27 a. An employee of a reinsurer;

28 b. A United States manager of the United States branch of an alien
29 reinsurer;

30 c. An underwriting manager who, pursuant to contract, manages
31 all the reinsurance operating of a reinsurer, is under common
32 control with the reinsurer under Article 19 of this Chapter, and
33 whose compensation is not based on the volume of premiums
34 written;

35 d. The manager of a group, association, pool, or organization of
36 insurers that engages in joint underwriting or joint reinsurance
37 and that is subject to examination by the insurance regulator of
38 the state in which the manager's principal business office is
39 located.

40 (7) 'Producer' means an insurance agent or insurance broker licensed
41 under Article 33 of this Chapter or an intermediary licensed under this
42 Article.

43 (8) 'Qualified United States financial institution' means a bank that:

- 1 a. Is organized, or in the case of a United States office of a foreign
2 banking organization is licensed, under the laws of the United
3 States or any state;
4 b. Is regulated, supervised, and examined by federal or state
5 authorities having regulatory authority over banks and trust
6 companies; and
7 c. Has been determined by the Securities Valuation Office of the
8 NAIC to meet its standards of financial condition and standing
9 in order to issue letters of credit.

10 (9) 'Reinsurer' means any licensed insurer that is authorized to assume
11 reinsurance.

12 (b) No person shall act as a broker in this State if the broker maintains an office
13 either directly, as a member or employee of a noncorporate entity, or as an officer,
14 director, or employee of a corporation:

15 (1) In this State, unless the broker is a producer in this State; or

16 (2) In another state, unless the broker is a producer in this State or another
17 state having a law or rule substantially similar to this Article or unless
18 the broker is licensed under this Article as a nonresident intermediary.

19 (c) No person shall act as a manager:

20 (1) For a reinsurer domiciled in this State, unless the manager is a
21 producer in this State;

22 (2) In this State, if the manager maintains an office directly, as a member
23 or employee of a noncorporate entity, or as an officer, director, or
24 employee of a corporation in this State, unless the manager is a
25 producer in this State;

26 (3) In another state for a foreign insurer, unless the manager is a producer
27 in this State or another state having a law or rule substantially similar
28 to this Article, or the manager is licensed in this State as a nonresident
29 intermediary.

30 (d) Every manager subject to subsection (c) of this section shall demonstrate to
31 the Commissioner that he has evidence of financial responsibility in the form of fidelity
32 bonds or liability insurance to cover the manager's contractual obligations. If any
33 manager cannot demonstrate this evidence, the Commissioner shall require the manager
34 to:

35 (1) Maintain a separate fidelity bond in favor of each reinsurer represented
36 in an amount that will cover those obligations and which bond is
37 issued by an authorized insurer; or

38 (2) Maintain an errors and omissions liability insurance policy in an
39 amount that will cover those obligations and which policy is issued by
40 a licensed insurer."

41 Sec. 20. Article 9 of Chapter 58 of the General Statutes is amended by
42 adding a new section to read:

43 "§ 58-9-6. Licensing.

1 (a) The Commissioner shall issue an intermediary license to any person who has
2 complied with the requirements of this Article. A license issued to a noncorporate
3 entity authorizes all of the members of the entity and any designated employees to act as
4 intermediaries under the license, and those persons shall be named in the application
5 and any supplements. A license issued to a corporation authorizes all of the officers and
6 any designated employees and directors of the corporation to act as intermediaries on
7 behalf of the corporation, and those persons shall be named in the application and any
8 supplements.

9 (b) If an applicant for an intermediary license is a nonresident, the applicant,
10 before receiving a license, shall designate the Commissioner as his agent for service of
11 legal process and shall furnish the Commissioner with the name and address of a
12 resident of this State upon whom notices or orders of the Commissioner or process
13 affecting the nonresident intermediary may be served. The licensee shall notify the
14 Commissioner in writing of every change in his designated agent for service of process
15 within five business days after the change, and the change shall not become effective
16 until acknowledged by the Commissioner.

17 (c) The Commissioner shall refuse to issue an intermediary license if:

- 18 (1) The applicant, anyone named on the application, or any member,
19 principal, officer, or director of the applicant is not trustworthy;
- 20 (2) Any controlling person of the applicant is not trustworthy to act as an
21 intermediary; or
- 22 (3) Any of the persons in subdivisions (1) and (2) of this subsection has
23 given cause for revocation or suspension of the license or has failed to
24 comply with any prerequisite for the issuance of the license.

25 Upon written request, the Commissioner shall furnish a summary of the basis for refusal
26 to issue a license.

27 (d) Attorneys-at-law licensed by this State are exempt from this section when
28 they are acting in their professional capacities."

29 Sec. 21. Article 9 of Chapter 58 of the General Statutes is amended by
30 adding a new section to read:

31 **"§ 58-9-11. Broker and insurer transactions.**

32 (a) Transactions between a broker and the insurer it represents as a broker shall
33 only be entered into pursuant to a written authorization, specifying the responsibilities
34 of each party. The authorization shall include provisions to the effect that:

- 35 (1) The insurer may terminate the broker's authority at any time.
- 36 (2) The broker will render accounts to the insurer that accurately detail all
37 material transactions, including information necessary to support all
38 commissions, charges, and other fees received by or owing to the
39 broker and will remit all funds due to the insurer within 30 days after
40 receipt by the broker.
- 41 (3) All funds collected for the insurer's account will be held by the broker
42 in a fiduciary capacity in a qualified United States financial institution.
- 43 (4) The broker will comply with this Article.

- 1 (5) The broker will comply with the written standards established by the
2 insurer for the cession or retrocession of all risks.
- 3 (6) The broker will disclose to the insurer any relationship with any
4 reinsurer to which business will be ceded or retroceded.
- 5 (7) The broker will annually provide the insurer with an audited statement
6 of the broker's financial condition, which statement will be prepared
7 by an independent certified public accountant.
- 8 (8) The insurer will have access and the right to copy and audit all
9 accounts and records maintained by the broker related to its business,
10 in a form usable by the insurer.
- 11 (9) For at least 10 years after the expiration of each contract of reinsurance
12 transacted by the broker, the broker will keep a complete record for
13 each transaction showing:
- 14 a. The type of contract, limits, underwriting restrictions, classes or
15 risks, and territory;
- 16 b. Period of coverage, including effective and expiration dates,
17 cancellation provisions, and notice required of cancellation;
- 18 c. Reporting and settlement requirements of balances;
- 19 d. Rate or rates used to compute the reinsurance premium;
- 20 e. Names and addresses of assuming reinsurers;
- 21 f. Rates of all reinsurance commissions, including the
22 commissions on any retrocession handled by the broker;
- 23 g. Related correspondence and memoranda;
- 24 h. Proof of placement;
- 25 i. Details regarding retrocessions handled by the broker, including
26 the identity of retrocessionaires and percentage of each contract
27 assumed or ceded;
- 28 j. Financial records, including premium and loss accounts; and
- 29 k. When the broker procures a reinsurance contract on behalf of a
30 licensed ceding insurer:
- 31 1. Directly from any assuming reinsurer, written evidence
32 that the assuming reinsurer has agreed to assume the
33 risk; or
- 34 2. If placed through a representative of the assuming
35 reinsurer, other than an employee, written evidence that
36 the reinsurer has delegated binding authority to the
37 representative.

38 (b) An insurer shall not engage the services of any person to act as a broker on its
39 behalf unless the person is licensed under G.S. 58-9-6. An insurer shall not employ an
40 individual who is employed by a broker with which it transacts business, unless the
41 broker is under common control with the insurer under Article 19 of this Chapter."

42 Sec. 22. Article 9 of Chapter 58 of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 58-9-16. Manager and reinsurer transactions.**

1 (a) Transactions between a manager and the reinsurer it represents as a manager
2 shall only be entered into pursuant to a written contract, specifying the responsibilities
3 of each party, which shall be approved by the reinsurer's board of directors. At least 30
4 days before the reinsurer assumes or cedes business through the manager, a certified
5 copy of the approved contract shall be filed with the Commissioner for approval. The
6 contract shall include provisions to the effect that:

7 (1) The reinsurer may terminate the contract for cause upon written notice
8 to the manager. The reinsurer may immediately suspend the authority
9 of the manager to assume or cede business during the pendency of any
10 dispute regarding the cause for termination.

11 (2) The manager will render accounts to the reinsurer accurately detailing
12 all material transactions, including information necessary to support all
13 commissions, charges, and other fees received by or owing to the
14 manager and will remit all funds due under the contract to the reinsurer
15 at least once every month.

16 (3) All funds collected for the reinsurer's account will be held by the
17 manager in a fiduciary capacity in a qualified United States financial
18 institution. The manager may retain no more than three months'
19 estimated claims payments and allocated loss adjustment expenses.
20 The manager shall maintain a separate bank account for each reinsurer
21 that it represents.

22 (4) For at least 10 years after the expiration of each contract of reinsurance
23 transacted by the manager, the manager will keep a complete record
24 for each transaction showing:

25 a. The type of contract, limits, underwriting restrictions, classes or
26 risks, and territory;

27 b. Period of coverage, including effective and expiration dates,
28 cancellation provisions and notice required of cancellation, and
29 disposition of outstanding reserves on covered risk;

30 c. Reporting and settlement requirements of balances;

31 d. Rate used to compute the reinsurance premium;

32 e. Names and addresses of reinsurers;

33 f. Rates of all reinsurance commissions, including the
34 commissions on any retrocessions handled by the manager;

35 g. Related correspondence and memoranda;

36 h. Proof of placement;

37 i. Details regarding retrocessions handled by the manager, as
38 permitted by G.S. 58-9-21, including the identity of
39 retrocessionaires and percentage of each contract assumed or
40 ceded;

41 j. Financial records, including, but not limited to, premium and
42 loss accounts; and

43 k. When the manager places a reinsurance contract on behalf of a
44 ceding insurer;

- 1 1. Directly from any assuming reinsurer, written evidence
2 that the assuming reinsurer has agreed to assume the
3 risk; or
- 4 2. If placed through a representative of the assuming
5 reinsurer, other than an employee, written evidence that
6 the reinsurer has delegated binding authority to the
7 representative.
- 8 (5) The reinsurer will have access and the right to copy all accounts and
9 records maintained by the manager related to its business in a form
10 usable by the reinsurer.
- 11 (6) The contract cannot be assigned in whole or in part by the manager.
- 12 (7) The manager will comply with the written underwriting and rating
13 standards established by the insurer for the acceptance, rejection, or
14 cession of all risks.
- 15 (8) The rates, terms, and purposes of commissions, charges, and other fees
16 that the manager may levy against the reinsurer shall be set forth.
- 17 (9) If the contract permits the manager to settle claims on behalf of the
18 reinsurer:
 - 19 a. All claims will be reported to the reinsurer in a timely manner;
 - 20 b. A copy of the claim file will be sent to the reinsurer at its
21 request or as soon as it becomes known that the claim:
 - 22 1. Has the potential to exceed an amount set by the
23 reinsurer and approved by the Commissioner;
 - 24 2. Involves a coverage dispute;
 - 25 3. May exceed the manager's claims settlement authority;
 - 26 4. Is open for more than six months; or
 - 27 5. Is closed by payment of an amount set by the reinsurer
28 and approved by the Commissioner.
 - 29 c. All claim files will be the joint property of the reinsurer and
30 manager. However, upon an order of liquidation of the
31 reinsurer, the files shall become the sole property of the
32 reinsurer or its estate; the manager shall have reasonable access
33 to and the right to copy the files on a timely basis; and
 - 34 d. Any settlement authority granted to the manager may be
35 terminated for cause upon the reinsurer's written notice to the
36 manager or upon the termination of the contract. The reinsurer
37 may suspend the settlement authority during the pendency of
38 the dispute regarding the cause of termination.
- 39 (10) If the contract provides for a sharing of interim profits by the manager,
40 the interim profits will not be paid until one year after the end of each
41 underwriting period for property business and five years after the end
42 of each underwriting period for casualty business and not until the
43 adequacy of reserves on remaining claims has been verified pursuant
44 to G.S. 58-9-21.

- 1 (11) The manager will annually provide the reinsurer with an audited
2 statement of its financial condition prepared by an independent
3 certified public accountant.
- 4 (12) The reinsurer shall at least semiannually conduct an on-site review of
5 the underwriting and claims processing operations of the manager.
- 6 (13) The manager will disclose to the reinsurer any relationship it has with
7 any insurer before ceding or assuming any business with the insurer
8 pursuant to this contract.
- 9 (14) Within the scope of its actual or apparent authority, the acts of the
10 manager shall be deemed to be the acts of the reinsurer on whose
11 behalf it is acting.
- 12 (b) A manager shall not:
- 13 (1) Cede retrocessions on behalf of the reinsurer, except that the manager
14 may cede facultative retrocessions pursuant to obligatory facultative
15 agreements if the contract with the reinsurer contains reinsurance
16 underwriting guidelines for the retrocessions. The guidelines shall
17 include a list of reinsurers with which the automatic agreements are in
18 effect, and for each reinsurer, the coverages and amounts or
19 percentages that may be reinsured, and commission schedules.
- 20 (2) Commit the reinsurer to participate in reinsurance syndicates.
- 21 (3) Appoint any producer without assuring that the producer is duly
22 licensed to transact the type of reinsurance for which he is appointed.
- 23 (4) Without prior approval of the reinsurer, pay or commit the reinsurer to
24 pay a claim settlement with a retrocessionaire, without prior approval
25 of the reinsurer. If prior approval is given, a report must be promptly
26 forwarded to the reinsurer.
- 27 (5) Collect any payment from a retrocessionaire or commit the reinsurer to
28 any claim settlement with a retrocessionaire, without prior approval of
29 the reinsurer. If prior approval is given, a report must be promptly
30 forwarded to the reinsurer.
- 31 (6) Jointly employ an individual who is employed by the reinsurer unless
32 the manager is under common control with the reinsurer under Article
33 19 of this Chapter.
- 34 (7) Appoint a submanager."

35 Sec. 23. Article 9 of Chapter 58 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 58-9-21. Miscellaneous provisions.**

38 (a) A reinsurer shall not engage the services of any person to act as a manager on
39 its behalf unless the person is licensed under G.S. 58-9-6.

40 (b) If a manager establishes loss reserves, the reinsurer shall annually obtain the
41 opinion of an actuary attesting to the adequacy of loss reserves established for losses
42 incurred and outstanding on business produced by the manager. This opinion shall be in
43 addition to any other required loss reserve certification.

1 (c) Binding authority for all retrocessional contracts or participation in
2 reinsurance syndicates shall be given to an officer of the reinsurer who is not affiliated
3 with the manager.

4 (d) Within 30 days after termination of a contract with a manager, the reinsurer
5 shall provide written notification of the termination to the Commissioner.

6 (e) A reinsurer shall not appoint to its board of directors any officer, director,
7 employee, controlling person, or subproducer of its manager. This Article does not
8 apply to relationships governed by Article 19 of this Chapter or G.S. 58-3-165.

9 (f) An intermediary is subject to examination by the Commissioner. The
10 Commissioner shall have access to all books, bank accounts, and records of an
11 intermediary in a form usable to the Commissioner. A manager may be examined as if
12 it were the reinsurer."

13 Sec. 24. Article 9 of Chapter 58 of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 58-9-26. Sanctions.**

16 (a) If the Commissioner determines that any person has not materially complied with
17 this Article or with any rule adopted or order issued under this Article, after notice and
18 opportunity to be heard, the Commissioner may order:

19 (1) For each separate violation, a civil penalty under the procedures in
20 G.S. 58-2-70(d); or

21 (2) Revocation or suspension of the person's license.

22 If the Commissioner finds that because of a material noncompliance that an insurer
23 or reinsurer has suffered any loss or damage, the Commissioner may maintain a civil
24 action brought by or on behalf of the insurer or reinsurer and its policyholders and
25 creditors for recovery of compensatory damages for the benefit of the insurer or
26 reinsurer and its policyholders and creditors or for other appropriate relief.

27 (b) If an order of rehabilitation or liquidation of the insurer has been entered
28 under Article 30 of this Chapter, and the receiver appointed under that order determines
29 that any person has not materially complied with this Article, or any rule adopted or
30 order issued under this Article, and the insurer suffered any loss or damage from the
31 material noncompliance, the receiver may maintain a civil action for recovery of
32 damages or other appropriate sanctions for the benefit of the insurer."

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

34 **"§ 58-13-10. Scope.**

35 This Article applies to all domestic insurers and to all kinds of insurance written by
36 those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to
37 comply in substance with the requirements and limitations of this section. This Article
38 does not apply to variable contracts for which separate accounts are required to be
39 maintained nor to ~~county farm mutual companies.~~ statutory deposits that are required to
40 be maintained by insurance regulator agencies as a requirement for doing business in
41 such jurisdictions."

42 Sec. 26. G.S. 58-19-15(a) reads as rewritten:

43 "(a) No person other than the issuer shall make a tender offer for or a request or
44 invitation for tenders of, or enter into any agreement to exchange securities, or seek to

1 acquire, or acquire, in the open market or otherwise, any voting security of a domestic
2 insurer, if, after the consummation thereof, such person would, directly or indirectly (or
3 by conversion or by exercise of any right to acquire), be in control of such insurer, and
4 no person shall enter into an agreement to merge with or otherwise to acquire control of
5 a domestic insurer or any person controlling a domestic insurer unless, at the time any
6 such offer, request, or invitation is made, or any such agreement is entered into, or prior to the
7 acquisition of such securities, if no offer or agreement is involved, such person has filed with
8 the Commissioner and has simultaneously sent to such insurer, a statement containing the
9 information required by this section and such offer, request, invitation, agreement or
10 acquisition has been approved by the Commissioner in the manner hereinafter prescribed.
11 Provided, however, that the provisions of this paragraph do not apply to any acquisition or
12 proposed acquisition of a domestic insurer's voting securities acquired or sought to be acquired
13 that, when combined with all other voting securities of the domestic insurer acquired directly or
14 indirectly during the preceding 12 months by the person in control and all affiliates of the
15 person in control, do not exceed one percent (1%) of any class or series of the domestic
16 insurer's outstanding voting securities.

17 ~~Further, no person shall enter into an agreement to merge with or otherwise acquire~~
18 ~~control of a domestic insurer unless such agreement is conditioned upon the approval of~~
19 ~~the Commissioner pursuant to this section. No such merger or other acquisition of~~
20 ~~control shall be effective until a statement containing the information required by this~~
21 ~~section has been filed with the Commissioner and all other provisions of this section~~
22 ~~have been complied with and the merger or acquisition of control has been approved by~~
23 ~~the Commissioner pursuant to this section. unless such offer, request, invitation,~~
24 ~~agreement, or acquisition is conditioned upon the approval of the Commissioner~~
25 ~~pursuant to this section. No such merger or other acquisition of control shall be~~
26 ~~effective until a statement containing the information required by this section has been~~
27 ~~filed with the Commissioner and all other provisions of this section have been complied~~
28 ~~with and the merger or acquisition of control has been approved by the Commissioner~~
29 ~~pursuant to this section. The statement containing the information required by this~~
30 ~~section shall also be filed with the domestic insurer at the time it is filed with the~~
31 ~~Commissioner.~~

32 For the purposes of this section a 'domestic insurer' includes any person controlling a
33 domestic insurer. Further, for the purposes of this section, 'person' does not include any
34 securities broker holding, in the usual and customary broker's function, less than twenty
35 percent (20%) of the voting securities of an insurance company or of any person that
36 controls an insurance company."

37 Sec. 27. G.S. 58-19-15(b) reads as rewritten:

38 "(b) The statement to be filed with the Commissioner under subsection (a) of this
39 section shall be made under oath or affirmation and shall contain the following
40 information:

- 41 (1) The name and address of each person by whom or on whose behalf the
42 merger or other acquisition of control referred to in subsection (a) of
43 this section is to be effected (hereinafter called 'acquiring party'), and:
44 (i) if such person is an individual, his principal occupation and all
45 offices and positions held during the past five years, and any

1 conviction of crimes other than minor traffic violations during the past
2 10 years; (ii) if such person is not an individual, a report of the nature
3 of its business operations during the past five years or for such lesser
4 period as such person and any predecessors thereof shall have been in
5 existence; an informative description of the business intended to be
6 done by such person and such person's subsidiaries; and a list of all
7 individuals who are or who have been selected to become directors or
8 executive officers of such person, or who perform or will perform
9 functions appropriate to such positions. Such list shall include for
10 each such individual the information required by sub-subdivision (1)(i)
11 of this subsection.

12 (2) The source, nature, and amount of the consideration used or to be used
13 in effecting the merger or other acquisition of control; a description of
14 any transaction wherein funds were or are to be obtained for any such
15 purpose, including any pledge of the insurer's stock, or the stock of any
16 of its subsidiaries or controlling affiliates; and the identity of persons
17 furnishing such ~~consideration~~ consideration; provided, however, that
18 where a source of such consideration is a loan made in the lender's
19 ordinary course of business, the identity of the lender shall remain
20 confidential, if the person filing such statement so requests.

21 (3) Fully audited financial information as to the earnings and financial
22 condition of each acquiring party for the preceding five fiscal years of
23 each such acquiring party, or for such lesser period as such acquiring
24 party and any predecessors thereof have been in existence; and similar
25 unaudited information as of a date not earlier than 90 days prior to the
26 filing of the statement.

27 (4) Any plans or proposals that each acquiring party may have to liquidate
28 such insurer, to sell its assets or merge or consolidate it with any
29 person, or to make any other material change in its business or
30 corporate structure or management.

31 (5) The number of shares of any security referred to in subsection (a) of
32 this section that each acquiring party proposes to acquire; the terms of
33 the offer, request, invitation, agreement, or acquisition referred to in
34 subsection (a) of this section; and a statement as to the method by
35 which the fairness of the proposal was arrived at.

36 (6) The amount of each class of any security referred to in subsection (a)
37 of this section that is beneficially owned or concerning which there is a
38 right to acquire beneficial ownership by each acquiring party.

39 (7) A full description of any contracts, arrangements, or understandings
40 with respect to any security referred to in subsection (a) of this section
41 in which any acquiring party is involved, including transfer of any of
42 the securities, joint ventures, loan or option arrangements, puts or
43 calls, guarantees of loans, guarantees against loss or guarantees of
44 profits, division of losses or profits, or the giving or withholding of

1 proxies. Such description shall identify the persons with whom such
2 contracts, arrangements, or understandings have been entered into.

3 (8) A description of the purchase of any security referred to in subsection
4 (a) of this section during the 12 calendar months preceding the filing
5 of the statement, by any acquiring party, including the dates of
6 purchase, names of the purchasers, and consideration paid or agreed to
7 be paid therefor.

8 (9) A description of any recommendations to purchase any security
9 referred to in subsection (a) of this section made during the 12
10 calendar months preceding the filing of the statement, by any acquiring
11 party, or by anyone based upon interviews or at the suggestion of such
12 acquiring party.

13 (10) Copies of all tender offers for, requests, or invitations for tenders of,
14 exchange offers for, and agreements to acquire or exchange any
15 securities referred to in subsection (a) of this section, and any related
16 additional soliciting material that has been distributed.

17 (11) The term of any agreement, contract, or understanding made with or
18 proposed to be made with any third party in connection with any
19 acquisition of control of or merger with a domestic insurer, and the
20 amount of any fees, commissions, or other compensation to be paid to
21 the third party with regard thereto.

22 (12) Such additional information as the Commissioner may by rule
23 prescribe as necessary or appropriate for the protection of
24 policyholders of the insurer or in the public interest.

25 If the person required to file the statement referred to in subsection (a) of this
26 section is a partnership, limited partnership, syndicate, or other group, the
27 Commissioner shall require that the information called for by subdivisions (1) through
28 (12) of this subsection be given with respect to each partner of such partnership or
29 limited partnership, each member of such syndicate or group, and each person who
30 controls such partner or member. If any such partner, member, or person is a
31 corporation or the person required to file the statement referred to in subsection (a) of
32 this section is a corporation, the Commissioner shall require that the information called
33 for by subdivisions (1) through (12) of this subsection be given with respect to such
34 corporation, each officer and director of such corporation, and each person who is,
35 directly or indirectly, the beneficial owner of more than ten percent (10%) of the
36 outstanding voting securities of such corporation.

37 If any material change occurs in the facts set forth in the statement filed with the
38 Commissioner and sent to such insurer pursuant to this section, an amendment setting
39 forth such change, together with copies of all documents and other material relevant to
40 such change, shall be filed with the Commissioner and sent to such insurer by the filer
41 within two business days after the person learns of such change."

42 Sec. 28. G.S. 58-19-15(d) reads as rewritten:

1 "(d) The Commissioner shall approve any merger or other acquisition of control
2 referred to in subsection (a) of this section unless, after a public hearing thereon, he
3 finds any of the following:

- 4 (1) After the change of control, the domestic insurer referred to in
5 subsection (a) of this section would not be able to satisfy the
6 requirements for the issuance of a license to write the kind or kinds of
7 insurance for which it is presently licensed.
- 8 (2) The effect of the merger or other acquisition of control would be
9 substantially to lessen competition in insurance or tend to create a
10 monopoly in this State.
- 11 (3) The financial condition of any acquiring party might jeopardize the
12 financial stability of the insurer or prejudice the interest of its
13 policyholders.
- 14 (4) Any plans or proposals that the acquiring party has to liquidate the
15 insurer, sell its assets or consolidate or merge it with any person, or to
16 make any other material change in its business or corporate structure
17 or management, are unfair and unreasonable to policyholders of the
18 insurer and not in the public interest.
- 19 (5) The competence, experience, and integrity of those persons who would
20 control the operation of the insurer are such that it would not be in the
21 interests of policyholders of the insurer and of the public to permit the
22 merger or other acquisition of control.
- 23 (6) The acquisition is likely to be ~~detrimental~~ hazardous or prejudicial to
24 the insurance-buying public."

25 Sec. 29. G.S. 58-19-15(h) reads as rewritten:

26 "(h) The provisions of this section do not apply to any offer, request, invitation,
27 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not
28 having been made or entered into for the purpose and not having the effect of changing
29 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended
30 within the purposes of this section. ~~Nor does this section apply to any transaction that is~~
31 ~~subject to the provisions of G.S. 58-7-150."~~

32 Sec. 30. G.S. 58-19-25(a) reads as rewritten:

33 "(a) Every insurer that is licensed to do business in this State and that is a member
34 of an insurance holding company system shall register with the Commissioner, except a
35 foreign insurer subject to the registration requirements and standards adopted by statute
36 or regulation in the jurisdiction of its domicile that are substantially similar to those
37 contained in this section ~~and G.S. 58-19-30(a) and G.S. 58-19-30(b), 58-19-30(c), and~~
38 58-19-30(d), or a provision such as the following: Each registered insurer shall keep
39 current the information required to be disclosed in its registration statement by reporting
40 all material changes or additions within 15 days after the end of the month in which it
41 learns of each change or addition. The insurer shall also file a copy of its registration
42 statement and any amendments to the statement in each state in which that insurer is
43 authorized to do business if requested by the insurance regulator of that state. Any
44 insurer that is subject to registration under this section shall register within 30 days after

1 it becomes subject to registration, and an amendment to the registration statement shall
2 be filed by March 31~~1~~ of each year for ~~any changes that may have occurred during the~~
3 previous calendar year; unless the Commissioner for good cause shown extends the time
4 for registration or filing, and then within the extended time. All registration statements
5 shall contain a summary, on a form prescribed by the Commissioner, outlining all items
6 in the current registration statement representing changes from the prior registration
7 statement. The Commissioner may require any insurer that is a member of a holding
8 company system that is not subject to registration under this section to furnish a copy of
9 the registration statement or other information filed by such insurance company with the
10 insurance regulator of its domiciliary jurisdiction."

11 Sec. 31. G.S. 58-19-25(b) reads as rewritten:

12 "(b) Every insurer subject to registration shall file the registration statement on a
13 form prescribed by the Commissioner, which shall contain the following current
14 information:

- 15 (1) The bylaws, capital structure, general financial condition, ownership,
16 and management of the insurer and any person controlling the insurer.
- 17 (2) The identity and relationship of every member of the insurance
18 holding company system.
- 19 (3) The following agreements in force, and transactions currently
20 outstanding or that have occurred during the last calendar year
21 between such insurer and its affiliates ~~or other third parties where~~
22 ~~indicated~~:
 - 23 a. Loans, other investments, or purchases, sales or exchanges of
24 securities of the affiliates by the insurer or of the insurer by its
25 affiliates.
 - 26 b. Purchases, sales, or exchange of assets.
 - 27 c. Transactions not in the ordinary course of business.
 - 28 d. Guarantees or undertakings for the benefit of an affiliate that
29 result in an actual contingent exposure of the insurer's assets to
30 liability, other than insurance contracts entered into in the
31 ordinary course of the insurer's business.
 - 32 e. All management agreements, service contracts, and cost-sharing
33 arrangements.
 - 34 f. Reinsurance agreements.
 - 35 g. Dividends and other distributions to shareholders.
 - 36 h. Consolidated tax allocation agreements.
- 37 (4) Any pledge of the insurer's stock, including stock of any subsidiary or
38 controlling affiliate, for a loan made to any member of the insurance
39 holding company system.
- 40 (5) Other matters concerning transactions between registered insurers and
41 any affiliates as may be included from time to time in any registration
42 forms adopted or approved by the Commissioner."

43 Sec. 32. G.S. 58-19-25(d) reads as rewritten:

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

5 Sec. 33. G.S. 58-19-30(b) reads as rewritten:

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

11 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
12 or investments, provided the transactions equal or exceed: (i) with
13 respect to nonlife insurers, the lesser of three percent (3%) of the
14 insurer's admitted assets or twenty-five percent (25%) of surplus as
15 regards policyholders; (ii) with respect to life insurers, three percent
16 (3%) of the insurer's admitted assets; each as of the preceding
17 December 31.

18 (2) Loans or extensions of credit to any person who is not affiliated, where
19 the insurer makes the loans or extensions of credit with the agreement
20 or understanding that the proceeds of the transactions, in whole or in
21 substantial part, are to be used to make loans or extensions of credit to,
22 to purchase assets of, or to make investments in, any affiliate of the
23 insurer making the loans or extensions of credit provided the
24 transactions equal or exceed: (i) with respect to nonlife insurers, the
25 lesser of three percent (3%) of the insurer's admitted assets or twenty-
26 five percent (25%) of surplus as regards policyholders; (ii) with
27 respect to life insurers, three percent (3%) of the insurer's admitted
28 assets; each as of the preceding December 31.

29 (3) Reinsurance agreements or modifications to the agreements in which
30 the reinsurance premium or a change in the insurer's liabilities equals
31 or exceeds five percent (5%) of the insurer's surplus as regards
32 policyholders, as of the preceding December 31, including those
33 agreements that may require as consideration the transfer of assets
34 from an insurer to a nonaffiliate, if an agreement or understanding
35 exists between the insurer and nonaffiliate that any portion of the
36 assets will be transferred to one or more affiliates of the insurer.

37 (4) All management agreements, service contracts, or cost-sharing
38 arrangements ~~wherein the annual aggregate cost to the insurer would~~
39 ~~equal or exceed the amounts specified in subdivision (1) of this~~
40 ~~subsection.~~

41 (5) Any material transactions, specified by rule, that the Commissioner
42 determines may adversely affect the interests of the insurer's
43 policyholders.

1 Nothing in this section authorizes or permits any transactions that, in the case of an
2 insurer, not a member of the same holding company system, would be otherwise
3 contrary to law. A domestic insurer may not enter into transactions that are part of a
4 plan or series of like transactions with persons within the holding company system if the
5 purpose of those separate transactions is to avoid the statutory threshold amount and
6 thus avoid the review that would otherwise occur. If the Commissioner determines that
7 such separate transactions were entered into over any 12-month period for that purpose,
8 the Commissioner may exercise the Commissioner's authority under G.S. 58-19-50.
9 The Commissioner, in reviewing transactions pursuant to this subsection, shall consider
10 whether the transactions comply with the standards set forth in subsection (a) of
11 this section and whether they may adversely affect the interests of policyholders. The
12 Commissioner shall be notified within 30 days after any investment of a domestic
13 insurer in any one corporation if, as a result of the investment, the total investment in
14 the corporation by the insurance holding company system exceeds ten percent (10%) of
15 the corporation's voting securities."

16 Sec. 34. G.S. 58-19-45(c) reads as rewritten:

17 "(c) In any case where a person has acquired or is proposing to acquire any voting
18 securities in violation of this Article or any rule or order of the Commissioner under this
19 Article, the Superior Court of Wake County may, on such notice as the court considers
20 appropriate and upon the application of the insurer or the Commissioner, seize or
21 sequester any voting securities of the insurer owned directly or indirectly by the person,
22 and issue an order with respect thereto as may be appropriate to effectuate the
23 provisions of this Article. Notwithstanding any other provision of law, for the purposes
24 of this Article the sites of the ownership of the securities of domestic insurers are in this
25 State.

26 ~~Notwithstanding any other provisions of law, for the purposes of this Article the~~
27 ~~sites of the ownership of the securities of domestic insurers are in this State."~~

28 Sec. 35. G.S. 58-22-10 reads as rewritten:

29 **"§ 58-22-10. Definitions.**

30 As used in this Article:

- 31 (1) 'Completed operations liability' means liability arising out of the
32 installation, maintenance, or repair of any product at a site that is not
33 owned or controlled by:
34 a. Any person who performs that work; or
35 b. Any person who hires an independent contractor to perform that
36 work;
37 but includes liability for activities that are completed or abandoned
38 before the date of the occurrence giving rise to the liability.
- 39 (2) 'Domicile', for purposes of determining the state in which a purchasing
40 group is domiciled, means:
41 a. For a corporation, the state in which the purchasing group is
42 incorporated; and
43 b. For an unincorporated entity, the state of its principal place of
44 business.

- 1 (3) 'Hazardous financial condition' means that, based on its present or
2 reasonably anticipated financial condition, a risk retention group,
3 although not yet financially impaired or insolvent, is unlikely to be
4 able:
- 5 a. To meet obligations to policyholders with respect to known
6 claims and reasonably anticipated claims; or
7 b. To pay other obligations in the normal course of business.
- 8 (4) 'Insurance' means primary insurance, excess insurance, reinsurance,
9 surplus lines insurance, and any other arrangement for shifting and
10 distributing risk that is determined to be insurance under the laws of
11 this State.
- 12 (5) 'Liability' means legal liability for damages, including costs of defense,
13 legal costs and fees, and other claims expenses, because of injuries to
14 other persons, damage to their property, or other damage or loss to
15 such other persons resulting from or arising out of any profit or
16 nonprofit business, trade, product, professional or other services,
17 premises, or operations; or any activity of any state or local
18 government, or any agency or political subdivision thereof. Liability
19 does not include personal risk liability or an employer's liability with
20 respect to its employees other than legal liability under the Federal
21 Employers' Liability Act (45 U.S.C. § 51 **et seq.**).
- 22 (6) 'Personal risk liability' means liability for damage because of injury to
23 any person, damage to property, or other loss or damage resulting from
24 any personal, familial, or household responsibilities or activities.
25 Personal risk liability does not include liability as defined in
26 subdivision (5) of this section.
- 27 (7) 'Plan of operation' or 'feasibility study' means an analysis that presents
28 the expected activities and results of a risk retention group including,
29 at a minimum:
- 30 a. ~~The~~ For each state in which the group intends to do business,
31 the coverages, deductibles, coverage limits, rates, and rating
32 classification systems for each kind of insurance the group
33 intends to offer;
- 34 b. Historical and expected loss experience of the proposed
35 members and national experience of similar exposures;
- 36 c. ~~Pre forma~~ Prospective financial statements and projections;
- 37 d. Appropriate opinions by a qualified, independent casualty
38 actuary, including a determination of minimum premium or
39 participation levels required to commence operations and to
40 prevent a hazardous financial condition;
- 41 e. Identification of management, underwriting and claim
42 procedures, marketing methods, managerial oversight methods,
43 reinsurance agreements, and investment policies; and

- 1 f. ~~Such other matters as may be prescribed by the Commissioner~~
 2 ~~for liability insurance companies authorized by Articles 1~~
 3 ~~through 64 of this Chapter. Identification of each state in which~~
 4 ~~the group has obtained, or sought to obtain, a charter and~~
 5 ~~license, and a description of its status in each such state;~~
- 6 g. Information sufficient to verify that the group's members are
 7 engaged in businesses or activities similar or related with
 8 respect to the liability to which those members are exposed by
 9 virtue of any related, similar, or common business, trade,
 10 product, services, premises, or operations; and
- 11 h. Such other matters that are prescribed by the Commissioner for
 12 liability insurance companies authorized by this Chapter.
- 13 (8) 'Product liability' means liability for damages because of any personal
 14 injury, death, emotional harm, consequential economic damage, or
 15 property damage, including damages resulting from the loss of use of
 16 property, arising out of the manufacture, design, importation,
 17 distribution, packaging, labeling, lease, or sale of a product; but does
 18 not include the liability of any person for those damages if the product
 19 involved was in the possession of such person when the incident
 20 giving rise to the claim occurred.
- 21 (9) 'Purchasing group' means any group that:
- 22 a. Has as one of its purposes the purchase of liability insurance on
 23 a group basis;
- 24 b. Purchases such insurance only for its group members and only
 25 to cover their similar or related liability exposure, as described
 26 in sub-subdivision c. of this subdivision;
- 27 c. Is composed of members whose businesses or activities are
 28 similar or related with respect to the liability to which the
 29 members are exposed by virtue of any related, similar, or
 30 common business, trade, product, services, premises, or
 31 operations; and
- 32 d. Is domiciled in any state.
- 33 (10) 'Risk retention group' means any corporation or other limited liability
 34 ~~association formed under the laws of any state, Bermuda, or the Cayman~~
 35 ~~Islands association:~~
- 36 a. Whose primary activity consists of assuming and spreading all
 37 or any portion of the liability exposure of its group members;
- 38 b. That is organized for the primary purpose of conducting the
 39 activity described under sub-subdivision a. of this subdivision;
- 40 c. That
- 41 (i) Is chartered and licensed as a liability insurance
 42 company and authorized to engage in the business of
 43 insurance under the laws of any state; or

- 1 (ii) Before January 1, 1985, was chartered or licensed and
2 authorized to engage in the business of insurance under
3 the laws of Bermuda or the Cayman Islands and, before
4 that date, had certified to the insurance regulator of at
5 least one state that it satisfied the capitalization
6 requirements of such state; except that any such group
7 shall be considered to be a risk retention group only if it
8 has been engaged in business continuously since that
9 date and only for the purpose of continuing to provide
10 insurance to cover product liability or completed
11 operations liability, as such terms were defined in the
12 Product Liability Risk Retention Act of 1981 before the
13 effective date of the Risk Retention Act of 1986;
- 14 d. That does not exclude any person from membership in the
15 group solely to provide for members of such a group a
16 competitive advantage over such person;
- 17 e. That
- 18 (i) Has as its members only persons who have an ownership
19 interest in the group and that has as its owners only
20 persons who are members who are provided insurance
21 by the risk retention group; or
- 22 (ii) Has as its sole member and sole owner an organization
23 that is owned by persons who are provided insurance by
24 the risk retention group;
- 25 f. Whose members are engaged in businesses or activities similar
26 or related with respect to the liability of which such members
27 are exposed by virtue of any related, similar, or common
28 business trade, product, services, premises, or operations;
- 29 g. Whose activities do not include the provision of insurance other
30 than:
- 31 (i) Liability insurance for assuming and spreading all or any
32 portion of the liability of its group members; and
- 33 (ii) Reinsurance with respect to the liability of any other risk
34 retention group, or any members of such other group,
35 that is engaged in businesses or activities so that such
36 group or member meets the requirement described in
37 sub-subdivision f. of this subdivision from membership
38 in the risk retention group that provides such
39 reinsurance; and
- 40 h. The name of which includes the phrase 'Risk Retention Group'."

41 Sec. 36. G.S. 58-22-15 reads as rewritten:

42 **"§ 58-22-15. Risk retention groups chartered in this State.**

43 (a) A risk retention group seeking to be chartered in this State must be chartered
44 and licensed as a liability insurance company under Article 7 of this Chapter and, except

1 as provided elsewhere in this Article, must comply with all of the laws and rules
2 applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20
3 to the extent such requirements are not a limitation on laws, administrative rules, or
4 requirements of this State. ~~Before it may offer insurance in any State, each risk retention~~
5 ~~group shall also submit to the Commissioner, for his approval, a plan of operation or a~~
6 ~~feasibility study and revisions of such plan or study if the group intends to offer any additional~~
7 ~~lines of liability insurance.~~

8 (b) Before it may offer insurance in any state, each risk retention group shall also
9 submit for approval to the Commissioner of this State a plan of operation or feasibility
10 study. The risk retention group shall submit an appropriate revision in the event of any
11 subsequent material change in any item of the plan of operation or feasibility study,
12 within 10 days after any such change. The group shall not offer any additional kinds of
13 liability insurance, in this State or in any other state, until a revision of such plan or
14 study is approved by the Commissioner.

15 (c) At the time of filing its application for a charter, the risk retention group shall
16 provide to the Commissioner in summary form the following information: the identity
17 of the initial members of the group, the identity of those individuals who organized the
18 group or who will provide administrative services or otherwise influence or control the
19 activities of the group, the amount and nature of initial capitalization, the coverages to
20 be afforded, and the states in which the group intends to operate. Upon receipt of this
21 information, the Commissioner shall forward such information to the NAIC. Providing
22 notification to the NAIC is in addition to and shall not be sufficient to satisfy the
23 requirements of G.S. 58-22-20 or any other sections of this Article."

24 Sec. 37. G.S. 58-22-20 reads as rewritten:

25 "**§ 58-22-20. Risk retention groups not chartered in this State.**

26 Risk retention groups that have been chartered in states other than this State and that
27 seek to do business as risk retention groups in this state must observe and abide by the
28 laws of this State as follows:

- 29 (1) Notice of Operations and Designation of Commissioner as Agent. –
30 Before offering insurance in this State, a risk retention group shall
31 submit to the Commissioner:
- 32 a. A statement identifying the state or states in which the risk
33 retention group is chartered and licensed as a liability insurance
34 company, date of chartering, its principal place of business, and
35 such other information including information on its
36 membership, as the Commissioner may require to verify that
37 the risk retention group is qualified under G.S. 58-22-10(10);
 - 38 b. A copy of its plan of operations or a feasibility study and
39 revisions of such plan or study submitted to its state of
40 domicile; provided, however, that the provision relating to the
41 submission of a plan of operation or a feasibility study shall not
42 apply with respect to any line or classification of liability
43 insurance that (i) was defined in the Product Liability Risk
44 Retention Act of 1981 before October 27, 1986, and (ii) was

- 1 offered before that date by any risk retention group that had
2 been chartered and operating for not less than three years before
3 that date;
- 4 c. ~~A statement of registration that designates the Commissioner as~~
5 ~~its agent for the purpose of receiving service of legal process.~~
6 The risk retention group shall submit a copy of any revision to
7 its plan of operation or feasibility study required by G.S. 58-22-
8 15(b) at the same time that such revision is submitted to the
9 Commissioner of its chartering state; and
- 10 d. A statement of registration that designates the Commissioner as
11 its agent for the purpose of receiving service of legal process.
- 12 (2) Financial Condition. – A risk retention group doing business in this
13 State shall file with the Commissioner:
- 14 a. A copy of the group's financial statement submitted to its state
15 of domicile, which shall be certified by an independent public
16 accountant and contain a statement of opinion on loss and loss
17 adjustment expense reserves made by a member of the
18 American Academy of Actuaries or a qualified loss reserve
19 specialist, under criteria established by the NAIC or by the
20 Commissioner;
- 21 b. A copy of each examination of the risk retention group as
22 certified by the State insurance regulator or public official
23 conducting the examination;
- 24 c. Upon request by the Commissioner, a copy of any audit
25 performed with respect to the risk retention group; and
- 26 d. Such information as may be required to verify its continuing
27 qualification as a risk retention group under G.S. 58-22-10(10).
- 28 (3) Taxation.
- 29 a. All premiums paid for coverages within this State to risk
30 retention groups shall be subject to taxation at the same rate and
31 subject to the same payment procedures and to the same
32 interest, fines, and penalties for nonpayment as those applicable
33 to surplus lines insurance under Article 21 of this Chapter.
- 34 b. To the extent licensed agents or brokers are utilized,~~utilized~~
35 pursuant to G.S. 58-22-60, they shall report and pay the taxes
36 for the premiums for ~~risk-risks~~ that they have placed with or on
37 behalf of a risk retention group not chartered in this State. Such
38 agent or broker shall keep a complete and separate record of all
39 policies procured from each such risk retention group, which
40 record shall be open to examination by the Commissioner, as
41 provided in G.S. 58-2-185. These records shall, for each policy
42 and each kind of insurance provided thereunder, include the
43 following:
- 44 1. The limit of liability;

b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) Prohibition of Ownership By An Insurance Company. – No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) Prohibited Coverage. – No risk retention group may offer insurance policy coverage prohibited or not authorized by this Chapter or declared unlawful by the appellate courts of this State.

(11) Delinquency Proceedings. – A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under ~~G.S. 58-22-20~~–G.S. 58-22-20(6).

(12) Penalties. – A risk retention group that violates any provision of this Article is subject to G.S. 58-2-70."

Sec. 38. G.S. 58-22-40 reads as rewritten:

"§ 58-22-40. Notice and registration requirements of purchasing groups.

(a) A purchasing group that intends to do business in this State ~~shall~~shall, before doing business, furnish notice to the Commissioner that shall:

(1) Identify the state in which the group is domiciled;

(2) Specify the lines and classifications of liability insurance that the purchasing group intends to purchase;

(3) Identify the insurer from which the group intends to purchase its insurance and the domicile of such insurer;

(4) Identify the principal place of business of the group;

(5) Provide such other information as may be required by the Commissioner to verify that the purchasing group is qualified under G.S. 58-22-10(9); ~~and~~

(6) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this State; and furnish such information as may be required by the Commissioner to determine the appropriate premium tax ~~treatment~~–treatment; and

(7) Identify all other states in which the group intends to do business.

(b) The purchasing group shall register with and designate the Commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement does not apply in the case of a purchasing group:

(1) That

a. Was domiciled before April 2, 1986, in any state of the United States; and

- 1 b. Is domiciled on and after October 27, 1986, in any state of the
2 United States;
- 3 (2) That before October 27, 1986, purchased insurance from an insurer
4 licensed in any state; and since October 27, 1986, purchased its
5 insurance from an insurer licensed in any state;
- 6 (3) That was a purchasing group under the requirements of the Product
7 Liability Retention Act of 1981 before October 27, 1986; and
- 8 (4) That does not purchase insurance that was not authorized for purposes
9 of an exemption under that act, as in effect before October 27, 1986.
- 10 (c) A purchasing group shall notify the Commissioner of any changes in any of
11 the items in subsection (a) of this section within 10 days after those changes.
- 12 (d) Each purchasing group that is required to give notice under subsection (a) of
13 this section shall also furnish such information as may be required by the Commissioner
14 to:
- 15 (1) Verify that the entity qualifies as a purchasing group;
16 (2) Determine where the purchasing group is located; and
17 (3) Determine appropriate tax treatment."

18 Sec. 39. Article 23 of Chapter 58 of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 58-23-26. Financial monitoring and evaluation of pools.**

21 (a) Each pool shall have an annual audit by an independent certified public
22 accountant, at the expense of the pool, and shall make a copy of the audit available to
23 the governing body or chief executive officer of each member of the pool. A copy of
24 the audit shall be filed with the Commissioner within 130 days after the end of the
25 pool's fiscal year, unless that time is extended by the Commissioner. The annual audit
26 shall report the financial position of the pool in conformity with statutory accounting
27 practices prescribed or permitted by the Commissioner.

28 (b) Each pool shall have an actuarial evaluation of its loss and loss adjustment
29 expense reserves, including reserves for loss and loss adjustment expenses incurred but
30 not reported, performed annually by a qualified actuary. A copy of the evaluation shall
31 be filed with the Commissioner along with the annual audit submitted pursuant to
32 subsection (a) of this section. A 'qualified actuary' shall be as defined or prescribed by
33 the Commissioner.

34 (c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-
35 155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-70, 58-3-75, 58-3-80, 58-
36 3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-32, 58-7-50, 58-7-55, 58-7-140, 58-7-
37 160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173,
38 58-7-175, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-
39 7-190, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34
40 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by
41 each pool within 60 days after the end of the pool's fiscal year, subject to extension by
42 the Commissioner."

43 Sec. 40. A new section is added to Article 30 of Chapter 58 of the General
44 Statutes to read:

1 **"§ 58-30-71. Immunity and indemnification of the receiver and employees.**

2 (a) For the purposes of this section, the persons entitled to protection under this
3 section are:

4 (1) All receivers responsible for the conduct of a delinquency proceeding
5 under this Article, including present and former receivers; and

6 (2) Their employees meaning all present and former special deputies and
7 assistant special deputies appointed by the Commissioner, staff
8 assigned to the delinquency proceeding employed by the Attorney
9 General's Office, and all persons whom the Commissioner, special
10 deputies, or assistant special deputies have employed to assist in a
11 delinquency proceeding under this Article. Attorneys, accountants,
12 auditors, and other professional persons or firms, who are retained by
13 the receiver as independent contractors and their employees are not
14 employees of the receiver for purposes of this section.

15 (b) The receiver and his employees have official immunity and are immune from
16 suit and liability, both personally and in their official capacities, for any claim for
17 damage to or loss of property or personal injury or other civil liability caused by or
18 resulting from any alleged act, error, or omission of the receiver or any employee
19 arising out of or by reason of their duties or employment; provided that nothing in this
20 section holds the receiver or any employee immune from suit or liability for any
21 damage, loss, injury, or liability caused by the intentional or willful and wanton
22 misconduct of the receiver or any employee or for any bodily injury caused by the
23 operation of a motor vehicle.

24 (c) If any legal action is commenced against the receiver or any employee,
25 whether against him personally or in his official capacity, alleging property damage,
26 property loss, personal injury, or other civil liability caused by or resulting from any
27 alleged act, error, or omission of the receiver or any employee arising out of or by
28 reason of their duties or employment, the receiver and any employee shall be
29 indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments,
30 settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in
31 the defense of such legal action; unless it is determined upon a final adjudication on the
32 merits that the alleged act, error, or omission of the receiver or employee giving rise to
33 the claim did not arise out of or by reason of his duties or employment, or was caused
34 by intentional or willful and wanton misconduct.

35 (d) Attorneys' fees and all related expenses incurred in defending a legal action
36 for which immunity or indemnity is available under this section shall be paid from the
37 assets of the insurer, as they are incurred, before the final disposition of the action, upon
38 receipt of any agreement by or on behalf of the receiver or employee to repay the
39 attorneys' fees and expenses if it is ultimately determined upon a final adjudication on
40 the merits that the receiver or employee is not entitled to immunity or indemnity under
41 this section.

42 (e) Any indemnification for expense payments, judgments, settlements, decrees,
43 attorneys' fees, surety bond premiums, or other amounts paid or to be paid from the
44 insurer's assets under this section shall be an administrative expense of the insurer.

1 (f) In the event of any actual or threatened litigation against a receiver or any
2 employee for which immunity or indemnity may be available under this section, a
3 reasonable amount of funds, that in the judgment of the Commissioner may be needed
4 to provide immunity or indemnity, shall be segregated and reserved from the assets of
5 the insurer as security for the payment of indemnity until all applicable statutes of
6 limitation have run, all actual or threatened actions against the receiver or any employee
7 have been completely and finally resolved, and all obligations of the insurer and the
8 Commissioner under this section have been satisfied.

9 (g) In lieu of segregation and reserving of funds, the Commissioner may, in his
10 discretion, obtain a surety bond or make other arrangements that will enable the
11 Commissioner to fully secure the payment of all obligations under this section.

12 (h) If any legal action against an employee for which indemnity may be available
13 under this section is settled before final adjudication on the merits, the insurer must pay
14 the settlement amount on behalf of the employee, or indemnify the employee for the
15 settlement amount, unless the Commissioner determines:

16 (1) That the claim did not arise out of or by reason of the employee's
17 duties or employment; or

18 (2) That the claims were caused by the intentional or willful and wanton
19 misconduct of the employee.

20 (i) In any legal action in which the receiver is a defendant, that portion of any
21 settlement relating to the alleged act, error, or omission of the receiver is subject to the
22 approval of the court before which the delinquency proceeding is pending. The court
23 shall not approve that portion of the settlement if it determines:

24 (1) That the claim did not arise out of or by reason of the receiver's duties
25 or employment; or

26 (2) That the claim was caused by the intentional or willful and wanton
27 misconduct of the receiver.

28 (j) Nothing in this section deprives the receiver or any employee of any
29 immunity, indemnity, benefits of law, rights, or any defense otherwise available.

30 (k) Subsection (b) of this section applies to any suit based in whole or in part on
31 any alleged act, error, or omission that occurs on or after October 1, 1993.

32 (l) No legal action shall lie against the receiver or any employee based in whole
33 or in part on any alleged act, error, or omission that occurred before October 1, 1993,
34 unless suit is filed and valid service of process is obtained within 12 months after
35 October 1, 1993.

36 (m) Subsections (c), (h), and (i) of this section apply to any suit that is pending on
37 or filed after October 1, 1993, without regard to when the alleged act, error, or omission
38 took place."

39 Sec. 41. G.S. 58-30-95 reads as rewritten:

40 **"§ 58-30-95. Termination of rehabilitation.**

41 (a) Whenever the rehabilitator believes further attempts to rehabilitate an insurer
42 would substantially increase the risk of loss to creditors, policyholders or the public, or
43 would be futile, the rehabilitator may petition the Court for an order of liquidation. A
44 petition under this subsection shall have the same effect as a petition under G.S. 58-30-

1 100. The Court may make such findings and issue such orders at any time upon its own
2 motion. The Court shall permit the directors of the insurer to take such actions as are
3 reasonably necessary to defend against the petition and may order payment from the
4 estate of the insurer of such costs and other expenses of defense as justice may require.
5 The court may allow the payment of costs and expenses incurred in defending against
6 the petition for an order of liquidation only upon a specific finding that the defense was
7 conducted, and the costs and expenses were incurred, in good faith. The directors shall
8 have the burden of proving good faith. Evidence of good faith shall be the existence of
9 a reasonable basis to conclude that the insurer is actually solvent or that there exists a
10 viable means to accomplish rehabilitation without jeopardizing the remaining assets of
11 the insurer and that continued operation of the insurer is in the best interest of the
12 policyholders, stockholders, and creditors.

13 (b) The rehabilitator may at any time petition the Court for an order terminating
14 rehabilitation of an insurer. The Court shall also permit the directors of the insurer to
15 petition the Court for an order terminating rehabilitation of the insurer and may order
16 payment from the estate of the insurer of such costs and other expenses of such petition
17 as justice may require. The court may allow the payment of costs and expenses incurred
18 in defending against the petition for an order terminating rehabilitation only upon a
19 specific finding that the defense was conducted, and the costs and expenses were
20 incurred, in good faith. The directors shall have the burden of proving good faith.
21 Evidence of good faith shall be the existence of a reasonable basis to conclude that the
22 insurer is actually solvent or that there exists a viable means to accomplish
23 rehabilitation without jeopardizing the remaining assets of the insurer and that
24 continued operation of the insurer is in the best interest of the policyholders,
25 stockholders, and creditors. If the Court finds that rehabilitation has been accomplished
26 and that grounds for rehabilitation under G.S. 58-30-75 no longer exist, it shall order
27 that the insurer be restored to possession of its property and the control of the business.
28 The Court may also make that finding and issue that order at any time upon its own
29 motion."

30 Sec. 42. Reserved.

31 Sec. 43. G.S. 58-34-2(a) reads as rewritten:

32 "(a) As used in this Article:

- 33 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under
34 common control', means the direct or indirect possession of the power
35 to direct or cause the direction of the management and policies of a
36 person, whether through the ownership of voting securities, by contract
37 other than a commercial contract for goods or nonmanagement
38 services, or otherwise, unless the power is the result of an official
39 position with or corporate office held by the person.
- 40 (2) 'Insurer' means a domestic insurer but does not mean a reciprocal
41 regulated under Article 15 of this Chapter.
- 42 (3) 'Managing general agent' or 'MGA' means any person who ~~negotiates~~
43 ~~and binds ceding reinsurance contracts on behalf of an insurer or manages~~
44 all or part of the insurance business of an insurer (including the

1 management of a separate division, department, or underwriting
2 office) and acts as an agent for the insurer, whether known as a
3 managing general agent, manager, or other similar term, who, with or
4 without the authority, either separately or together with persons under
5 common control, produces, directly or indirectly, and underwrites an
6 amount of gross direct written premium equal to or more than five
7 percent (5%) of the policyholder surplus as reported in the last annual
8 statement of the insurer in any one quarter or year together with one or
9 more of the following activities related to the business produced: (i)
10 adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of
11 the insurer. 'MGA' does not mean an employee of the insurer; an
12 underwriting manager who, pursuant to contract, manages all or part of
13 the insurance operations of the insurer, is under common control with
14 the insurer, is subject to Article 19 of this Chapter, and whose
15 compensation is not based on the volume of premiums written; ~~or~~ a
16 person who, under Article 15 of this Chapter, is designated and
17 authorized by subscribers as the attorney-in-fact for a reciprocal
18 having authority to obligate them on reciprocal and other insurance
19 contracts; or a U.S. Manager of the United States branch of an alien
20 insurer.

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

26 (5) 'Underwrite' means the authority to accept or reject risk on behalf of
27 the insurer."

28 Sec. 44. G.S. 58-34-2(d) reads as rewritten:

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

34 (1) The insurer may terminate the contract for cause upon written notice to
35 the MGA. The insurer may suspend the underwriting authority of the
36 MGA during the pendency of any dispute regarding the cause for
37 termination.

38 (2) The MGA will render accounts to the insurer detailing all transactions
39 and remit all funds due under the contract to the insurer on not less
40 than a monthly basis.

41 (3) All funds collected for the account of an insurer will be held by the
42 MGA in a fiduciary capacity in a bank that is a member of the Federal
43 Reserve System. This account shall be used for all payments on behalf

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

1 years after they are earned on casualty business and not until the
2 profits have been verified under subsection (m) of this section.

3 (10) The MGA shall not:

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

31 Sec. 45. G.S. 58-34-2(i) reads as rewritten:

32 "(i) Within 15 days after entering into or termination of a contract with an MGA,
33 the insurer shall provide written notification of the appointment or termination to the
34 Commission. Notices of appointment of an MGA shall include a copy of the contract, a
35 statement of duties that the MGA is expected to perform on behalf of the insurer, the
36 ~~kinds-lines~~ of insurance for which the MGA is to be authorized to act, whether any
37 affiliation exists between the insurer and the MGA and the basis for the affiliation,
38 NAIC biographical affidavit for each officer, director, and each person who owns ten
39 percent (10%) or more of the outstanding voting stock of the MGA, and any other
40 information the Commissioner may request. The Commissioner may prescribe the form
41 to be used for notification of the information required by this item."

42 Sec. 46. G.S. 58-34-2(l) reads as rewritten:

43 "(l) An insurer shall not appoint to its board of directors an officer, director,
44 employee, subagent, or controlling shareholder of its MGAs. This subsection does not

1 apply to relationships governed by Article 19 of this Chapter or, if applicable, ~~G.S. 58-7-~~
2 ~~157-G.S. 58-3-165."~~

3 Sec. 47. G.S. 58-34-2(n) reads as rewritten:

4 "(n) ~~If the Commissioner finds after a hearing conducted in accordance with G.S. 58-2-~~
5 ~~50 that any person has violated any provision of this Article, determines that an MGA or any~~
6 ~~other person has not materially complied with this section or with any rule adopted or~~
7 ~~order issued under this section, after notice and opportunity to be heard, the~~
8 Commissioner may order:

9 (1) For each separate violation, a civil penalty ~~of one thousand dollars~~
10 ~~(\$1,000) to be credited to the General Fund; under the procedures in G.S.~~
11 ~~58-2-70(d); or~~

12 (2) Revocation or suspension of the ~~agent's license, or person's license.~~

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

16 If the Commissioner finds that because of a material noncompliance that an insurer has
17 suffered any loss or damage, the Commissioner may maintain a civil action brought by
18 or on behalf of the insurer and its policyholders and creditors for recovery of
19 compensatory damages for the benefit of the insurer and its policyholders and creditors
20 or for other appropriate relief."

21 Sec. 48. G.S. 58-34-2 is amended by adding a new subsection to read:

22 "(p) If an order of rehabilitation or liquidation of the insurer has been entered
23 under Article 30 of this Chapter, and the receiver appointed under that order determines
24 that the MGA or any other person has not materially complied with this section, or any
25 regulation or order promulgated thereunder, and the insurer suffered any loss or damage
26 therefrom, the receiver may maintain a civil action for recovery of damages or other
27 appropriate sanctions for the benefit of the insurer."

28 Sec. 49. G.S. 58-34-10 reads as rewritten:

29 "**§ 58-34-10. Management contracts.**

30 (a) ~~All agreements or contracts under which any person is delegated management~~
31 ~~duties or control of a domestic insurer, or which transfer a substantial part of any major~~
32 ~~function of a domestic insurer such as adjustment of losses, production of business,~~
33 ~~investment of assets, or general servicing of the insurer's business must be filed with the~~
34 ~~Commissioner on or before the effective date of such contract or agreement. Subject to~~
35 ~~G.S. 58-19-30(b)(4), any domestic insurer that enters into a management contract must~~
36 ~~file that contract with the Commissioner on or before its effective date. As used in this~~
37 ~~section, 'management contract' means any agreement or contract under which any~~
38 ~~person is delegated management duties or control of an insurer, or transfers a substantial~~
39 ~~part of any major function of an insurer, such as adjustment of losses, production of~~
40 ~~business, investment of assets, or general servicing of the insurer's business.~~

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

1 Any domestic insurer that has a management contract shall file a statement with the
2 initial filing of that contract that discloses (i) criteria on which charges to the insurer are
3 based for that contract; (ii) whether management personnel or other employees of the
4 insurer are to be performing management functions and receiving any remuneration
5 therefor through that contract in addition to the compensation by way of salary received
6 directly from the insurer for their services; (iii) whether the contract transfers substantial
7 control of the insurer or any of the powers vested in the board of directors, by statute,
8 articles of incorporation, or bylaws, or substantially all of the basic functions of the
9 insurer's management; (iv) biographical information for each officer and director of the
10 management firm; and (v) other information concerning the contract or the management
11 firm as may be included from time to time in any registration forms adopted or
12 approved by the Commissioner. Such statement shall be filed on a form prescribed by
13 the Commissioner.

14 (c) Any domestic insurer that amends or cancels a management contract filed
15 pursuant to subsection (a) of this section shall notify the Commissioner thereof within
16 15 business days after the amendment or cancellation. If the contract is amended, the
17 notice shall provide a copy of the amended contract and shall disclose if the amendment
18 affects any of the items in subsection (b) of this section. The Commissioner may
19 prescribe a form to be used to provide notice under this subsection.

20 (d) Any domestic insurer that has a management contract shall file a statement on
21 or before March 1 of each year, for the preceding calendar year, disclosing (i) total
22 charges incurred by the insurer under the contract; (ii) any salaries, commissions, or
23 other valuable consideration paid by the insurer directly to any officer, director, or
24 shareholder of the management firm; and (iii) other information concerning the contract
25 or the management firm as may be included from time to time in any registration forms
26 adopted or approved by the Commissioner. The Commissioner may prescribe a form to
27 be used to provide the information required by this subsection.

28 (e) Any domestic insurer that has a management contract may request an
29 exemption from the filing requirements of this section if the contract is for a group of
30 affiliated insurers on a pooled funds basis or service company management basis, where
31 costs to the individual member insurers are charged on an actually incurred or closely
32 estimated basis. The request for an exemption must be in writing, must explain the
33 basis for the exemption, and must be received by the Commissioner on or before the
34 effective date of the contract. As used in this subsection, 'affiliated' has the same
35 meaning as in G.S. 58-19-5(1). Management contracts exempted under this subsection
36 must still be reduced to written form."

37 Sec. 50. G.S. 58-34-15 reads as rewritten:

38 "**§ 58-34-15. Grounds for disapproval.**

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

- 41 (1) That the service or management charges are based upon criteria
42 unrelated either to the managed insurer's profits or to the reasonable
43 customary and usual charges for such services or are based on factors
44 unrelated to the value of such services to the insurer; or

- 1 (2) That management personnel or other employees of the insurer are to be
2 performing management functions and receiving any remuneration
3 therefor through the management or service contract in addition to the
4 compensation by way of salary received directly from the insurer for
5 their services; or
6 (3) That the contract would transfer substantial control of the insurer or
7 any of the powers vested in the board of directors, by statute, articles
8 of incorporation, or bylaws, or substantially all of the basic functions
9 of the insurance company management; or
10 (4) That the contract contains provisions that would be clearly detrimental
11 to the best interest of policyholders, stockholders, or members of the
12 insurer; or
13 (5) That the officers and directors of the management firm are of known
14 bad character or have been affiliated, directly or indirectly, through
15 ownership, control, management, reinsurance transactions, or other
16 insurance or business relations with any person known to have been
17 involved in the improper manipulation of assets, accounts, or
18 reinsurance.

19 (b) If the Commissioner disapproves of any management contract or service
20 agreement, contract, notice of such action shall be given to the insurer assigning the
21 reasons therefor in writing. The Commissioner shall grant any party to the contract a
22 hearing upon request according to G.S. 58-2-50."

23 Sec. 51. G.S. 58-48-20 reads as rewritten:

24 "**§ 58-48-20. Definitions.**

25 As used in this Article:

- 26 (1) 'Account' means any one of the three accounts created by G.S. 58-48-
27 25.
28 (1a) 'Affiliate' means a person who directly, or indirectly, through one or
29 more intermediaries, controls, is controlled by, or is under common
30 control with an insolvent insurer on December 31 of the year next
31 preceding the date the insurer becomes an insolvent insurer.
32 (2) 'Association' means the North Carolina Insurance Guaranty
33 Association created under G.S. 58-48-25.
34 (2a) 'Claimant' means any insured making a first party claim or any person
35 instituting a liability claim; provided that no person who is an affiliate
36 of the insolvent insurer may be a claimant.
37 (3) Repealed by Session Laws 1991, c. 720, s. 6.
38 (3a) 'Control' means the possession, direct or indirect, of the power to direct
39 or cause the direction of the management and policies of a person,
40 whether through the ownership of voting securities, by contract other
41 than a commercial contract for goods or nonmanagement services, or
42 otherwise, unless the power is the result of an official position with or
43 corporate office held by the person. Control shall be presumed to exist
44 if any person, directly or indirectly owns, controls, holds with the

1 power to vote, or holds proxies representing ten percent (10%) or more
2 of the voting securities of any other person. This presumption may be
3 rebutted by a showing that control does not exist in fact.

4 (4) 'Covered claim' means an unpaid claim, including one of unearned
5 premiums, which is in excess of fifty dollars (\$50.00) and arises out of
6 and is within the coverage and not in excess of the applicable limits of
7 an insurance policy to which this Article applies as issued by an
8 insurer, if such insurer becomes an insolvent insurer after the effective
9 date of this Article and (i) the claimant or insured is a resident of this
10 State at the time of the insured event; ~~provided that for entities other than~~
11 ~~an individual, the residence of a claimant or insured is the state in which its~~
12 ~~principal place of business is located at the time of the insured event;~~ or (ii)
13 the property from which the claim arises is permanently located in this
14 State. 'Covered claim' shall not include any amount awarded as
15 punitive or exemplary damages; sought as a return of premium under
16 any retrospective rating plan; or due any reinsurer, insurer, insurance
17 pool, or underwriting association, as subrogation or contribution
18 recoveries or otherwise.

19 (5) 'Insolvent insurer' means (i) an insurer licensed and authorized to
20 transact insurance in this State either at the time the policy was issued
21 or when the insured event occurred and (ii) against whom an order of
22 liquidation with a finding of insolvency has been entered after the
23 effective date of this Article by a court of competent jurisdiction in the
24 insurer's state of domicile or of this State under the provisions of
25 Article 30 of this Chapter, and which order of liquidation has not been
26 stayed or been the subject of a **writ of supersedeas** or other
27 comparable order.

28 (6) 'Member insurer' means any person who (i) writes any kind of
29 insurance to which this Article applies under G.S. 58-48-10, including
30 the exchange of reciprocal or interinsurance contracts, and (ii) is
31 licensed and authorized to transact insurance in this State.

32 (7) 'Net direct written premiums' means direct gross premiums written in
33 this State on insurance policies to which this Article applies, less
34 return premiums thereon and dividends paid or credited to
35 policyholders on such direct business. 'Net direct written premiums'
36 does not include premiums on contracts between insurers or reinsurers.

37 (8) 'Person' means any individual, corporation, partnership, association or
38 voluntary organization.

39 (9) 'Policyholder' means the person to whom an insurance policy to which
40 this Article applies was issued by an insurer which has become an
41 insolvent insurer.

42 (10) 'Resident' means:

43 a. An individual domiciled in this State;

- 1 b. An individual formerly domiciled in this State at the time the
2 applicable policy was issued or renewed and the term of the
3 policy had not expired at the time of the insured event, and who
4 at the time of the insured event had complied with the laws of
5 the current domicile necessary to allow maintenance in force
6 and effect of the applicable policy; or
7 c. In the case of a corporation or other entity that is not a natural
8 person, a corporation or entity whose principal place of
9 business is located in this State at the time of the insured event."

10 Sec. 52. G.S. 58-58-50 is amended by adding the following new subsections:

11 "(i) Every life insurance company doing business in this State shall annually
12 submit the opinion of a qualified actuary as to whether the reserves and related actuarial
13 items held in support of the policies and contracts specified by the Commissioner by
14 rule are computed appropriately, are based on assumptions that satisfy contractual
15 provisions, are consistent with previously reported amounts, and comply with applicable
16 laws of this State. The Commissioner by rule shall define the specifics of this opinion
17 and add any other items deemed to be necessary to its scope. Every life insurance
18 company, except as exempted by or pursuant to rule, shall also annually include in the
19 opinion required by this subsection, an opinion of the same qualified actuary as to
20 whether the reserves and related actuarial items held in support of the policies and
21 contracts specified by the Commissioner by rule, when considered in light of the assets
22 held by the company with respect to the reserves and related actuarial items, including
23 but not limited to the investment earnings on the assets and the considerations
24 anticipated to be received and retained under the policies and contracts, make adequate
25 provision for the company's obligations under the policies and contracts, including but
26 not limited to the benefits under and expenses associated with the policies and contracts.
27 The Commissioner may provide by rule for a transition period for establishing any
28 higher reserves that the qualified actuary may deem to be necessary in order to render
29 the opinion required by this subsection.

30 (j) Each opinion required by subsection (i) of this section shall be governed by
31 the following provisions:

32 (1) A memorandum, in form and substance acceptable to the
33 Commissioner as specified by rule, shall be prepared to support each
34 actuarial opinion.

35 (2) If the insurance company fails to provide a supporting memorandum at
36 the request of the Commissioner within a period specified by rule or
37 the Commissioner determines that the supporting memorandum
38 provided by the insurance company fails to meet the standards
39 prescribed by the rules or is otherwise unacceptable to the
40 Commissioner, the Commissioner may engage a qualified actuary at
41 the expense of the company to review the opinion and the basis for the
42 opinion and prepare such supporting memorandum as is required by
43 the Commissioner.

- 1 (3) The opinion shall be submitted with the annual statement reflecting the
2 valuation of such reserve liabilities for each year ending on or after
3 December 31, 1994.
- 4 (4) The opinion shall apply to all business in force including individual
5 and group health insurance plans, in form and substance acceptable to
6 the Commissioner as specified by rule.
- 7 (5) The opinion shall be based on standards adopted from time to time by
8 the actuarial standards board and on such additional standards as the
9 Commissioner may by rule prescribe.
- 10 (6) In the case of an opinion required to be submitted by a foreign or alien
11 company, the Commissioner may accept the opinion filed by that
12 company with the insurance supervisory official of another state if the
13 Commissioner determines that the opinion reasonably meets the
14 requirements applicable to a company domiciled in this State.
- 15 (7) For the purposes of this section, 'qualified actuary' means a member in
16 good standing of the American Academy of Actuaries who meets the
17 requirement set forth in such rules.
- 18 (8) Except in cases of fraud or willful misconduct, the qualified actuary
19 shall not be liable for damages to any person (other than the insurance
20 company and the Commissioner) for any act, error, omission, decision,
21 or conduct with respect to the actuary's opinion.
- 22 (9) Disciplinary action by the Commissioner against the company or the
23 qualified actuary shall be defined in rules by the Commissioner.
- 24 (10) Any memorandum in support of the opinion, and any other material
25 provided by the company to the Commissioner in connection
26 therewith, shall be kept confidential by the Commissioner and shall not
27 be made public and shall not be subject to subpoena, other than for the
28 purpose of defending an action seeking damages from any person by
29 reason of any action required by this section or by rules adopted under
30 this section; provided, however, that the memorandum or other
31 material may otherwise be released by the Commissioner (i) with the
32 written consent of the company or (ii) to the American Academy of
33 Actuaries upon request stating the memorandum or other material is
34 required for the purpose of professional disciplinary proceedings and
35 setting forth procedures satisfactory to the Commissioner for
36 preserving the confidentiality of the memorandum or other material.
37 Once any portion of the confidential memorandum is cited by the
38 company in its marketing or is cited before any governmental agency
39 other than a state insurance department or is released by the company
40 to the news media, all portions of the confidential memorandum shall
41 be no longer confidential.
- 42 (k) The Commissioner shall adopt rules containing the minimum standards
43 applicable to the valuation of health plans."

44 Sec. 53. G.S. 58-58-50(c)(1) reads as rewritten:

1 "(1) Except as otherwise provided in subdivisions (3) and (4) of this
2 subsection, the minimum standard for the valuation of all such policies
3 and contracts issued ~~prior to~~ before the ~~operative~~ effective date of G.S.
4 ~~58-58-55~~ this section shall be that provided by the laws in effect
5 immediately ~~prior to such~~ before that date, except that the minimum
6 standard for the valuation of annuities and pure endowments purchased
7 under group annuity and pure endowment contracts issued ~~prior to such~~
8 ~~effective~~ before that date shall be that provided by the laws in effect
9 immediately ~~prior to such~~ before that date but replacing the interest
10 rates specified in such laws by an interest rate of five percent (5%) per
11 annum, and five and one-half percent (5 1/2%) interest for single
12 premium life insurance policies."

13 Sec. 54. G.S. 58-58-50(c)(2) reads as rewritten:

14 "(2) Except as otherwise provided in subdivisions (3) and (4) of this
15 subsection, the minimum standards for the valuation of all such
16 policies and contracts issued on or after the ~~operative date of G.S. 58-58-~~
17 ~~55~~ effective date of this section shall be the Commissioner's reserve
18 valuation methods defined in subsections (d), (d-1) and (g), five
19 percent (5%) interest for group annuity and pure endowment contracts
20 and three and one-half percent (3 1/2%) interest for all other policies
21 and contracts, or, in the case of policies and contracts other than
22 annuity and pure endowment contracts, issued on or after July 1, 1975,
23 four percent (4%) interest for such policies issued prior to April 19,
24 1979, and four and one-half percent (4 1/2%) interest for such policies
25 issued on or after April 19, 1979, and the following tables:

- 26 a. For all ordinary policies of life insurance issued on the standard
27 basis, excluding any disability and accidental death benefits in
28 such policies – the Commissioner's 1941 Standard Ordinary
29 Mortality Table for such policies issued prior to the operative
30 date of subdivision (e)(2) of G.S. 58-58-55, the Commissioner's
31 1958 Standard Ordinary Mortality Table for such policies
32 issued on or after the operative date of subdivision (e)(2) of
33 G.S. 58-58-55 prior to the operative date of subdivision (e)(4)
34 of G.S. 58-58-55, provided that for any category of such
35 policies issued on female risks, all modified net premiums and
36 present values referred to in this section may be calculated
37 according to an age not more than six years younger than the
38 actual age of the insured; and, for such policies issued on or
39 after the operative date of subdivision (e)(4) of G.S. 58-58-55,
40 (i) the Commissioner's 1980 Standard Ordinary Mortality
41 Table, or (ii) at the election of the company for any one or more
42 specified plans of life insurance, the Commissioner's 1980
43 Standard Ordinary Mortality Table with Ten-Year Select
44 Mortality Factors, or (iii) any ordinary mortality table, adopted

- 1 after 1980 by the NAIC, that is approved by regulation
2 promulgated by the Commissioner for use in determining the
3 minimum standard of valuation for such policies;
- 4 b. For all industrial life insurance policies issued on the standard
5 basis, excluding any disability and accidental death benefits in
6 such policies – the 1941 Standard Industrial Mortality Table for
7 such policies issued prior to the operative date of subdivision
8 (e)(3) of G.S. 58-58-55 and for such policies issued on or after
9 such operative date the Commissioner's 1961 Standard
10 Industrial Mortality Table or any industrial mortality table,
11 adopted after 1980 by the NAIC, that is approved by regulation
12 promulgated by the Commissioner for use in determining the
13 minimum standard of valuation for such policies;
- 14 c. For individual annuity and pure endowment contracts,
15 excluding any disability and accidental death benefits in such
16 policies – the 1937 Standard Annuity Mortality Table or, at the
17 option of the company, the Annuity Mortality Table for 1949,
18 Ultimate, or any modification of either of these tables approved
19 by the Commissioner;
- 20 d. For group annuity and pure endowment contracts, excluding
21 any disability and accidental death benefits in such policies –
22 the Group Annuity Mortality Table for 1951, any modification
23 of such table approved by the Commissioner, or, at the option
24 of the company, any of the tables or modifications of tables
25 specified for individual annuity and pure endowment contracts;
- 26 e. For total and permanent disability benefits in or supplementary
27 to ordinary policies or contracts – for policies or contracts
28 issued on or after January 1, 1966, the tables of Period 2
29 disablement rates and the 1930 to 1950 termination rates of the
30 1952 Disability Study of the Society of Actuaries, with due
31 regard to the type of benefit or any tables of disablement rates
32 and termination rates, adopted after 1980 by the NAIC, that are
33 approved by regulation promulgated by the Commissioner for
34 use in determining the minimum standard of valuation for such
35 policies; for policies or contracts issued on or after January 1,
36 1961, and prior to January 1, 1966, either such tables or, at the
37 option of the company, the Class (3) Disability Table (1926);
38 and for policies issued prior to January 1, 1961, the Class (3)
39 Disability Table (1926). Any such table shall, for active lives,
40 be combined with a mortality table permitted for calculating the
41 reserves for life insurance policies;
- 42 f. For accidental death benefits in or supplementary to policies –
43 for policies issued on or after January 1, 1966, the 1959
44 Accidental Death Benefits Table or any accidental death

1 benefits table, adopted after 1980 by the NAIC, that is approved
2 by regulation promulgated by the Commissioner for use in
3 determining the minimum standard of valuation for such
4 policies; for policies issued on or after January 1, 1961, and
5 prior to January 1, 1966, either such table or, at the option of
6 the company, the Inter-Company Double Indemnity Mortality
7 Table; and for policies issued prior to January 1, 1961, the
8 Inter-Company Double Indemnity Mortality Table. Either table
9 shall be combined with a mortality table permitted for
10 calculating the reserves for life insurance policies;

11 g. For group life insurance, life insurance issued on the
12 substandard basis and other special benefits – such tables as
13 may be approved by the Commissioner."

14 Sec. 55. G.S. 58-58-50(e) reads as rewritten:

15 "(e) In no event shall a company's aggregate reserves for all life insurance
16 policies, excluding disability and accidental death benefits, issued on or after the
17 effective date of ~~G.S. 58-58-55, this section,~~ be less than the aggregate reserves
18 calculated in accordance with the methods set forth in subsections (d), (d-1), (g) and (h)
19 of this section and the mortality table or tables and rate or rates of interest used in
20 calculating nonforfeiture benefits for such policies. In no event shall the aggregate
21 reserves for all policies, contracts, and benefits be less than the aggregate reserves
22 determined by the qualified actuary to be necessary to render the opinion required by
23 subsection (i) of this section."

24 Sec. 56. G.S. 58-58-50(f) reads as rewritten:

25 "(f) Reserves for all policies and contracts issued ~~prior to the operative date of G.S.~~
26 ~~58-58-55 before the effective date of this section~~ may be calculated, at the option of the
27 company, according to any standards ~~which that~~ produce greater aggregate reserves for
28 ~~all such those~~ policies and contracts than the minimum reserves required by the laws in
29 effect immediately ~~prior to such before that~~ date.

30 Reserves for any category of policies, contracts or benefits as established by the
31 Commissioner, issued on or after ~~the operative date of G.S. 58-58-55, the effective date of~~
32 this section may be calculated, at the option of the company, according to any standards
33 ~~which that~~ produce greater aggregate reserves for such category than those calculated
34 according to the minimum standard herein provided, but the rate or rates of interest used
35 for policies and contracts, other than annuity and pure endowment contracts, shall not
36 be higher than the corresponding rate or rates of interest used in calculating any
37 nonforfeiture benefits provided for therein.

38 Any such company ~~which at any time shall have adopted that adopts~~ any standard of
39 valuation producing greater aggregate reserves than those calculated according to the
40 minimum standard herein provided may, with the approval of the Commissioner, adopt
41 any lower standard of valuation, but not lower than the minimum herein provided.
42 Provided, however, that for the purposes of this section, the holding of additional
43 reserves previously determined by a qualified actuary to be necessary to render the

1 opinion required by subsection (c) of this section shall not be deemed to be the adoption
2 of a higher standard of valuation."

3 Sec. 57. G.S. 58-58-55(b) reads as rewritten:

4 "(b) In the case of policies issued on or after the operative date of this section, as
5 defined in subsection (h), no policy of life insurance, except as stated in subsection (g),
6 shall be delivered or issued for delivery in this State unless it shall contain in substance
7 the following provisions, or corresponding provisions which in the opinion of the
8 Commissioner are at least as favorable to the defaulting or surrendering policyholder as
9 are the minimum requirements hereinafter specified and are essentially in compliance
10 with subsection (f1) of this section:

- 11 (1) That, in the event of default in any premium payment after premiums
12 have been paid for at least one full year in the case of ordinary
13 insurance or three full years in the case of industrial insurance, the
14 company will grant, upon proper request not later than 60 days after
15 the due date of the premium in default, a paid-up nonforfeiture benefit
16 on a plan stipulated in the policy, effective as of such due date, of such
17 amount as may be hereinafter specified. In lieu of such stipulated paid-
18 up nonforfeiture benefit, the company may substitute, upon proper
19 request not later than 60 days after the due date of the premium in
20 default, an actuarially equivalent alternative paid-up nonforfeiture
21 benefit which provides a greater amount or longer period of death
22 benefits or, if applicable, a greater amount or earlier payment of
23 endowment benefits.
- 24 (2) That, upon surrender of the policy within 60 days after the due date of
25 any premium payment in default after premiums have been paid for at
26 least three full years in the case of ordinary insurance or five full years
27 in the case of industrial insurance, the company will pay, in lieu of any
28 paid-up nonforfeiture benefit, a cash surrender value of such amount as
29 may be hereinafter specified.
- 30 (3) That a specified paid-up nonforfeiture benefit shall become effective
31 as specified in the policy unless the person entitled to make such
32 election elects another available option not later than 60 days after the
33 due date of the premium in default. Nothing herein shall prevent the
34 use of an automatic premium loan provision.
- 35 (4) That, if the policy shall have become paid up by completion of all
36 premium payments or if it is continued under any paid-up
37 nonforfeiture benefit which became effective on or after the third
38 policy anniversary in the case of ordinary insurance or the fifth policy
39 anniversary in the case of industrial insurance, the company will pay,
40 upon surrender of the policy within 30 days after any policy
41 anniversary, a cash surrender value of such amount as may be
42 hereinafter specified.
- 43 (5) In the case of policies which cause on a basis guaranteed in the policy
44 unscheduled changes in benefits or premiums, or which provide an

1 option for changes in benefits or premiums other than a change to
2 a new policy, a statement of the mortality table, interest rate, and method
3 used in calculating cash surrender values and the paid-up nonforfeiture
4 benefits available under the policy. In the case of all other policies, a
5 statement of the mortality table and interest rate used in calculating the
6 cash surrender values and the paid-up nonforfeiture benefits available
7 under the policy, together with a table showing the cash surrender
8 value, if any, and paid-up nonforfeiture benefit, if any available under
9 the policy on each policy anniversary either during the first 20 policy
10 years or during the term of the policy, whichever is shorter, such
11 values and benefits to be calculated upon the assumption that there are
12 no dividends or paid-up additions credited to the policy and that there
13 is no indebtedness to the company on the policy.

- 14 (6) ~~A brief and general statement of the method to be used in calculating~~
15 ~~the cash surrender value and the paid-up nonforfeiture benefit~~
16 ~~available under the policy on any policy anniversary with an~~
17 ~~explanation of the manner in which the cash surrender values and the~~
18 ~~paid-up nonforfeiture benefits are altered by the existence of any paid-~~
19 ~~up additions credited to the policy or any indebtedness to the company~~
20 ~~on the policy. A statement that the cash surrender values and the paid-~~
21 ~~up nonforfeiture benefits available under the policy are not less than~~
22 ~~the minimum values and benefits required by or pursuant to the~~
23 ~~insurance law of the state in which the policy is delivered; an~~
24 ~~explanation of the manner in which the cash surrender values and the~~
25 ~~paid-up nonforfeiture benefits are altered by the existence of any paid-~~
26 ~~up additions credited to the policy or any indebtedness to the company~~
27 ~~on the policy; if a detailed statement of the method of computation of~~
28 ~~the values and benefits shown in the policy is not stated therein, a~~
29 ~~statement that such method of computation has been filed with the~~
30 ~~Commissioner in which the policy is delivered; and a statement of the~~
31 ~~method to be used in calculating the cash surrender value and paid-up~~
32 ~~nonforfeiture benefit available under the policy on any policy~~
33 ~~anniversary beyond the last anniversary for which such values and~~
34 ~~benefits are consecutively shown in the policy.~~

35 Any of the foregoing provisions or portions thereof not applicable by reason of the
36 plan of insurance may, to the extent inapplicable, be omitted from the policy.

37 The company shall reserve the right to defer the payment of any cash surrender
38 value for a period of six months after demand therefor with surrender of the policy."

39 Sec. 58. G.S. 58-58-55(e1) reads as rewritten:

40 "(e1) In the case of any plan of life insurance which provides for future premium
41 determination, the amounts of which are to be determined by the insurance company
42 based on then estimates of future experience, or in the case of any plan of life insurance
43 which is of such a nature that minimum values cannot be determined by the methods
44 described in subsections (b), (c), (d), or (e) herein, then:

- 1 (1) The Commissioner must be satisfied that the benefits provided under
 2 the plan are substantially as favorable to policyholders and insureds as
 3 the minimum benefits otherwise required by subsections (b), (c), (d),
 4 or (e) herein;
- 5 (2) The Commissioner must be satisfied that the benefits and the pattern of
 6 premiums of that plan are not such as to mislead prospective
 7 policyholders or insureds;
- 8 (3) The cash surrender values and paid-up nonforfeiture benefits provided
 9 by such plan must not be less than the minimum values and benefits
 10 required for the plan computed by a method consistent with the
 11 principles of this Standard Nonforfeiture Law, as determined by
 12 regulations promulgated by the ~~Commissioner~~ Commissioner;
- 13 (4) Notwithstanding any other provision in the laws of this State, any
 14 policy, contract, or certificate providing life insurance under any such
 15 plan must be affirmatively approved by the Commissioner before it
 16 can be marketed, issued, delivered, or used in this State."

17 Sec. 59. G.S. 58-58-55 is amended by adding a new subsection to read:

18 "(i) For any single premium whole life or endowment insurance policy subject to
 19 subdivisions (e)(2) and (e)(3) of this section, a rate of interest not exceeding six and
 20 one-half percent (6 1/2%) per annum may be used."

21 Sec. 60. G.S. 58-62-16 reads as rewritten:

22 **"§ 58-62-16. Definitions.**

23 As used in this Article:

- 24 (1) 'Account' means any of the two accounts created under G.S. 58-62-26.
- 25 (2) 'Association' means the North Carolina Life and Health Insurance
 26 Guaranty Association created under G.S. 58-62-26.
- 27 (3) 'Board' means the board of directors of the Association established
 28 under G.S. 58-62-31.
- 29 (4) 'Contractual obligation' means any obligation under a policy or
 30 certificate under a group policy, or part thereof, for which coverage is
 31 provided under G.S. 58-62-21.
- 32 (5) 'Covered policy' means any policy within the scope of this Article
 33 under G.S. 58-62-21.
- 34 (6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer;
 35 and 'delinquency' means an insurer impairment or insolvency.
- 36 (7) 'Health insurance' includes accident and health insurance, accident
 37 insurance, and disability insurance.
- 38 (8) 'Impaired insurer' means a member insurer that, after the effective date
 39 of this Article, is not an insolvent insurer, and (i) is deemed by the
 40 Commissioner to be potentially unable to fulfill its contractual
 41 obligations or (ii) is placed under an order of rehabilitation or
 42 conservation by a court of competent jurisdiction.

- 1 (9) 'Insolvent insurer' means a member insurer that, after the effective date
2 of this Article, is placed under an order of liquidation with a finding of
3 insolvency by a court of competent jurisdiction.
- 4 (10) 'Insurance regulator' means the official or agency of another state that
5 is responsible for the regulation of a foreign insurer.
- 6 (11) 'Member insurer' means any insurer licensed or that holds a license to
7 transact in this State any kind of insurance for which coverage is
8 provided under G.S. 58-62-21; and includes any insurer whose license
9 in this State may have been suspended, revoked, not renewed or
10 voluntarily withdrawn, but does not include an entity governed by
11 Articles 65 through 67 of this Chapter; fraternal order or fraternal
12 benefit society; mandatory State pooling plan; mutual assessment
13 company or any entity that operates on an assessment basis; insurance
14 exchange; or any entity similar to any of the foregoing.
- 15 (12) 'Moody's Corporate Bond Yield Average' means the Monthly Average
16 Corporates as published by Moody's Investors Service, Inc., or any
17 successor thereto.
- 18 (13) 'Person' includes an individual, corporation, company, partnership,
19 association, or aggregation of individuals.
- 20 (14) 'Plan' means the plan of operation established under G.S. 58-62-46.
- 21 (15) 'Policy' includes a contract of insurance and an annuity contract.
- 22 (16) 'Premiums' means amounts received in any calendar year on covered
23 policies less premiums, considerations, and deposits returned thereon,
24 and less dividends and experience credits thereon. 'Premiums' does
25 not include any amounts received for any policies or for the parts of
26 any policies for which coverage is not provided under G.S. 58-62-
27 21(b); except that assessable premium shall not be reduced on account
28 of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-
29 21(d)(2) relating to limitations with respect to any one individual, any
30 one participant, and any one contract holder.
- 31 (17) 'Resident' means any person who resides in this State when a member
32 insurer is determined to be a delinquent insurer and to whom a
33 contractual obligation is owed. A person may be a resident of only
34 one state, which in the case of a person other than a natural person
35 shall be its principal place of business. 'Resident' also means a U.S.
36 citizen residing outside of the United States who owns a covered
37 policy that was purchased from a member insurer while that person
38 resided in this State.
- 39 (18) 'Unallocated annuity contract' means any annuity contract or group
40 annuity certificate that is not issued to and owned by an individual,
41 except to the extent of any annuity benefits guaranteed to an individual
42 by an insurer under the contract or certificate."

43 Sec. 61. G.S. 58-62-21(d) reads as rewritten:

1 "(d) The benefits for which the Association is liable do not, in any event, exceed
2 the lesser of:

- 3 (1) The contractual obligations for which the insurer is liable or would
4 have been liable if it were not a delinquent insurer; or
5 (2) With respect to any one individual, regardless of the number of
6 policies, three hundred thousand dollars (\$300,000) for all benefits,
7 including cash ~~values.~~ values; or
8 (3) With respect to each individual participating in a governmental
9 retirement plan established under section 401, 403(b), or 457 of the
10 Internal Revenue Code covered by an unallocated annuity contract, or
11 the beneficiaries of each individual if deceased, in the aggregate, three
12 hundred thousand dollars (\$300,000) in present value annuity benefits,
13 including net cash surrender and net cash withdrawal values; or
14 (4) With respect to any one contract holder covered by any unallocated
15 annuity contract not included in subdivision (3) of this subsection, five
16 million dollars (\$5,000,000) in benefits, regardless of the number of
17 such contracts held by that contract holder."

18 Sec. 61.1. G.S. 58-62-41(a) reads as rewritten:

19 "(a) To provide the funds necessary to carry out the powers and duties of the
20 Association, the Board shall assess the member insurers, separately for each account, at
21 such time and for such amounts as the Board finds necessary. Assessments are due not
22 less than 30 days after prior written notice to the member insurers and shall accrue
23 interest at ~~eight percent (8%) per annum on and~~ the rate of one percent (1%) per month, or
24 any part thereof, after the due date."

25 Sec. 62. G.S. 58-62-41(l) reads as rewritten:

26 "(l) The Association shall issue to each insurer paying an assessment under this
27 Article, other than a Class A assessment, a certificate of contribution, in a form
28 prescribed by the Commissioner, for the amount of the assessment so paid. All
29 outstanding certificates shall be of equal dignity and priority without reference to
30 amounts or dates of issue. ~~A certificate of contribution may be shown by the insurer in its~~
31 ~~financial statement as an asset in the form and for the amount, if any, and period of time as the~~
32 ~~Commissioner approves."~~

33 Sec. 63. G.S. 58-64-20(a) reads as rewritten:

34 "(a) At the time of, or prior to, the execution of a contract to provide continuing
35 care, or at the time of, or prior to, the transfer of any money or other property to a
36 provider by or on behalf of a prospective resident, whichever occurs first, the provider
37 shall deliver a current disclosure statement to the person with whom the contract is to be
38 entered into, the text of which shall contain at least:

- 39 (1) The name and business address of the provider and a statement of
40 whether the provider is a partnership, corporation, or other type of
41 legal entity.
42 (2) The names and business addresses of the officers, directors, trustees,
43 managing or general partners, any person having a ten percent (10%)
44 or greater equity or beneficial interest in the provider, and any person

- 1 who will be managing the facility on a day-to-day basis, and a
2 description of these persons' interests in or occupations with the
3 provider.
- 4 (3) The following information on all persons named in response to
5 subdivision (2) of this section:
- 6 a. A description of the business experience of this person, if any,
7 in the operation or management of similar facilities;
- 8 b. The name and address of any professional service firm,
9 association, trust, partnership, or corporation in which this
10 person has, or which has in this person, a ten percent (10%) or
11 greater interest and which it is presently intended shall currently
12 or in the future provide goods, leases, or services to the facility,
13 or to residents of the facility, of an aggregate value of five
14 hundred dollars (\$500.00) or more within any year, including a
15 description of the goods, leases, or services and the probable or
16 anticipated cost thereof to the facility, provider, or residents or a
17 statement that this cost cannot presently be estimated; and
- 18 c. A description of any matter in which the person (i) has been
19 convicted of a felony or pleaded **nolo contendere** to a felony
20 charge, or been held liable or enjoined in a civil action by final
21 judgment, if the felony or civil action involved fraud,
22 embezzlement, fraudulent conversion, or misappropriation of
23 property; or (ii) is subject to a currently effective injunctive or
24 restrictive court order, or within the past five years, had any
25 State or federal license or permit suspended or revoked as a
26 result of an action brought by a governmental agency or
27 department, if the order or action arose out of or related to
28 business activity of health care, including actions affecting a
29 license to operate a foster care facility, nursing home,
30 retirement home, home for aged, or facility subject to this
31 Article or a similar law in another state.
- 32 (4) A statement as to whether the provider is, or is not affiliated with, a
33 religious, charitable, or other nonprofit organization, the extent of the
34 affiliation, if any, the extent to which the affiliate organization will be
35 responsible for the financial and contract obligations of the provider,
36 and the provision of the Federal Internal Revenue Code, if any, under
37 which the provider or affiliate is exempt from the payment of income
38 tax.
- 39 (5) The location and description of the physical property or properties of
40 the facility, existing or proposed, and to the extent proposed, the
41 estimated completion date or dates, whether construction has begun,
42 and the contingencies subject to which construction may be deferred.
- 43 (6) The services provided or proposed to be provided pursuant to contracts
44 for continuing care at the facility, including the extent to which

- 1 medical care is furnished, and a clear statement of which services are
2 included for specified basic fees for continuing care and which
3 services are made available at or by the facility at extra charge.
- 4 (7) A description of all fees required of residents, including the entrance
5 fee and periodic charges, if any. The description shall include:
- 6 a. A statement of the fees that will be charged if the resident
7 marries while at the facility, and a statement of the terms
8 concerning the entry of a spouse to the facility and the
9 consequences if the spouse does not meet the requirements for
10 entry;
- 11 b. The circumstances under which the resident will be permitted to
12 remain in the facility in the event of possible financial
13 difficulties of the resident;
- 14 c. The terms and conditions under which a contract for continuing
15 care at the facility may be canceled by the provider or by the
16 resident, and the conditions, if any, under which all or any
17 portion of the entrance fee or any other fee will be refunded in
18 the event of cancellation of the contract by the provider or by
19 the resident or in the event of the death of the resident prior to
20 or following occupancy of a living unit;
- 21 d. The conditions under which a living unit occupied by a resident
22 may be made available by the facility to a different or new
23 resident other than on the death of the prior resident; and
- 24 e. The manner by which the provider may adjust periodic charges
25 or other recurring fees and the limitations on these adjustments,
26 if any; and, if the facility is already in operation, or if the
27 provider or manager operates one or more similar continuing
28 care locations within this State, tables shall be included
29 showing the frequency and average dollar amount of each
30 increase in periodic charges, or other recurring fees at each
31 facility or location for the previous five years, or such shorter
32 period as the facility or location may have been operated by the
33 provider or manager.
- 34 (8) The health and financial condition required for an individual to be
35 accepted as a resident and to continue as a resident once accepted,
36 including the effect of any change in the health or financial condition
37 of a person between the date of entering into a contract for continuing
38 care and the date of initial occupancy of a living unit by that person.
- 39 (9) The provisions that have been made or will be made, ~~if any, including,~~
40 but not limited to, the requirements of G.S. 58-64-33 and G.S. 58-64-
41 35, to provide reserve funding or security to enable the provider to
42 perform its obligations fully under contracts to provide continuing care
43 at the facility, including the establishment of escrow accounts, trusts,
44 or reserve funds, together with the manner in which these funds will be

- 1 invested, and the names and experience of any individuals in the direct
2 employment of the provider who will make the investment decisions.
- 3 (10) Financial statements of the provider certified to by an independent
4 public accountant as of the end of the most recent fiscal year or such
5 shorter period of time as the provider shall have been in existence. If
6 the provider's fiscal year ended more than 120 days prior to the date
7 the disclosure statement is recorded, interim financial statements as of
8 a date not more than 90 days prior to the date of recording the
9 statement shall also be included, but need not be certified to by an
10 independent certified public accountant.
- 11 (11) In the event the facility has had an actuarial report prepared within the
12 prior two years, the summary of a report of an actuary that estimates
13 the capacity of the provider to meet its contractual obligations to the
14 residents.
- 15 (12) Forecast financial statements for the facility of the next five years,
16 including a balance sheet, a statement of operations, a statement of
17 cash flows, and a statement detailing all significant assumptions,
18 compiled by an independent certified public accountant. Reporting
19 routine, categories, and structure may be further defined by regulations
20 or forms adopted by the Commissioner.
- 21 (13) The estimated number of residents of the facility to be provided
22 services by the provider pursuant to the contract for continuing care.
- 23 (14) Proposed or development stage facilities shall additionally provide:
- 24 a. The summary of the report of an actuary estimating the capacity
25 of the provider to meet its contractual obligation to the
26 residents;
- 27 b. Narrative disclosure detailing all significant assumptions used
28 in the preparation of the forecast financial statements,
29 including:
- 30 1. Details of any long-term financing for the purchase or
31 construction of the facility including interest rate,
32 repayment terms, loan covenants, and assets pledged;
- 33 2. Details of any other funding sources that the provider
34 anticipates using to fund any start-up losses or to provide
35 reserve funds to assure full performance of the
36 obligations of the provider under contracts for the
37 provision of continuing care;
- 38 3. The total life occupancy fees to be received from or on
39 behalf of, residents at, or prior to, commencement of
40 operations along with anticipated accounting methods
41 used in the recognition of revenues from and expected
42 refunds of life occupancy fees;
- 43 4. A description of any equity capital to be received by the
44 facility;

5. The cost of the acquisition of the facility or, if the facility is to be constructed, the estimated cost of the acquisition of the land and construction cost of the facility;
6. Related costs, such as financing any development costs that the provider expects to incur or become obligated for prior to the commencement of operations;
7. The marketing and resident acquisition costs to be incurred prior to commencement of operations; and
8. A description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services.

(15) Any other material information concerning the facility or the provider which, if omitted, would lead a reasonable person not to enter into this contract."

Sec. 64. G.S. 58-64-33(a) reads as rewritten:

"(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by liquid, marketable investments, including invested cash, bonds, stocks, commercial paper, U.S. Treasury obligations, other equivalents, or under G.S. 58-7-85(a)(1) through (6), or by an unconditional, irrevocable letter of credit of a quality satisfactory to the Commissioner investment grade securities, including: cash, invested cash, bonds, stocks, U.S. Treasury obligations, or U.S. government agencies."

Sec. 65. G.S. 58-2-175, 58-3-70, 58-3-80, 58-7-32, 58-7-135, 58-7-190, 58-9-1, 58-9-5, 58-9-10, 58-9-15, 58-9-20, 58-9-25, 58-9-30, 58-12-1, 58-12-5, 58-12-10, 58-12-15, 58-12-20, 58-19-20, 58-23-25, and 58-34-20 are repealed.

Sec. 66. If any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 67. This act becomes effective October 1, 1993.