

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

3

HOUSE BILL 622*
Committee Substitute Favorable 5/24/93
Committee Substitute #2 Favorable 6/7/93

Short Title: Insurer Solvency/Reinsurer Fee.

(Public)

Sponsors:

Referred to:

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE LAWS RELATING TO NORTH CAROLINA'S MONITORING OF INSURANCE COMPANY FINANCES AND THE PRESERVATION OF INSURANCE COMPANY SOLVENCY, TO MAINTAIN NORTH CAROLINA'S ACCREDITATION BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND TO ESTABLISH A FEE FOR THE ACCREDITATION AND RENEWAL OF ACCREDITATION OF REINSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

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

§ 58-3-71. Unearned premium reserves.

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

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

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

4 (d) Reinsurance ceded to an authorized assuming insurer may be deducted on the
5 basis of original premiums and original terms, except in the case of excess loss or
6 catastrophe reinsurance, which may be deducted only on the basis of actual reinsurance
7 premiums and actual reinsurance terms.

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

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

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

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

18 "**§ 58-3-75. Loss and loss expense reserves of fire and marine insurance companies.**

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

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

36 "**§ 58-3-81. Loss and loss expense reserves of casualty insurance and surety**
37 **companies.**

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

1 which such determination, statement, or report is made is hereinafter referred to as the
2 date of determination.

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

5 (1) The aggregate estimated amounts due or to become due on account of
6 all known losses and claims and loss expenses incurred but not paid,
7 including the estimated liability on any notice received by the
8 company of the occurrence of any event which may result in a loss;
9 and

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

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

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

30 (1) For all such compensation policies where losses were incurred more
31 than three years prior to the date of determination, such reserves shall
32 be the sum of the present values, at three and one-half percent (3
33 1/2%) interest per annum, of the determined and estimated unpaid
34 losses computed on an individual case basis plus the estimated unpaid
35 loss expenses computed in accordance with subsection (b) of this
36 section.

37 (2) Where losses were incurred during the three years immediately
38 preceding the date of determination, such reserves shall be the sum of
39 the reserves for each year, which shall be calculated in accordance
40 with any method adopted or approved by the NAIC and shall be not
41 less than the sum of the present values, at three and one-half percent (3
42 1/2%) interest per annum, of the determined and estimated unpaid
43 losses computed on an individual case basis plus the estimated unpaid

1 loss expenses computed in accordance with subsection (b) of this
2 section.

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

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

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

13 **"§ 58-7-31. Life and health reinsurance agreements.**

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

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

24 (1) Renewal expense allowances provided or to be provided to the ceding
25 insurer by the reinsurer in any accounting period, are not sufficient to
26 cover anticipated allocable renewal expenses of the ceding insurer on
27 the portion of the business reinsured, unless a liability is established
28 for the present value of the shortfall, using assumptions equal to the
29 applicable statutory reserve basis on the business reinsured. Those
30 expenses include commissions, premium taxes, and direct expenses
31 including, but not limited to, billing, valuation, claims, and
32 maintenance expected by the company at the time the business is
33 reinsured.

34 (2) The ceding insurer can be deprived of surplus or assets at the
35 reinsurer's option or automatically upon the occurrence of some event,
36 such as the insolvency of the ceding insurer; except that termination of
37 the reinsurance agreement by the reinsurer for nonpayment of
38 reinsurance premiums or other amounts due, such as modified
39 coinsurance reserve adjustments, interest, and adjustments on funds
40 withheld, and tax reimbursements, are not a deprivation of surplus or
41 assets.

42 (3) The ceding insurer is required to reimburse the reinsurer for negative
43 experience under the reinsurance agreement; except that neither
44 offsetting experience refunds against current and prior years' losses

1 under the reinsurance agreement nor payment by the ceding insurer of
2 an amount equal to the current and prior years' losses under the
3 reinsurance agreement upon voluntary termination of in-force
4 reinsurance by the ceding insurer are a reimbursement to the reinsurer
5 for negative experience. Voluntary termination does not include
6 situations where termination occurs because of unreasonable
7 provisions that allow the reinsurer to reduce its risk under the
8 reinsurance agreement.

9 (4) The ceding insurer must, at specific points in time scheduled in the
10 reinsurance agreement, terminate or automatically recapture all or part
11 of the reinsurance ceded.

12 (5) The reinsurance agreement involves the possible payment by the
13 ceding insurer to the reinsurer of amounts other than from income
14 realized from the reinsured policies. No ceding company shall pay
15 reinsurance premiums or other fees or charges to a reinsurer that are
16 greater than the direct premiums collected by the ceding company.

17 (6) The treaty does not transfer all of the significant risk inherent in the
18 business being reinsured. The following table identifies for a
19 representative sampling of products or type of business, the risks that
20 are considered to be significant. For products not specifically
21 included, the risks determined to be significant shall be consistent with
22 this table.

23 Risk Categories:

24 a.= Morbidity.

25 b.= Mortality.

26 c.= Lapse. (This is the risk that a policy will voluntarily terminate
27 before the recoupment of a statutory surplus strain experienced
28 at issue of the policy.)

29 d.= Credit Quality (C1). (This is the risk that invested assets
30 supporting the reinsured business will decrease in value. The
31 main hazards are that assets will default or that there will be a
32 decrease in earning power. It excludes market value declines
33 due to changes in interest rate.)

34 e.= Reinvestment (C3). (This is the risk that interest rates will fall
35 and funds reinvested [coupon payments or monies received
36 upon asset maturity or call] will therefore earn less than
37 expected. If asset durations are less than liability durations, the
38 mismatch will increase.)

39 f.= Disintermediation (C3). (This is the risk that interest rates will
40 rise and policy loans and surrenders increase or maturing
41 contracts do not renew at anticipated rates of renewal. If asset
42 durations are greater than the liability durations, the mismatch
43 will increase. Policyholders will move their funds into new

1 assets to the reinsurer or legally segregate such assets in a
 2 trust or escrow account or otherwise establish a mechanism
 3 satisfactory to the Commissioner that legally segregates, by
 4 contract or contractual provisions, the underlying assets.)

5 b. Notwithstanding the requirements of subdivision (7)a. of this
 6 section, the assets supporting the reserves for the following
 7 classes of business and any classes of business that do not
 8 have a significant credit quality, reinvestment, or
 9 disintermediation risk may be held by the ceding company
 10 without segregation of those assets:

- 11 - Health Insurance - LTC/LTD
- 12 - Traditional Non-Par Permanent
- 13 - Traditional Par Permanent
- 14 - Adjustable Premium Permanent
- 15 - Indeterminate Premium Permanent
- 16 - Universal Life Fixed Premium
- 17 - (no dump-in premiums allowed)

18 The associated formula for determining the reserve interest rate
 19 adjustment must use a formula that reflects the ceding company's
 20 investment earnings and incorporates all realized and unrealized gains
 21 and losses reflected in the statutory statement. The following is an
 22 acceptable formula:

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

25 Where: I is the net investment income.

26 CG is capital gains less capital losses.

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

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

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

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

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

37 (11) The reinsurance agreement is entered into for the principal purpose of
 38 producing significant surplus aid for the ceding insurer, typically on a
 39 temporary basis, while not transferring all of the significant risks
 40 inherent in the business reinsured and, in substance or effect, the
 41 expected potential liability to the ceding insurer remains basically
 42 unchanged.

43 (c) Notwithstanding subsection (a) of this section, an insurer may, with the prior
 44 approval of the Commissioner, take such reserve credit or establish such asset as the

1 Commissioner deems to be consistent with the insurance laws or rules of this State,
2 including actuarial interpretations or standards adopted by the Commissioner.

3 (d) (1) Reinsurance agreements entered into after October 1, 1993,
4 that involve the reinsurance of business issued prior to the effective
5 date of the reinsurance agreements, along with any subsequent
6 amendments thereto, shall be filed by the ceding company with the
7 Commissioner within 30 days after its date of execution. Each filing
8 shall include data detailing the final impact of the transaction. The
9 ceding insurer's actuary who signs the financial statement actuarial
10 opinion with respect to valuation of reserves shall consider this
11 statute and any applicable actuarial standards of practice when
12 determining the proper credit in financial statements filed with the
13 Commissioner. The actuary should maintain adequate
14 documentation and be prepared upon request to describe the
15 actuarial work performed for inclusion in the financial statements
16 and to demonstrate that such work conforms to this statute.

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

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

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

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

35 (1) The reinsurance agreement shall constitute the entire reinsurance
36 agreement between the parties with respect to the business being
37 reinsured thereunder and that there are no understandings between the
38 parties other than as expressed in the reinsurance agreement; and

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

42 (h) Insurers subject to this section shall reduce to zero by December 31, 1994,
43 any reserve credits or assets established with respect to reinsurance agreements entered
44 into prior to the effective date of this statute that, under the provisions of this section,

1 would not be entitled to recognition of such reserve credits or assets; provided,
2 however, that such reinsurance agreements shall have been in compliance with laws or
3 regulations in existence immediately preceding October 1, 1993."

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

5 **"§ 58-7-50. Maintenance and removal of records and assets.**

6 (a) Every domestic insurer ~~that has~~ shall maintain its home or principal office in
7 ~~a location outside this State shall nevertheless maintain an office or offices in this State~~
8 and keep therein ~~for such period as the Commissioner may by regulation require~~
9 complete records of its assets, transactions, and affairs, specifically including:

10 (1) Financial records;

11 (2) Corporate records;

12 (3) ~~Reinsurance document;~~ documents;

13 (4) ~~Access to all~~ All accounting transactions and ~~access in this State, upon~~
14 ~~demand by the Commissioner, to all original accounting documents;~~
15 transactions;

16 (5) Claim files; and

17 (6) Payment of claims, in accordance with such methods and systems as
18 are customary or suitable as to the kind or kinds of insurance
19 transacted.

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

22 (1) Real property and personal property appurtenant thereto lawfully
23 owned by the insurer and located outside this State; and

24 (2) Such property of the insurer as may be customary, necessary, and
25 convenient to enable and facilitate the operation of its branch offices,
26 regional home offices, and operations offices, located outside this State
27 as referred to in G.S. 58-7-55.

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

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

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

8 **"§ 58-7-115. Increase of capital stock.**

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

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

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

- 32 (1) The plan of ~~merger or consolidation~~ must be submitted to and be
33 approved by the Commissioner in advance of the ~~merger or~~
34 consolidation.
- 35 (2) The Commissioner shall not approve any such plan unless, after a
36 hearing, he finds that it is fair, equitable to policyholders, consistent
37 with law, and will not conflict with the public interest. If the
38 Commissioner fails to approve the plan, he shall state his reasons for
39 such failure in his order made on such hearing.
- 40 (3) No director, officer, member or subscriber of any such insurer, except
41 as is expressly provided by the plan of ~~merger or consolidation~~, shall
42 receive any fee, commission, other compensation or valuable
43 consideration whatever, for in any manner aiding, promoting or
44 assisting in the ~~merger or consolidation~~.

- 1 (4) Any ~~merger or~~ consolidation as to an incorporated domestic insurer
2 shall in other respects be governed by the general laws of this State
3 relating to business corporations, except that the ~~merger or~~
4 consolidation of a domestic mutual insurer may be effected by vote of
5 two thirds of the members voting thereon pursuant to such notice and
6 procedure as the Commissioner may prescribe."

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

8 "**§ 58-7-162. Allowable or admitted assets.**

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

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

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

1 c. The person or affiliates shall provide to the insurer, and the
2 insurer shall maintain in its possession, evidence that the person
3 or affiliates have purchased and have currently in effect a
4 financial guaranty bond, payable to the insurer, issued for a
5 term of not less than one year and that is in conformity with the
6 requirements set forth in this sub-subdivision, the amount of
7 which equals or exceeds the liability of the person or affiliates
8 to the insurer, at all times during which the financial guaranty
9 bond is in effect, for the premiums collected by the person or
10 persons. The financial guaranty bond shall be issued under an
11 arrangement satisfactory to the Commissioner and the financial
12 guaranty bond shall be issued by an insurer that is authorized to
13 transact that business in this State, that has a financial standing
14 satisfactory to the Commissioner, and that is neither controlled
15 nor controlling in relation to either the insurer or the person or
16 affiliates for whom the bond is purchased.

17 Premiums receivable under this subdivision will not be allowed as an
18 admitted asset if a financial evaluation by the Commissioner indicates
19 that the person or affiliates are unlikely to be able to pay the premiums
20 as they become due. The financial evaluation shall be based on a
21 review of the books and records of the controlling or controlled
22 person.

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

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

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

5 **"§ 58-7-163. Assets not allowed.**

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

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

10 (2) Advances (other than policy loans) to officers, directors, and
11 controlling stockholders, whether secured or not, and advances to
12 employees, agents, and other persons on personal security only.

13 (3) Stock of the insurer or any material equity therein or loans secured
14 thereby, or any material proportionate interest in the stock acquired or
15 held through the ownership by the insurer of an interest in another
16 firm, corporation, or business unit.

17 (4) Furniture, fixtures, other equipment, safes, vehicles, libraries,
18 stationery, literature, and supplies, other than data processing and
19 accounting systems authorized under G.S. 58-7-162(12), except in the
20 case of title insurers the materials and plants which G.S. 58-7-182
21 expressly authorizes the insurer to invest in, and except, in the case of
22 any insurer, any personal property that the insurer is permitted to hold
23 under this Chapter, or that is acquired through foreclosure of chattel
24 mortgages acquired under G.S. 58-7-180, or that is reasonably
25 necessary for the maintenance and operation of real estate that the
26 insurer uses for a home office, branch office, and similar purposes.

27 (5) The amount, if any, by which the aggregate book value of investments
28 as carried in the ledger assets of the insurer exceeds the aggregate
29 value of the investments as determined under this Chapter.

30 (6) Bonds, notes, or other evidences of indebtedness that are secured by
31 mortgages or deeds of trust that are in default, to the extent of the cost
32 of carrying value that is in excess of the value as determined pursuant
33 to other provisions of this Chapter.

34 (7) Prepaid and deferred expenses.

35 (8) Certificates of contribution or other similar evidences of indebtedness.

36 (9) Any asset that is encumbered in any manner unless the asset is
37 authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

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

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

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

5 An insurer that, as of October 1, 1991, has mortgage investments with any one
6 person that exceed the aggregate limitation specified in this subsection shall submit to
7 the Commissioner no later than January 31, 1992, a plan to bring the amount of
8 mortgage investments with that person into compliance with the limitations by January
9 1, 2001."

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

11 "(d) Without the Commissioner's prior written approval, the cost of investments in
12 bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed,
13 or guaranteed by any solvent United States institution, any state, Canada, or any
14 Canadian province, and that are classified as medium to lower quality obligations, other
15 than obligations of subsidiaries or affiliated corporations as that term is defined in G.S.
16 58-7-177, shall be limited to:

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

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

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

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

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

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

1 **"§ 58-7-173. Permitted insurer investments.**

2 An insurer may invest in:

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

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

1 investments made in any one issuer shall not exceed three percent
2 (3%) of an insurer's admitted assets or ten percent (10%) of an
3 insurer's capital and surplus, whichever is greater. As used in this
4 subdivision, 'industry' means a distinct and recognized area of
5 economic activity that consists of the production, manufacture, or
6 distribution of common goods, products, commodities, or services.

7 (12) Secured obligations of duly constituted churches and of church-
8 holding companies; and the cost of investments made under this
9 subdivision shall not exceed the lesser of one percent (1%) of the
10 insurer's admitted assets or five percent (5%) of the insurer's capital
11 and surplus.

12 (13) Equipment trust obligations or certificates adequately secured and
13 evidencing an interest in transportation equipment, wholly or in part
14 within the United States, and the right to receive determined portions
15 of rental, purchase, or other fixed obligatory payments for the use or
16 purchase of that transportation equipment; and the cost of investments
17 made under this subdivision shall not exceed twenty percent (20%) of
18 the insurer's admitted assets.

19 (14) Share or savings accounts of savings and loan associations or building
20 and loan associations; and the cost of investments made under this
21 subdivision shall not exceed the lesser of three percent (3%) of the
22 insurer's admitted assets or five percent (5%) of the insurer's capital
23 and surplus.

24 (15) Loans with a maturity not in excess of 12 years from the date thereof
25 that are secured by the pledge of securities eligible for investment
26 under this Chapter or by the pledge or assignment of life insurance
27 policies issued by other insurers authorized to transact insurance in this
28 State. On the date made, no such loan shall exceed in amount seventy-
29 five percent (75%) of the market value of the collateral pledged,
30 except that loans upon the pledge of U.S. Government bonds and loans
31 upon the pledge or assignment of life insurance policies shall not
32 exceed ninety-five percent (95%) of the market value of the bonds or
33 the cash surrender value of the policies pledged. The market value of
34 the collateral pledge shall at all times during the continuance of the
35 loans meet or exceed the minimum percentages herein. Loans made
36 under this section shall not be renewable beyond a period of 12 years
37 from the date of the loan.

38 (16) Stocks, common or preferred, of any corporation created or existing
39 under the laws of the United States, any U.S. territory, Canada or any
40 Canadian province, or of any state. An insurer may invest in stocks,
41 common or preferred, of any corporation created or existing under the
42 laws of any foreign country other than Canada if the stocks are listed
43 and traded on a national securities exchange in the United States or if
44 the investment in stocks of any corporation created or existing under

1 the laws of any foreign country are first approved by the
 2 Commissioner. Nothing in this section applies to qualifying
 3 investments made by an insurer in a foreign country under authority of
 4 G.S. 58-7-178.

- 5 (17) Mortgage pass-through securities and derivatives thereof, that have
 6 been rated as investment grade by the Securities Valuation Office of
 7 the NAIC and considered by the Federal Financial Institutions
 8 Examination Council or its successor to be nonhigh risk mortgage
 9 securities, including, without limitation, collateral mortgage
 10 obligations backed by a pool of mortgages of the kind, class, and
 11 investment quality as those eligible for investment under G.S. 58-7-
 12 179, but not including investments permitted under G.S. 58-7-173(2), (8), or
 13 (11), 58-7-179."

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

15 **"§ 58-7-183. Special consent investments.**

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

- 19 (1) Without limitation in any investments otherwise authorized by this
 20 Chapter; or
 21 (2) In such other investments not specifically authorized by this Chapter
 22 as long as any single interest investment does not exceed two percent
 23 (2%) of admitted assets and the aggregate of the investments does not
 24 exceed the lesser of five percent (5%) of the insurer's total admitted
 25 assets or ~~twenty percent (20%)~~ sixty percent (60%) of the amount by
 26 which the insurer's policyholders' surplus exceeds the minimum
 27 required to be maintained.

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

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

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

35 Sec. 15. The catch line of G.S. 58-7-192 reads as rewritten:

36 **"§ 58-7-192. Valuation of ~~other~~ securities and investments."**

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

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

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

43 **"§ 58-8-20. Mutual companies with a guaranty capital.**

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

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

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

24 (d) Shareholders and members of such companies are subject to the same
25 provisions of law in respect to their right to vote as apply respectively to shareholders in
26 stock companies and policyholders in ~~purely~~-mutual companies.

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

1 income as specified in the certificate. Any amounts in excess shall be for the benefit of
2 the policyholders."

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

5 **"ARTICLE 9.**

6 **~~"EXCHANGE OF STOCK.~~ REINSURANCE INTERMEDIARIES."**

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

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

10 (a) As used in this Article:

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

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

19 (3) 'Commissioner' includes the Commissioner's authorized deputies and
20 employees.

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

24 (5) 'Intermediary' means any person who acts as a broker, as defined in
25 G.S. 58-33-10(c), in soliciting, negotiating, or procuring the making of
26 any reinsurance contract or binder on behalf of a ceding insurer; or
27 acts as a broker, as defined in G.S. 58-33-10(c), in accepting any
28 reinsurance contract on behalf of an assuming insurer. 'Intermediary'
29 includes a broker or a manager, as those terms are defined in this
30 section.

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

36 a. An employee of a reinsurer;

37 b. A United States manager of the United States branch of an alien
38 reinsurer;

39 c. An underwriting manager who, pursuant to contract, manages
40 all the reinsurance operating of a reinsurer, is under common
41 control with the reinsurer under Article 19 of this Chapter, and
42 whose compensation is not based on the volume of premiums
43 written;

- 1 d. The manager of a group, association, pool, or organization of
2 insurers that engages in joint underwriting or joint reinsurance
3 and that is subject to examination by the insurance regulator of
4 the state in which the manager's principal business office is
5 located.
- 6 (7) 'Producer' means an insurance agent or insurance broker licensed
7 under Article 33 of this Chapter or an intermediary licensed under this
8 Article.
- 9 (8) 'Qualified United States financial institution' means a bank that:
- 10 a. Is organized, or in the case of a United States office of a foreign
11 banking organization is licensed, under the laws of the United
12 States or any state;
- 13 b. Is regulated, supervised, and examined by federal or state
14 authorities having regulatory authority over banks and trust
15 companies; and
- 16 c. Has been determined by the Securities Valuation Office of the
17 NAIC to meet its standards of financial condition and standing
18 in order to issue letters of credit.
- 19 (9) 'Reinsurer' means any licensed insurer that is authorized to assume
20 reinsurance.
- 21 (b) No person shall act as a broker in this State if the broker maintains an office
22 either directly, as a member or employee of a noncorporate entity, or as an officer,
23 director, or employee of a corporation:
- 24 (1) In this State, unless the broker is a producer in this State; or
25 (2) In another state, unless the broker is a producer in this State or another
26 state having a law or rule substantially similar to this Article or unless
27 the broker is licensed under this Article as a nonresident intermediary.
- 28 (c) No person shall act as a manager:
- 29 (1) For a reinsurer domiciled in this State, unless the manager is a
30 producer in this State;
- 31 (2) In this State, if the manager maintains an office directly, as a member
32 or employee of a noncorporate entity, or as an officer, director, or
33 employee of a corporation in this State, unless the manager is a
34 producer in this State;
- 35 (3) In another state for a foreign insurer, unless the manager is a producer
36 in this State or another state having a law or rule substantially similar
37 to this Article, or the manager is licensed in this State as a nonresident
38 intermediary.
- 39 (d) Every manager subject to subsection (c) of this section shall demonstrate to
40 the Commissioner that he has evidence of financial responsibility in the form of fidelity
41 bonds or liability insurance to cover the manager's contractual obligations. If any
42 manager cannot demonstrate this evidence, the Commissioner shall require the manager
43 to:

- 1 (1) Maintain a separate fidelity bond in favor of each reinsurer represented
2 in an amount that will cover those obligations and which bond is
3 issued by an authorized insurer; or
4 (2) Maintain an errors and omissions liability insurance policy in an
5 amount that will cover those obligations and which policy is issued by
6 a licensed insurer."

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

9 **"§ 58-9-6. Licensing.**

10 (a) The Commissioner shall issue an intermediary license to any person who has
11 complied with the requirements of this Article. A license issued to a noncorporate
12 entity authorizes all of the members of the entity and any designated employees to act as
13 intermediaries under the license, and those persons shall be named in the application
14 and any supplements. A license issued to a corporation authorizes all of the officers and
15 any designated employees and directors of the corporation to act as intermediaries on
16 behalf of the corporation, and those persons shall be named in the application and any
17 supplements.

18 (b) If an applicant for an intermediary license is a nonresident, the applicant,
19 before receiving a license, shall designate the Commissioner as his agent for service of
20 legal process and shall furnish the Commissioner with the name and address of a
21 resident of this State upon whom notices or orders of the Commissioner or process
22 affecting the nonresident intermediary may be served. The licensee shall notify the
23 Commissioner in writing of every change in his designated agent for service of process
24 within five business days after the change, and the change shall not become effective
25 until acknowledged by the Commissioner.

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

- 27 (1) The applicant, anyone named on the application, or any member,
28 principal, officer, or director of the applicant is not trustworthy;
29 (2) Any controlling person of the applicant is not trustworthy to act as an
30 intermediary; or
31 (3) Any of the persons in subdivisions (1) and (2) of this subsection has
32 given cause for revocation or suspension of the license or has failed to
33 comply with any prerequisite for the issuance of the license.

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

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

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

40 **"§ 58-9-11. Broker and insurer transactions.**

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

- 44 (1) The insurer may terminate the broker's authority at any time.

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

1 the reinsurer has delegated binding authority to the
2 representative.

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

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

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

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

16 (1) The reinsurer may terminate the contract for cause upon written notice
17 to the manager. The reinsurer may immediately suspend the authority
18 of the manager to assume or cede business during the pendency of any
19 dispute regarding the cause for termination.

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

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

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

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

36 b. Period of coverage, including effective and expiration dates,
37 cancellation provisions and notice required of cancellation, and
38 disposition of outstanding reserves on covered risk;

39 c. Reporting and settlement requirements of balances;

40 d. Rate used to compute the reinsurance premium;

41 e. Names and addresses of reinsurers;

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

44 g. Related correspondence and memoranda;

- 1 h. Proof of placement;
2 i. Details regarding retrocessions handled by the manager, as
3 permitted by G.S. 58-9-21, including the identity of
4 retrocessionaires and percentage of each contract assumed or
5 ceded;
6 j. Financial records, including, but not limited to, premium and
7 loss accounts; and
8 k. When the manager places a reinsurance contract on behalf of a
9 ceding insurer:
10 1. Directly from any assuming reinsurer, written evidence
11 that the assuming reinsurer has agreed to assume the
12 risk; or
13 2. If placed through a representative of the assuming
14 reinsurer, other than an employee, written evidence that
15 the reinsurer has delegated binding authority to the
16 representative.
17 (5) The reinsurer will have access and the right to copy all accounts and
18 records maintained by the manager related to its business in a form
19 usable by the reinsurer.
20 (6) The contract cannot be assigned in whole or in part by the manager.
21 (7) The manager will comply with the written underwriting and rating
22 standards established by the insurer for the acceptance, rejection, or
23 cession of all risks.
24 (8) The rates, terms, and purposes of commissions, charges, and other fees
25 that the manager may levy against the reinsurer shall be set forth.
26 (9) If the contract permits the manager to settle claims on behalf of the
27 reinsurer:
28 a. All claims will be reported to the reinsurer in a timely manner;
29 b. A copy of the claim file will be sent to the reinsurer at its
30 request or as soon as it becomes known that the claim:
31 1. Has the potential to exceed an amount set by the
32 reinsurer and approved by the Commissioner;
33 2. Involves a coverage dispute;
34 3. May exceed the manager's claims settlement authority;
35 4. Is open for more than six months; or
36 5. Is closed by payment of an amount set by the reinsurer
37 and approved by the Commissioner.
38 c. All claim files will be the joint property of the reinsurer and
39 manager. However, upon an order of liquidation of the
40 reinsurer, the files shall become the sole property of the
41 reinsurer or its estate; the manager shall have reasonable access
42 to and the right to copy the files on a timely basis; and
43 d. Any settlement authority granted to the manager may be
44 terminated for cause upon the reinsurer's written notice to the

- 1 manager or upon the termination of the contract. The reinsurer
2 may suspend the settlement authority during the pendency of
3 the dispute regarding the cause of termination.
- 4 (10) If the contract provides for a sharing of interim profits by the manager,
5 the interim profits will not be paid until one year after the end of each
6 underwriting period for property business and five years after the end
7 of each underwriting period for casualty business and not until the
8 adequacy of reserves on remaining claims has been verified pursuant
9 to G.S. 58-9-21.
- 10 (11) The manager will annually provide the reinsurer with an audited
11 statement of its financial condition prepared by an independent
12 certified public accountant.
- 13 (12) The reinsurer shall at least semiannually conduct an on-site review of
14 the underwriting and claims processing operations of the manager.
- 15 (13) The manager will disclose to the reinsurer any relationship it has with
16 any insurer before ceding or assuming any business with the insurer
17 pursuant to this contract.
- 18 (14) Within the scope of its actual or apparent authority, the acts of the
19 manager shall be deemed to be the acts of the reinsurer on whose
20 behalf it is acting.
- 21 (b) A manager shall not:
- 22 (1) Cede retrocessions on behalf of the reinsurer, except that the manager
23 may cede facultative retrocessions pursuant to obligatory facultative
24 agreements if the contract with the reinsurer contains reinsurance
25 underwriting guidelines for the retrocessions. The guidelines shall
26 include a list of reinsurers with which the automatic agreements are in
27 effect, and for each reinsurer, the coverages and amounts or
28 percentages that may be reinsured, and commission schedules.
- 29 (2) Commit the reinsurer to participate in reinsurance syndicates.
- 30 (3) Appoint any producer without assuring that the producer is duly
31 licensed to transact the type of reinsurance for which he is appointed.
- 32 (4) Without prior approval of the reinsurer, pay or commit the reinsurer to
33 pay a claim settlement with a retrocessionaire, without prior approval
34 of the reinsurer. If prior approval is given, a report must be promptly
35 forwarded to the reinsurer.
- 36 (5) Collect any payment from a retrocessionaire or commit the reinsurer to
37 any claim settlement with a retrocessionaire, without prior approval of
38 the reinsurer. If prior approval is given, a report must be promptly
39 forwarded to the reinsurer.
- 40 (6) Jointly employ an individual who is employed by the reinsurer unless
41 the manager is under common control with the reinsurer under Article
42 19 of this Chapter.
- 43 (7) Appoint a submanager."

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

3 **"§ 58-9-21. Miscellaneous provisions.**

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

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

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

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

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

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

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

24 **"§ 58-9-26. Sanctions.**

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

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

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

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

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

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

43 **"§ 58-13-10. Scope.**

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

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

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

27 ~~Further, no person shall enter into an agreement to merge with or otherwise acquire~~
28 ~~control of a domestic insurer unless such agreement is conditioned upon the approval of~~
29 ~~the Commissioner pursuant to this section. No such merger or other acquisition of~~
30 ~~control shall be effective until a statement containing the information required by this~~
31 ~~section has been filed with the Commissioner and all other provisions of this section~~
32 ~~have been complied with and the merger or acquisition of control has been approved by~~
33 ~~the Commissioner pursuant to this section. unless such offer, request, invitation,~~
34 ~~agreement, or acquisition is conditioned upon the approval of the Commissioner~~
35 ~~pursuant to this section. No such merger or other acquisition of control shall be~~
36 ~~effective until a statement containing the information required by this section has been~~
37 ~~filed with the Commissioner and all other provisions of this section have been complied~~
38 ~~with and the merger or acquisition of control has been approved by the Commissioner~~
39 ~~pursuant to this section. The statement containing the information required by this~~
40 ~~section shall also be filed with the domestic insurer at the time it is filed with the~~
41 ~~Commissioner.~~

42 For the purposes of this section a 'domestic insurer' includes any person controlling a
43 domestic insurer. Further, for the purposes of this section, 'person' does not include any
44 securities broker holding, in the usual and customary broker's function, less than twenty

1 percent (20%) of the voting securities of an insurance company or of any person that
2 controls an insurance company."

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

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

7 (1) The name and address of each person by whom or on whose behalf the
8 merger or other acquisition of control referred to in subsection (a) of
9 this section is to be effected (hereinafter called 'acquiring party'), and:
10 (i) if such person is an individual, his principal occupation and all
11 offices and positions held during the past five years, and any
12 conviction of crimes other than minor traffic violations during the past
13 10 years; (ii) if such person is not an individual, a report of the nature
14 of its business operations during the past five years or for such lesser
15 period as such person and any predecessors thereof shall have been in
16 existence; an informative description of the business intended to be
17 done by such person and such person's subsidiaries; and a list of all
18 individuals who are or who have been selected to become directors or
19 executive officers of such person, or who perform or will perform
20 functions appropriate to such positions. Such list shall include for
21 each such individual the information required by sub-subdivision (1)(i)
22 of this subsection.

23 (2) The source, nature, and amount of the consideration used or to be used
24 in effecting the merger or other acquisition of control; a description of
25 any transaction wherein funds were or are to be obtained for any such
26 purpose, including any pledge of the insurer's stock, or the stock of any
27 of its subsidiaries or controlling affiliates; and the identity of persons
28 furnishing such ~~consideration~~ consideration; provided, however, that
29 where a source of such consideration is a loan made in the lender's
30 ordinary course of business, the identity of the lender shall remain
31 confidential, if the person filing such statement so requests.

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

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

42 (5) The number of shares of any security referred to in subsection (a) of
43 this section that each acquiring party proposes to acquire; the terms of
44 the offer, request, invitation, agreement, or acquisition referred to in

1 subsection (a) of this section; and a statement as to the method by
2 which the fairness of the proposal was arrived at.

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

6 (7) A full description of any contracts, arrangements, or understandings
7 with respect to any security referred to in subsection (a) of this section
8 in which any acquiring party is involved, including transfer of any of
9 the securities, joint ventures, loan or option arrangements, puts or
10 calls, guarantees of loans, guarantees against loss or guarantees of
11 profits, division of losses or profits, or the giving or withholding of
12 proxies. Such description shall identify the persons with whom such
13 contracts, arrangements, or understandings have been entered into.

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

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

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

28 (11) The term of any agreement, contract, or understanding made with or
29 proposed to be made with any third party in connection with any
30 acquisition of control of or merger with a domestic insurer, and the
31 amount of any fees, commissions, or other compensation to be paid to
32 the third party with regard thereto.

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

36 If the person required to file the statement referred to in subsection (a) of this
37 section is a partnership, limited partnership, syndicate, or other group, the
38 Commissioner shall require that the information called for by subdivisions (1) through
39 (12) of this subsection be given with respect to each partner of such partnership or
40 limited partnership, each member of such syndicate or group, and each person who
41 controls such partner or member. If any such partner, member, or person is a
42 corporation or the person required to file the statement referred to in subsection (a) of
43 this section is a corporation, the Commissioner shall require that the information called
44 for by subdivisions (1) through (12) of this subsection be given with respect to such

1 corporation, each officer and director of such corporation, and each person who is,
2 directly or indirectly, the beneficial owner of more than ten percent (10%) of the
3 outstanding voting securities of such corporation.

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

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

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

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

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

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

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

42 "(a) Every insurer that is licensed to do business in this State and that is a member
43 of an insurance holding company system shall register with the Commissioner, except a
44 foreign insurer subject to the registration requirements and standards adopted by statute

1 or regulation in the jurisdiction of its domicile that are substantially similar to those
2 contained in this section ~~and G.S. 58-19-30(a) and G.S. 58-19-30(b), 58-19-30(c), and~~
3 ~~58-19-30(d), or a provision such as the following:~~ Each registered insurer shall keep
4 current the information required to be disclosed in its registration statement by reporting
5 all material changes or additions within 15 days after the end of the month in which it
6 learns of each change or addition. The insurer shall also file a copy of its registration
7 statement and any amendments to the statement in each state in which that insurer is
8 authorized to do business if requested by the insurance regulator of that state. Any
9 insurer that is subject to registration under this section shall register within 30 days after
10 it becomes subject to registration, and an amendment to the registration statement shall
11 be filed by March ~~31~~1 of each year for ~~any changes that may have occurred during the~~
12 previous calendar year; unless the Commissioner for good cause shown extends the time
13 for registration or filing, and then within the extended time. All registration statements
14 shall contain a summary, on a form prescribed by the Commissioner, outlining all items
15 in the current registration statement representing changes from the prior registration
16 statement. The Commissioner may require any insurer that is a member of a holding
17 company system that is not subject to registration under this section to furnish a copy of
18 the registration statement or other information filed by such insurance company with the
19 insurance regulator of its domiciliary jurisdiction."

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

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

- 24 (1) The bylaws, capital structure, general financial condition, ownership,
25 and management of the insurer and any person controlling the insurer.
- 26 (2) The identity and relationship of every member of the insurance
27 holding company system.
- 28 (3) The following agreements in force, and transactions currently
29 outstanding or that have occurred during the last calendar year
30 between such insurer and its affiliates ~~or other third parties where~~
31 ~~indicated:~~
 - 32 a. Loans, other investments, or purchases, sales or exchanges of
33 securities of the affiliates by the insurer or of the insurer by its
34 affiliates.
 - 35 b. Purchases, sales, or exchange of assets.
 - 36 c. Transactions not in the ordinary course of business.
 - 37 d. Guarantees or undertakings for the benefit of an affiliate that
38 result in an actual contingent exposure of the insurer's assets to
39 liability, other than insurance contracts entered into in the
40 ordinary course of the insurer's business.
 - 41 e. All management agreements, service contracts, and cost-sharing
42 arrangements.
 - 43 f. Reinsurance agreements.
 - 44 g. Dividends and other distributions to shareholders.

1 h. Consolidated tax allocation agreements.

2 (4) Any pledge of the insurer's stock, including stock of any subsidiary or
3 controlling affiliate, for a loan made to any member of the insurance
4 holding company system.

5 (5) Other matters concerning transactions between registered insurers and
6 any affiliates as may be included from time to time in any registration
7 forms adopted or approved by the Commissioner."

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

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

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

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

19 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
20 or investments, provided the transactions equal or exceed: (i) with
21 respect to nonlife insurers, the lesser of three percent (3%) of the
22 insurer's admitted assets or twenty-five percent (25%) of surplus as
23 regards policyholders; (ii) with respect to life insurers, three percent
24 (3%) of the insurer's admitted assets; each as of the preceding
25 December 31.

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

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

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

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

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

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

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

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

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

36 "**§ 58-22-10. Definitions.**

37 As used in this Article:

38 (1) 'Completed operations liability' means liability arising out of the
39 installation, maintenance, or repair of any product at a site that is not
40 owned or controlled by:

41 a. Any person who performs that work; or

42 b. Any person who hires an independent contractor to perform that
43 work;

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

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

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

1 in the risk retention group that provides such
2 reinsurance; and

3 h. The name of which includes the phrase 'Risk Retention Group'."

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

5 **"§ 58-22-15. Risk retention groups chartered in this State.**

6 (a) A risk retention group seeking to be chartered in this State must be chartered
7 and licensed as a liability insurance company under Article 7 of this Chapter and, except
8 as provided elsewhere in this Article, must comply with all of the laws and rules
9 applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20
10 to the extent such requirements are not a limitation on laws, administrative rules, or
11 requirements of this State. ~~Before it may offer insurance in any State, each risk retention~~
12 ~~group shall also submit to the Commissioner, for his approval, a plan of operation or a~~
13 ~~feasibility study and revisions of such plan or study if the group intends to offer any additional~~
14 ~~lines of liability insurance.~~

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

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

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

32 **"§ 58-22-20. Risk retention groups not chartered in this State.**

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

36 (1) Notice of Operations and Designation of Commissioner as Agent. –
37 Before offering insurance in this State, a risk retention group shall
38 submit to the Commissioner:

39 a. A statement identifying the state or states in which the risk
40 retention group is chartered and licensed as a liability insurance
41 company, date of chartering, its principal place of business, and
42 such other information including information on its
43 membership, as the Commissioner may require to verify that
44 the risk retention group is qualified under G.S. 58-22-10(10);

- 1 b. A copy of its plan of operations or a feasibility study and
2 revisions of such plan or study submitted to its state of
3 domicile; provided, however, that the provision relating to the
4 submission of a plan of operation or a feasibility study shall not
5 apply with respect to any line or classification of liability
6 insurance that (i) was defined in the Product Liability Risk
7 Retention Act of 1981 before October 27, 1986, and (ii) was
8 offered before that date by any risk retention group that had
9 been chartered and operating for not less than three years before
10 that date;
- 11 c. ~~A statement of registration that designates the Commissioner as~~
12 ~~its agent for the purpose of receiving service of legal process.~~
13 The risk retention group shall submit a copy of any revision to
14 its plan of operation or feasibility study required by G.S. 58-22-
15 15(b) at the same time that such revision is submitted to the
16 Commissioner of its chartering state; and
- 17 d. A statement of registration that designates the Commissioner as
18 its agent for the purpose of receiving service of legal process.
- 19 (2) Financial Condition. – A risk retention group doing business in this
20 State shall file with the Commissioner:
- 21 a. A copy of the group's financial statement submitted to its state
22 of domicile, which shall be certified by an independent public
23 accountant and contain a statement of opinion on loss and loss
24 adjustment expense reserves made by a member of the
25 American Academy of Actuaries or a qualified loss reserve
26 specialist, under criteria established by the NAIC or by the
27 Commissioner;
- 28 b. A copy of each examination of the risk retention group as
29 certified by the State insurance regulator or public official
30 conducting the examination;
- 31 c. Upon request by the Commissioner, a copy of any audit
32 performed with respect to the risk retention group; and
- 33 d. Such information as may be required to verify its continuing
34 qualification as a risk retention group under G.S. 58-22-10(10).
- 35 (3) Taxation.
- 36 a. All premiums paid for coverages within this State to risk
37 retention groups shall be subject to taxation at the same rate and
38 subject to the same payment procedures and to the same
39 interest, fines, and penalties for nonpayment as those applicable
40 to surplus lines insurance under Article 21 of this Chapter.
- 41 b. To the extent licensed agents or brokers are ~~utilized~~, utilized
42 pursuant to G.S. 58-22-60, they shall report and pay the taxes
43 for the premiums for ~~risk~~ risks that they have placed with or on
44 behalf of a risk retention group not chartered in this State. Such

agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the Commissioner, as provided in G.S. 58-2-185. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

1. The limit of liability;
2. The time period covered;
3. The effective date;
4. The name of the risk retention group that issued the policy;
5. The gross premium charged; and
6. The amount of return premiums, if any.

c. To the ~~extent~~ extent that insurance agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State.

- (4) Compliance With Unfair Claims Settlement Practices Law. – A risk retention group and its agents and representatives shall comply with G.S. 58-3-100(5) and G.S. 58-63-15(11).
- (5) Deceptive, False, or Fraudulent Practices. – A risk retention group shall comply with the provisions of Article 63 of this Chapter and Chapter 75 of the General Statutes regarding deceptive, false, or fraudulent acts or practices.
- (6) Examination Regarding Financial Condition. – A risk retention group must submit to an examination by the Commissioner to determine its financial condition if the insurance regulator of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner. This examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the NAIC.
- (7) Notice to Purchasers. – Any policy issued by a risk retention group shall contain in 10 point type and contrasting color on the front page and the declaration page, the following notice:

'NOTICE

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. In the event of the insolvency of your risk retention group, losses under this policy will not be paid by any insurance insolvency or guaranty fund in this State.'

- 1 (8) Prohibited Acts Regarding Solicitation or Sale. – The following acts
2 by a risk retention group are prohibited:
3 a. The solicitation or sale of insurance by a risk retention group to
4 any person who is not eligible for membership in such group;
5 and
6 b. The solicitation or sale of insurance by, or operation of, a risk
7 retention group that is in a hazardous financial condition or is
8 financially impaired.
- 9 (9) Prohibition of Ownership By An Insurance Company. – No risk
10 retention group shall be allowed to do business in this State if an
11 insurance company is directly or indirectly a member or owner of such
12 risk retention group, other than in the case of a risk retention group all
13 of whose members are insurance companies.
- 14 (10) Prohibited Coverage. – No risk retention group may offer insurance
15 policy coverage prohibited or not authorized by this Chapter or
16 declared unlawful by the appellate courts of this State.
- 17 (11) Delinquency Proceedings. – A risk retention group not chartered in
18 this State and doing business in this State must comply with a lawful
19 order issued in a voluntary dissolution proceeding or in a delinquency
20 proceeding commenced by a state insurance commissioner if there has
21 been a finding of financial impairment after an examination under ~~G.S.~~
22 ~~58-22-20.~~ G.S. 58-22-20(6).
- 23 (12) Penalties. – A risk retention group that violates any provision of this
24 Article is subject to G.S. 58-2-70."

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

26 "**§ 58-22-40. Notice and registration requirements of purchasing groups.**

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

- 29 (1) Identify the state in which the group is domiciled;
30 (2) Specify the lines and classifications of liability insurance that the
31 purchasing group intends to purchase;
32 (3) Identify the insurer from which the group intends to purchase its
33 insurance and the domicile of such insurer;
34 (4) Identify the principal place of business of the group;
35 (5) Provide such other information as may be required by the
36 Commissioner to verify that the purchasing group is qualified under
37 G.S. 58-22-10(9); ~~and~~
38 (6) Specify the method by which and the person or persons, if any,
39 through whom insurance will be offered to its members whose risks
40 are resident or located in this State; and furnish such information as
41 may be required by the Commissioner to determine the appropriate
42 premium tax ~~treatment.~~ treatment; and
43 (7) Identify all other states in which the group intends to do business.

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

4 (1) That

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

7 b. Is domiciled on and after October 27, 1986, in any state of the
8 United States;

9 (2) That before October 27, 1986, purchased insurance from an insurer
10 licensed in any state; and since October 27, 1986, purchased its
11 insurance from an insurer licensed in any state;

12 (3) That was a purchasing group under the requirements of the Product
13 Liability Retention Act of 1981 before October 27, 1986; and

14 (4) That does not purchase insurance that was not authorized for purposes
15 of an exemption under that act, as in effect before October 27, 1986.

16 (c) A purchasing group shall notify the Commissioner of any changes in any of
17 the items in subsection (a) of this section within 10 days after those changes.

18 (d) Each purchasing group that is required to give notice under subsection (a) of
19 this section shall also furnish such information as may be required by the Commissioner
20 to:

21 (1) Verify that the entity qualifies as a purchasing group;

22 (2) Determine where the purchasing group is located; and

23 (3) Determine appropriate tax treatment."

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

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

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

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

40 (c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-
41 155, 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-
42 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-
43 160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173,
44 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-

1 7-190, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34
2 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by
3 each pool within 60 days after the end of the pool's fiscal year, subject to extension by
4 the Commissioner."

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

7 **"§ 58-30-71. Immunity and indemnification of the receiver and employees.**

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

- 10 (1) All receivers responsible for the conduct of a delinquency proceeding
11 under this Article, including present and former receivers; and
12 (2) Their employees meaning all present and former special deputies and
13 assistant special deputies appointed by the Commissioner, staff
14 assigned to the delinquency proceeding employed by the Attorney
15 General's Office, and all persons whom the Commissioner, special
16 deputies, or assistant special deputies have employed to assist in a
17 delinquency proceeding under this Article. Attorneys, accountants,
18 auditors, and other professional persons or firms, who are retained by
19 the receiver as independent contractors and their employees are not
20 employees of the receiver for purposes of this section.

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

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

41 (d) Attorneys' fees and all related expenses incurred in defending a legal action
42 for which immunity or indemnity is available under this section shall be paid from the
43 assets of the insurer, as they are incurred, before the final disposition of the action, upon
44 receipt of any agreement by or on behalf of the receiver or employee to repay the

1 attorneys' fees and expenses if it is ultimately determined upon a final adjudication on
2 the merits that the receiver or employee is not entitled to immunity or indemnity under
3 this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 "**§ 58-30-95. Termination of rehabilitation.**

3 (a) Whenever the rehabilitator believes further attempts to rehabilitate an insurer
4 would substantially increase the risk of loss to creditors, policyholders or the public, or
5 would be futile, the rehabilitator may petition the Court for an order of liquidation. A
6 petition under this subsection shall have the same effect as a petition under G.S. 58-30-
7 100. The Court may make such findings and issue such orders at any time upon its own
8 motion. The Court shall permit the directors of the insurer to take such actions as are
9 reasonably necessary to defend against the petition and may order payment from the
10 estate of the insurer of such costs and other expenses of defense as justice may require.
11 The court may allow the payment of costs and expenses incurred in defending against
12 the petition for an order of liquidation only upon a specific finding that the defense was
13 conducted, and the costs and expenses were incurred, in good faith. The directors shall
14 have the burden of proving good faith. Evidence of good faith shall be the existence of
15 a reasonable basis to conclude that the insurer is actually solvent or that there exists a
16 viable means to accomplish rehabilitation without jeopardizing the remaining assets of
17 the insurer and that continued operation of the insurer is in the best interest of the
18 policyholders, stockholders, and creditors.

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

36 Sec. 42. G.S. 58-7-21(b)(2) reads as rewritten:

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

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

42 b. Submits to this State's authority to examine its books and
43 records;

- 1 c. Is licensed to transact insurance or reinsurance in at least one
 2 state, or in the case of a United States branch of an alien
 3 assuming insurer is entered through and licensed to transact
 4 insurance or reinsurance in at least one state;
- 5 d. Files annually with the Commissioner a copy of its annual
 6 statement filed with the insurance regulator of its state of
 7 ~~domicile and~~ domicile, a copy of its most recent audited
 8 financial ~~statement;~~ statement, and a fee of five hundred dollars
 9 (\$500.00); and either
- 10 1. Maintains a policyholders' surplus in an amount that is
 11 not less than twenty million dollars (\$20,000,000) and
 12 whose accreditation has not been denied by the
 13 Commissioner within 90 days after its submission; or
 - 14 2. Maintains a policyholders' surplus in an amount less than
 15 twenty million dollars (\$20,000,000) and whose
 16 accreditation has been approved by the Commissioner.
- 17 No credit shall be allowed a domestic ceding
 18 insurer if the assuming insurer's accreditation
 19 has been revoked by the Commissioner after
 20 notice and opportunity for a hearing."

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

22 "(a) As used in this Article:

- 23 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under
 24 common control', means the direct or indirect possession of the power
 25 to direct or cause the direction of the management and policies of a
 26 person, whether through the ownership of voting securities, by contract
 27 other than a commercial contract for goods or nonmanagement
 28 services, or otherwise, unless the power is the result of an official
 29 position with or corporate office held by the person.
- 30 (2) 'Insurer' means a domestic insurer but does not mean a reciprocal
 31 regulated under Article 15 of this Chapter.
- 32 (3) 'Managing general agent' or 'MGA' means any person who ~~negotiates~~
 33 ~~and binds ceding reinsurance contracts on behalf of an insurer or manages~~
 34 all or part of the insurance business of an insurer (including the
 35 management of a separate division, department, or underwriting
 36 office) and acts as an agent for the insurer, whether known as a
 37 managing general agent, manager, or other similar term, who, with or
 38 without the authority, either separately or together with persons under
 39 common control, produces, directly or indirectly, and underwrites an
 40 amount of gross direct written premium equal to or more than five
 41 percent (5%) of the policyholder surplus as reported in the last annual
 42 statement of the insurer in any one quarter or year together with one or
 43 more of the following activities related to the business produced: (i)
 44 adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of

1 the insurer. 'MGA' does not mean an employee of the insurer; an
2 underwriting manager who, pursuant to contract, manages all or part of
3 the insurance operations of the insurer, is under common control with
4 the insurer, is subject to Article 19 of this Chapter, and whose
5 compensation is not based on the volume of premiums written; ~~or~~ a
6 person who, under Article 15 of this Chapter, is designated and
7 authorized by subscribers as the attorney-in-fact for a reciprocal
8 having authority to obligate them on reciprocal and other insurance
9 contracts; or a U.S. Manager of the United States branch of an alien
10 insurer.

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

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

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

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

24 (1) The insurer may terminate the contract for cause upon written notice to
25 the MGA. The insurer may suspend the underwriting authority of the
26 MGA during the pendency of any dispute regarding the cause for
27 termination.

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

31 (3) All funds collected for the account of an insurer will be held by the
32 MGA in a fiduciary capacity in a bank that is a member of the Federal
33 Reserve System. This account shall be used for all payments on behalf
34 of the insurer. The MGA may retain no more than three months
35 estimated claims payments and allocated loss adjustment expenses.

36 (4) Separate records of business written by the MGA will be maintained.
37 The insurer shall have access to and right to copy all accounts related
38 to its business in a form usable by the insurer, and the Commissioner
39 shall have access to all books, bank accounts, and records of the MGA
40 in a form usable to the Commissioner. The records shall be retained
41 according to the provisions of 11 NCAC 11C.0105.

42 (5) The contract may not be assigned in whole or part by the MGA.

43 (6) Appropriate underwriting guidelines, including: the maximum annual
44 premium volume; the basis of the rates to be charged; the types of risks

1 that may be written; maximum limits of liability; applicable
2 exclusions; territorial limitations; policy cancellation provisions; and
3 the maximum policy period. The insurer shall have the right to cancel
4 or nonrenew any policy of insurance subject to applicable laws and
5 rules.

6 (7) If the contract permits the MGA to settle claims on behalf of the
7 insurer:

8 a. All claims must be reported to the ~~MGA~~insurer in a timely
9 manner.

10 b. A copy of the claim file will be sent to the insurer at its request
11 or as soon as it becomes known that the claim: has the potential
12 to exceed an amount determined by the insurer and approved by
13 the Commissioner; involves a coverage dispute; may exceed the
14 MGA's claims settlement authority; is open for more than six
15 months; or is closed by payment of an amount set by the insurer
16 and approved by the Commissioner.

17 c. All claim files will be the joint property of the insurer and
18 MGA. However, upon an order of liquidation of the insurer the
19 files shall become the sole property of the insurer or its estate;
20 the MGA shall have reasonable access to and the right to copy
21 the files on a timely basis.

22 d. Any settlement authority granted to the MGA may be
23 terminated for cause upon the insurer's written notice to the
24 MGA or upon the termination of the contract. The insurer may
25 suspend the settlement authority during the pendency of any
26 dispute regarding the cause for termination.

27 (8) Where electronic claims files are in existence, the contract must
28 address the timely transmission of the data.

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

36 (10) The MGA shall not:

37 a. Bind reinsurance or retrocessions on behalf of the insurer,
38 except that the MGA may bind facultative reinsurance contracts
39 pursuant to obligatory facultative agreements if the contract
40 with the insurer contains reinsurance underwriting guidelines
41 including, for both reinsurance assumed and ceded, a list of
42 reinsurers with which such automatic agreements are in effect,
43 the coverages and amounts or percentages that may be
44 reinsured, and commission schedules;

- 1 b. Commit the insurer to participate in insurance or reinsurance
2 syndicates;
3 c. Appoint any producer without assuring that the producer is
4 lawfully licensed to transact the type of insurance for which the
5 producer is appointed;
6 d. Without prior approval of the insurer, pay or commit the insurer
7 to pay a claim over a specified amount, net of reinsurance,
8 which shall not exceed one percent (1%) of the insurer's
9 policyholder's surplus as of the preceding December 31 ~~of the~~
10 ~~last completed calendar year~~;
11 e. Collect any payment from a reinsurer or commit the insurer to
12 any claim settlement with a reinsurer, without the insurer's prior
13 approval. If prior approval is given, a report must be promptly
14 forwarded to the insurer;
15 f. Permit its subproducer to serve on the insurer's board of
16 directors;
17 g. Jointly employ an individual who is employed with the insurer;
18 or
19 h. Appoint a sub-MGA."

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

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

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

32 "(l) An insurer shall not appoint to its board of directors an officer, director,
33 employee, subagent, or controlling shareholder of its MGAs. This subsection does not
34 apply to relationships governed by Article 19 of this Chapter or, if applicable, ~~G.S. 58-7-~~
35 ~~157-G.S. 58-3-165."~~

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

37 "(n) If the Commissioner ~~finds after a hearing conducted in accordance with G.S. 58-2-~~
38 ~~50 that any person has violated any provision of this Article, determines that an MGA or any~~
39 other person has not materially complied with this section or with any rule adopted or
40 order issued under this section, after notice and opportunity to be heard, the
41 Commissioner may order:

- 42 (1) For each separate violation, a civil penalty ~~of one thousand dollars~~
43 ~~(\$1,000) to be credited to the General Fund; under the procedures in G.S.~~
44 58-2-70(d); or

- 1 (2) ~~Revocation or suspension of the agent's license, or person's license.~~
2 (3) ~~The MGA to reimburse the insurer or the rehabilitator or liquidator of~~
3 ~~the insurer for any losses incurred by the insurer caused by a violation~~
4 ~~of this Article committed by the MGA.~~

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

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

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

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

18 **"§ 58-34-10. Management contracts.**

19 ~~(a) All agreements or contracts under which any person is delegated management~~
20 ~~duties or control of a domestic insurer, or which transfer a substantial part of any major~~
21 ~~function of a domestic insurer such as adjustment of losses, production of business,~~
22 ~~investment of assets, or general servicing of the insurer's business must be filed with the~~
23 ~~Commissioner on or before the effective date of such contract or agreement. Subject to~~
24 ~~G.S. 58-19-30(b)(4), any domestic insurer that enters into a management contract must~~
25 ~~file that contract with the Commissioner on or before its effective date. As used in this~~
26 ~~section, 'management contract' means any agreement or contract under which any~~
27 ~~person is delegated management duties or control of an insurer, or transfers a substantial~~
28 ~~part of any major function of an insurer, such as adjustment of losses, production of~~
29 ~~business, investment of assets, or general servicing of the insurer's business.~~

30 ~~(b) There shall be exempted from the filing requirement of this section contracts~~
31 ~~by groups of affiliated insurers on a pooled funds basis or service company management~~
32 ~~basis, where costs to the individual member insurers are charged on an actually incurred~~
33 ~~or closely estimated basis. However, these contracts must be reduced to written form.~~
34 Any domestic insurer that has a management contract shall file a statement with the
35 initial filing of that contract that discloses (i) criteria on which charges to the insurer are
36 based for that contract; (ii) whether management personnel or other employees of the
37 insurer are to be performing management functions and receiving any remuneration
38 therefor through that contract in addition to the compensation by way of salary received
39 directly from the insurer for their services; (iii) whether the contract transfers substantial
40 control of the insurer or any of the powers vested in the board of directors, by statute,
41 articles of incorporation, or bylaws, or substantially all of the basic functions of the
42 insurer's management; (iv) biographical information for each officer and director of the
43 management firm; and (v) other information concerning the contract or the management
44 firm as may be included from time to time in any registration forms adopted or

1 approved by the Commissioner. Such statement shall be filed on a form prescribed by
2 the Commissioner.

3 (c) Any domestic insurer that amends or cancels a management contract filed
4 pursuant to subsection (a) of this section shall notify the Commissioner thereof within
5 15 business days after the amendment or cancellation. If the contract is amended, the
6 notice shall provide a copy of the amended contract and shall disclose if the amendment
7 affects any of the items in subsection (b) of this section. The Commissioner may
8 prescribe a form to be used to provide notice under this subsection.

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

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

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

27 "**§ 58-34-15. Grounds for disapproval.**

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

- 30 (1) That the service or management charges are based upon criteria
31 unrelated either to the managed insurer's profits or to the reasonable
32 customary and usual charges for such services or are based on factors
33 unrelated to the value of such services to the insurer; or
34 (2) That management personnel or other employees of the insurer are to be
35 performing management functions and receiving any remuneration
36 therefor through the management or service contract in addition to the
37 compensation by way of salary received directly from the insurer for
38 their services; or
39 (3) That the contract would transfer substantial control of the insurer or
40 any of the powers vested in the board of directors, by statute, articles
41 of incorporation, or bylaws, or substantially all of the basic functions
42 of the insurance company management; or

- 1 (4) That the contract contains provisions that would be clearly detrimental
 2 to the best interest of policyholders, stockholders, or members of the
 3 insurer; or
 4 (5) That the officers and directors of the management firm are of known
 5 bad character or have been affiliated, directly or indirectly, through
 6 ownership, control, management, reinsurance transactions, or other
 7 insurance or business relations with any person known to have been
 8 involved in the improper manipulation of assets, accounts, or
 9 reinsurance.

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

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

15 **"§ 58-48-20. Definitions.**

16 As used in this Article:

- 17 (1) 'Account' means any one of the three accounts created by G.S. 58-48-
 18 25.
 19 (1a) 'Affiliate' means a person who directly, or indirectly, through one or
 20 more intermediaries, controls, is controlled by, or is under common
 21 control with an insolvent insurer on December 31 of the year next
 22 preceding the date the insurer becomes an insolvent insurer.
 23 (2) 'Association' means the North Carolina Insurance Guaranty
 24 Association created under G.S. 58-48-25.
 25 (2a) 'Claimant' means any insured making a first party claim or any person
 26 instituting a liability claim; provided that no person who is an affiliate
 27 of the insolvent insurer may be a claimant.
 28 (3) Repealed by Session Laws 1991, c. 720, s. 6.
 29 (3a) 'Control' means the possession, direct or indirect, of the power to direct
 30 or cause the direction of the management and policies of a person,
 31 whether through the ownership of voting securities, by contract other
 32 than a commercial contract for goods or nonmanagement services, or
 33 otherwise, unless the power is the result of an official position with or
 34 corporate office held by the person. Control shall be presumed to exist
 35 if any person, directly or indirectly owns, controls, holds with the
 36 power to vote, or holds proxies representing ten percent (10%) or more
 37 of the voting securities of any other person. This presumption may be
 38 rebutted by a showing that control does not exist in fact.
 39 (4) 'Covered claim' means an unpaid claim, including one of unearned
 40 premiums, which is in excess of fifty dollars (\$50.00) and arises out of
 41 and is within the coverage and not in excess of the applicable limits of
 42 an insurance policy to which this Article applies as issued by an
 43 insurer, if such insurer becomes an insolvent insurer after the effective
 44 date of this Article and (i) the claimant or insured is a resident of this

1 State at the time of the insured event; ~~provided that for entities other than~~
2 ~~an individual, the residence of a claimant or insured is the state in which its~~
3 ~~principal place of business is located at the time of the insured event; or (ii)~~
4 the property from which the claim arises is permanently located in this
5 State. 'Covered claim' shall not include any amount awarded as
6 punitive or exemplary damages; sought as a return of premium under
7 any retrospective rating plan; or due any reinsurer, insurer, insurance
8 pool, or underwriting association, as subrogation or contribution
9 recoveries or otherwise.

10 (5) 'Insolvent insurer' means (i) an insurer licensed and authorized to
11 transact insurance in this State either at the time the policy was issued
12 or when the insured event occurred and (ii) against whom an order of
13 liquidation with a finding of insolvency has been entered after the
14 effective date of this Article by a court of competent jurisdiction in the
15 insurer's state of domicile or of this State under the provisions of
16 Article 30 of this Chapter, and which order of liquidation has not been
17 stayed or been the subject of a **writ of supersedeas** or other
18 comparable order.

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

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

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

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

33 (10) 'Resident' means:

34 a. An individual domiciled in this State;

35 b. An individual formerly domiciled in this State at the time the
36 applicable policy was issued or renewed and the term of the
37 policy had not expired at the time of the insured event, and who
38 at the time of the insured event had complied with the laws of
39 the current domicile necessary to allow maintenance in force
40 and effect of the applicable policy; or

41 c. In the case of a corporation or other entity that is not a natural
42 person, a corporation or entity whose principal place of
43 business is located in this State at the time of the insured event."

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

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

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

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

25 (2) If the insurance company fails to provide a supporting memorandum at
26 the request of the Commissioner within a period specified by rule or
27 the Commissioner determines that the supporting memorandum
28 provided by the insurance company fails to meet the standards
29 prescribed by the rules or is otherwise unacceptable to the
30 Commissioner, the Commissioner may engage a qualified actuary at
31 the expense of the company to review the opinion and the basis for the
32 opinion and prepare such supporting memorandum as is required by
33 the Commissioner.

34 (3) The opinion shall be submitted with the annual statement reflecting the
35 valuation of such reserve liabilities for each year ending on or after
36 December 31, 1994.

37 (4) The opinion shall apply to all business in force including individual
38 and group health insurance plans, in form and substance acceptable to
39 the Commissioner as specified by rule.

40 (5) The opinion shall be based on standards adopted from time to time by
41 the actuarial standards board and on such additional standards as the
42 Commissioner may by rule prescribe.

43 (6) In the case of an opinion required to be submitted by a foreign or alien
44 company, the Commissioner may accept the opinion filed by that

1 company with the insurance supervisory official of another state if the
2 Commissioner determines that the opinion reasonably meets the
3 requirements applicable to a company domiciled in this State.

4 (7) For the purposes of this section, 'qualified actuary' means a member in
5 good standing of the American Academy of Actuaries who meets the
6 requirement set forth in such rules.

7 (8) Except in cases of fraud or willful misconduct, the qualified actuary
8 shall not be liable for damages to any person (other than the insurance
9 company and the Commissioner) for any act, error, omission, decision,
10 or conduct with respect to the actuary's opinion.

11 (9) Disciplinary action by the Commissioner against the company or the
12 qualified actuary shall be defined in rules by the Commissioner.

13 (10) Any memorandum in support of the opinion, and any other material
14 provided by the company to the Commissioner in connection
15 therewith, shall be kept confidential by the Commissioner and shall not
16 be made public and shall not be subject to subpoena, other than for the
17 purpose of defending an action seeking damages from any person by
18 reason of any action required by this section or by rules adopted under
19 this section; provided, however, that the memorandum or other
20 material may otherwise be released by the Commissioner (i) with the
21 written consent of the company or (ii) to the American Academy of
22 Actuaries upon request stating the memorandum or other material is
23 required for the purpose of professional disciplinary proceedings and
24 setting forth procedures satisfactory to the Commissioner for
25 preserving the confidentiality of the memorandum or other material.
26 Once any portion of the confidential memorandum is cited by the
27 company in its marketing or is cited before any governmental agency
28 other than a state insurance department or is released by the company
29 to the news media, all portions of the confidential memorandum shall
30 be no longer confidential.

31 (k) The Commissioner shall adopt rules containing the minimum standards
32 applicable to the valuation of health plans."

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

34 "(1) Except as otherwise provided in subdivisions (3) and (4) of this
35 subsection, the minimum standard for the valuation of all such policies
36 and contracts issued ~~prior to~~ before the ~~operative~~ effective date of G.S.
37 ~~58-58-55~~ this section shall be that provided by the laws in effect
38 immediately ~~prior to such~~ before that date, except that the minimum
39 standard for the valuation of annuities and pure endowments purchased
40 under group annuity and pure endowment contracts issued ~~prior to such~~
41 ~~effective~~ before that date shall be that provided by the laws in effect
42 immediately ~~prior to such~~ before that date but replacing the interest
43 rates specified in such laws by an interest rate of five percent (5%) per

1 annum, and five and one-half percent (5 1/2%) interest for single
2 premium life insurance policies."

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

4 "(2) Except as otherwise provided in subdivisions (3) and (4) of this
5 subsection, the minimum standards for the valuation of all such
6 policies and contracts issued on or after the ~~operative date of G.S. 58-58-~~
7 ~~55~~ effective date of this section shall be the Commissioner's reserve
8 valuation methods defined in subsections (d), (d-1) and (g), five
9 percent (5%) interest for group annuity and pure endowment contracts
10 and three and one-half percent (3 1/2%) interest for all other policies
11 and contracts, or, in the case of policies and contracts other than
12 annuity and pure endowment contracts, issued on or after July 1, 1975,
13 four percent (4%) interest for such policies issued prior to April 19,
14 1979, and four and one-half percent (4 1/2%) interest for such policies
15 issued on or after April 19, 1979, and the following tables:

16 a. For all ordinary policies of life insurance issued on the standard
17 basis, excluding any disability and accidental death benefits in
18 such policies – the Commissioner's 1941 Standard Ordinary
19 Mortality Table for such policies issued prior to the operative
20 date of subdivision (e)(2) of G.S. 58-58-55, the Commissioner's
21 1958 Standard Ordinary Mortality Table for such policies
22 issued on or after the operative date of subdivision (e)(2) of
23 G.S. 58-58-55 prior to the operative date of subdivision (e)(4)
24 of G.S. 58-58-55, provided that for any category of such
25 policies issued on female risks, all modified net premiums and
26 present values referred to in this section may be calculated
27 according to an age not more than six years younger than the
28 actual age of the insured; and, for such policies issued on or
29 after the operative date of subdivision (e)(4) of G.S. 58-58-55,
30 (i) the Commissioner's 1980 Standard Ordinary Mortality
31 Table, or (ii) at the election of the company for any one or more
32 specified plans of life insurance, the Commissioner's 1980
33 Standard Ordinary Mortality Table with Ten-Year Select
34 Mortality Factors, or (iii) any ordinary mortality table, adopted
35 after 1980 by the NAIC, that is approved by regulation
36 promulgated by the Commissioner for use in determining the
37 minimum standard of valuation for such policies;

38 b. For all industrial life insurance policies issued on the standard
39 basis, excluding any disability and accidental death benefits in
40 such policies – the 1941 Standard Industrial Mortality Table for
41 such policies issued prior to the operative date of subdivision
42 (e)(3) of G.S. 58-58-55 and for such policies issued on or after
43 such operative date the Commissioner's 1961 Standard
44 Industrial Mortality Table or any industrial mortality table,

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

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

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

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

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

15 "(f) Reserves for all policies and contracts issued ~~prior to the operative date of G.S.~~
16 ~~58-58-55 before the effective date of this section~~ may be calculated, at the option of the
17 company, according to any standards ~~which that~~ produce greater aggregate reserves for
18 ~~all such those~~ policies and contracts than the minimum reserves required by the laws in
19 effect immediately ~~prior to such before that~~ date.

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

28 Any such company ~~which at any time shall have adopted that adopts~~ any standard of
29 valuation producing greater aggregate reserves than those calculated according to the
30 minimum standard herein provided may, with the approval of the Commissioner, adopt
31 any lower standard of valuation, but not lower than the minimum herein provided.
32 Provided, however, that for the purposes of this section, the holding of additional
33 reserves previously determined by a qualified actuary to be necessary to render the
34 opinion required by subsection (c) of this section shall not be deemed to be the adoption
35 of a higher standard of valuation."

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

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

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

1 values and benefits to be calculated upon the assumption that there are
 2 no dividends or paid-up additions credited to the policy and that there
 3 is no indebtedness to the company on the policy.

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

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

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

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

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

- 35 (1) The Commissioner must be satisfied that the benefits provided under
 36 the plan are substantially as favorable to policyholders and insureds as
 37 the minimum benefits otherwise required by subsections (b), (c), (d),
 38 or (e) herein;
- 39 (2) The Commissioner must be satisfied that the benefits and the pattern of
 40 premiums of that plan are not such as to mislead prospective
 41 policyholders or insureds;
- 42 (3) The cash surrender values and paid-up nonforfeiture benefits provided
 43 by such plan must not be less than the minimum values and benefits
 44 required for the plan computed by a method consistent with the

1 principles of this Standard Nonforfeiture Law, as determined by
2 regulations promulgated by the ~~Commissioner~~ Commissioner;

- 3 (4) Notwithstanding any other provision in the laws of this State, any
4 policy, contract, or certificate providing life insurance under any such
5 plan must be affirmatively approved by the Commissioner before it
6 can be marketed, issued, delivered, or used in this State."

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

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

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

12 "**§ 58-62-16. Definitions.**

13 As used in this Article:

- 14 (1) 'Account' means any of the two accounts created under G.S. 58-62-26.
15 (2) 'Association' means the North Carolina Life and Health Insurance
16 Guaranty Association created under G.S. 58-62-26.
17 (3) 'Board' means the board of directors of the Association established
18 under G.S. 58-62-31.
19 (4) 'Contractual obligation' means any obligation under a policy or
20 certificate under a group policy, or part thereof, for which coverage is
21 provided under G.S. 58-62-21.
22 (5) 'Covered policy' means any policy within the scope of this Article
23 under G.S. 58-62-21.
24 (6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer;
25 and 'delinquency' means an insurer impairment or insolvency.
26 (7) 'Health insurance' includes accident and health insurance, accident
27 insurance, and disability insurance.
28 (8) 'Impaired insurer' means a member insurer that, after the effective date
29 of this Article, is not an insolvent insurer, and (i) is deemed by the
30 Commissioner to be potentially unable to fulfill its contractual
31 obligations or (ii) is placed under an order of rehabilitation or
32 conservation by a court of competent jurisdiction.
33 (9) 'Insolvent insurer' means a member insurer that, after the effective date
34 of this Article, is placed under an order of liquidation with a finding of
35 insolvency by a court of competent jurisdiction.
36 (10) 'Insurance regulator' means the official or agency of another state that
37 is responsible for the regulation of a foreign insurer.
38 (11) 'Member insurer' means any insurer licensed or that holds a license to
39 transact in this State any kind of insurance for which coverage is
40 provided under G.S. 58-62-21; and includes any insurer whose license
41 in this State may have been suspended, revoked, not renewed or
42 voluntarily withdrawn, but does not include an entity governed by
43 Articles 65 through 67 of this Chapter; fraternal order or fraternal
44 benefit society; mandatory State pooling plan; mutual assessment

1 company or any entity that operates on an assessment basis; insurance
2 exchange; or any entity similar to any of the foregoing.

3 (12) 'Moody's Corporate Bond Yield Average' means the Monthly Average
4 Corporates as published by Moody's Investors Service, Inc., or any
5 successor thereto.

6 (13) 'Person' includes an individual, corporation, company, partnership,
7 association, or aggregation of individuals.

8 (14) 'Plan' means the plan of operation established under G.S. 58-62-46.

9 (15) 'Policy' includes a contract of insurance and an annuity contract.

10 (16) 'Premiums' means amounts received in any calendar year on covered
11 policies less premiums, considerations, and deposits returned thereon,
12 and less dividends and experience credits thereon. 'Premiums' does
13 not include any amounts received for any policies or for the parts of
14 any policies for which coverage is not provided under G.S. 58-62-
15 21(b); except that assessable premium shall not be reduced on account
16 of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-
17 21(d)(2) relating to limitations with respect to any one individual, any
18 one participant, and any one contract holder.

19 (17) 'Resident' means any person who resides in this State when a member
20 insurer is determined to be a delinquent insurer and to whom a
21 contractual obligation is owed. A person may be a resident of only
22 one state, which in the case of a person other than a natural person
23 shall be its principal place of business. 'Resident' also means a U.S.
24 citizen residing outside of the United States who owns a covered
25 policy that was purchased from a member insurer while that person
26 resided in this State.

27 (18) 'Unallocated annuity contract' means any annuity contract or group
28 annuity certificate that is not issued to and owned by an individual,
29 except to the extent of any annuity benefits guaranteed to an individual
30 by an insurer under the contract or certificate."

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

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

34 (1) The contractual obligations for which the insurer is liable or would
35 have been liable if it were not a delinquent insurer; or

36 (2) With respect to any one individual, regardless of the number of
37 policies, three hundred thousand dollars (\$300,000) for all benefits,
38 including cash ~~values~~-values; or

39 (3) With respect to each individual participating in a governmental
40 retirement plan established under section 401, 403(b), or 457 of the
41 Internal Revenue Code covered by an unallocated annuity contract, or
42 the beneficiaries of each individual if deceased, in the aggregate, three
43 hundred thousand dollars (\$300,000) in present value annuity benefits,
44 including net cash surrender and net cash withdrawal values; or

1 (4) With respect to any one contract holder covered by any unallocated
2 annuity contract not included in subdivision (3) of this subsection, five
3 million dollars (\$5,000,000) in benefits, regardless of the number of
4 such contracts held by that contract holder."

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

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

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

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

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

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

- 26 (1) The name and business address of the provider and a statement of
27 whether the provider is a partnership, corporation, or other type of
28 legal entity.
- 29 (2) The names and business addresses of the officers, directors, trustees,
30 managing or general partners, any person having a ten percent (10%)
31 or greater equity or beneficial interest in the provider, and any person
32 who will be managing the facility on a day-to-day basis, and a
33 description of these persons' interests in or occupations with the
34 provider.
- 35 (3) The following information on all persons named in response to
36 subdivision (2) of this section:
- 37 a. A description of the business experience of this person, if any,
38 in the operation or management of similar facilities;
- 39 b. The name and address of any professional service firm,
40 association, trust, partnership, or corporation in which this
41 person has, or which has in this person, a ten percent (10%) or
42 greater interest and which it is presently intended shall currently
43 or in the future provide goods, leases, or services to the facility,
44 or to residents of the facility, of an aggregate value of five

- 1 hundred dollars (\$500.00) or more within any year, including a
2 description of the goods, leases, or services and the probable or
3 anticipated cost thereof to the facility, provider, or residents or a
4 statement that this cost cannot presently be estimated; and
- 5 c. A description of any matter in which the person (i) has been
6 convicted of a felony or pleaded **nolo contendere** to a felony
7 charge, or been held liable or enjoined in a civil action by final
8 judgment, if the felony or civil action involved fraud,
9 embezzlement, fraudulent conversion, or misappropriation of
10 property; or (ii) is subject to a currently effective injunctive or
11 restrictive court order, or within the past five years, had any
12 State or federal license or permit suspended or revoked as a
13 result of an action brought by a governmental agency or
14 department, if the order or action arose out of or related to
15 business activity of health care, including actions affecting a
16 license to operate a foster care facility, nursing home,
17 retirement home, home for aged, or facility subject to this
18 Article or a similar law in another state.
- 19 (4) A statement as to whether the provider is, or is not affiliated with, a
20 religious, charitable, or other nonprofit organization, the extent of the
21 affiliation, if any, the extent to which the affiliate organization will be
22 responsible for the financial and contract obligations of the provider,
23 and the provision of the Federal Internal Revenue Code, if any, under
24 which the provider or affiliate is exempt from the payment of income
25 tax.
- 26 (5) The location and description of the physical property or properties of
27 the facility, existing or proposed, and to the extent proposed, the
28 estimated completion date or dates, whether construction has begun,
29 and the contingencies subject to which construction may be deferred.
- 30 (6) The services provided or proposed to be provided pursuant to contracts
31 for continuing care at the facility, including the extent to which
32 medical care is furnished, and a clear statement of which services are
33 included for specified basic fees for continuing care and which
34 services are made available at or by the facility at extra charge.
- 35 (7) A description of all fees required of residents, including the entrance
36 fee and periodic charges, if any. The description shall include:
- 37 a. A statement of the fees that will be charged if the resident
38 marries while at the facility, and a statement of the terms
39 concerning the entry of a spouse to the facility and the
40 consequences if the spouse does not meet the requirements for
41 entry;
- 42 b. The circumstances under which the resident will be permitted to
43 remain in the facility in the event of possible financial
44 difficulties of the resident;

- 1 c. The terms and conditions under which a contract for continuing
2 care at the facility may be canceled by the provider or by the
3 resident, and the conditions, if any, under which all or any
4 portion of the entrance fee or any other fee will be refunded in
5 the event of cancellation of the contract by the provider or by
6 the resident or in the event of the death of the resident prior to
7 or following occupancy of a living unit;
- 8 d. The conditions under which a living unit occupied by a resident
9 may be made available by the facility to a different or new
10 resident other than on the death of the prior resident; and
- 11 e. The manner by which the provider may adjust periodic charges
12 or other recurring fees and the limitations on these adjustments,
13 if any; and, if the facility is already in operation, or if the
14 provider or manager operates one or more similar continuing
15 care locations within this State, tables shall be included
16 showing the frequency and average dollar amount of each
17 increase in periodic charges, or other recurring fees at each
18 facility or location for the previous five years, or such shorter
19 period as the facility or location may have been operated by the
20 provider or manager.
- 21 (8) The health and financial condition required for an individual to be
22 accepted as a resident and to continue as a resident once accepted,
23 including the effect of any change in the health or financial condition
24 of a person between the date of entering into a contract for continuing
25 care and the date of initial occupancy of a living unit by that person.
- 26 (9) The provisions that have been made or will be made, ~~if any,~~ including,
27 but not limited to, the requirements of G.S. 58-64-33 and G.S. 58-64-
28 35, to provide reserve funding or security to enable the provider to
29 perform its obligations fully under contracts to provide continuing care
30 at the facility, including the establishment of escrow accounts, trusts,
31 or reserve funds, together with the manner in which these funds will be
32 invested, and the names and experience of any individuals in the direct
33 employment of the provider who will make the investment decisions.
- 34 (10) Financial statements of the provider certified to by an independent
35 public accountant as of the end of the most recent fiscal year or such
36 shorter period of time as the provider shall have been in existence. If
37 the provider's fiscal year ended more than 120 days prior to the date
38 the disclosure statement is recorded, interim financial statements as of
39 a date not more than 90 days prior to the date of recording the
40 statement shall also be included, but need not be certified to by an
41 independent certified public accountant.
- 42 (11) In the event the facility has had an actuarial report prepared within the
43 prior two years, the summary of a report of an actuary that estimates

- 1 the capacity of the provider to meet its contractual obligations to the
2 residents.
- 3 (12) Forecast financial statements for the facility of the next five years,
4 including a balance sheet, a statement of operations, a statement of
5 cash flows, and a statement detailing all significant assumptions,
6 compiled by an independent certified public accountant. Reporting
7 routine, categories, and structure may be further defined by regulations
8 or forms adopted by the Commissioner.
- 9 (13) The estimated number of residents of the facility to be provided
10 services by the provider pursuant to the contract for continuing care.
- 11 (14) Proposed or development stage facilities shall additionally provide:
12 a. The summary of the report of an actuary estimating the capacity
13 of the provider to meet its contractual obligation to the
14 residents;
- 15 b. Narrative disclosure detailing all significant assumptions used
16 in the preparation of the forecast financial statements,
17 including:
- 18 1. Details of any long-term financing for the purchase or
19 construction of the facility including interest rate,
20 repayment terms, loan covenants, and assets pledged;
- 21 2. Details of any other funding sources that the provider
22 anticipates using to fund any start-up losses or to provide
23 reserve funds to assure full performance of the
24 obligations of the provider under contracts for the
25 provision of continuing care;
- 26 3. The total life occupancy fees to be received from or on
27 behalf of, residents at, or prior to, commencement of
28 operations along with anticipated accounting methods
29 used in the recognition of revenues from and expected
30 refunds of life occupancy fees;
- 31 4. A description of any equity capital to be received by the
32 facility;
- 33 5. The cost of the acquisition of the facility or, if the
34 facility is to be constructed, the estimated cost of the
35 acquisition of the land and construction cost of the
36 facility;
- 37 6. Related costs, such as financing any development costs
38 that the provider expects to incur or become obligated
39 for prior to the commencement of operations;
- 40 7. The marketing and resident acquisition costs to be
41 incurred prior to commencement of operations; and
- 42 8. A description of the assumptions used for calculating the
43 estimated occupancy rate of the facility and the effect on

1 the income of the facility of government subsidies for
2 health care services.

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

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

7 "(a) All continuing care facilities shall maintain after opening: operating reserves
8 equal to fifty percent (50%) of the total operating costs projected for the 12-month
9 period following the period covered by the most recent annual statement filed with the
10 Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as
11 the basis for computing the operating reserve. In addition to total operating expenses,
12 total operating costs will include debt service, consisting of principal and interest
13 payments along with taxes and insurance on any mortgage loan or other long-term
14 financing, but will exclude depreciation, amortized expenses, and extraordinary items as
15 approved by the Commissioner. If the debt service portion is accounted for by way of
16 another reserve account, the debt service portion may be excluded. Facilities that
17 maintain an occupancy level in excess of ninety percent (90%) shall only be required to
18 maintain twenty-five percent (25%) operating reserve upon approval of the
19 Commissioner, unless otherwise instructed by the Commissioner. The operating
20 reserves may be funded by liquid, marketable investments, including invested cash, bonds,
21 stocks, commercial paper, U.S. Treasury obligations, other equivalents, or under G.S. 58-7-
22 85(a)(1) through (6), or by an unconditional, irrevocable letter of credit of a quality satisfactory
23 to the Commissioner cash, invested cash, commercial paper, or by investment grade
24 securities, including bonds, stocks, U.S. Treasury obligations, or obligations of U.S.
25 government agencies."

26 Sec. 65. G.S. 58-2-175, 58-3-70, 58-3-80, 58-7-32, 58-7-135, 58-7-190, 58-
27 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,
28 58-12-15, 58-12-20, 58-19-20, 58-23-25, and 58-34-20 are repealed.

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

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