

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-212
HOUSE BILL 276**

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL AMENDMENTS IN THE LAWS CONCERNING INSURANCE COMPANY SOLVENCY AND TO PROHIBIT OFFICERS AND EMPLOYEES OF THE STATE AND ITS POLITICAL SUBDIVISIONS FROM REQUIRING CONSTRUCTION CONTRACT BIDDERS TO OBTAIN SURETY BONDS FROM SURETIES OR PRODUCERS DESIGNATED BY THE OFFICERS AND EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-5-5 reads as rewritten:

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

Unless otherwise provided in this Article, every fire, marine, or fire and marine insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~twenty-five thousand dollars (\$25,000)~~ one hundred thousand dollars (\$100,000) market value."

SECTION 2. G.S. 58-5-10 reads as rewritten:

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

Unless otherwise provided in this Article, every fidelity, surety or casualty insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~fifty thousand dollars (\$50,000)~~ two hundred thousand dollars (\$200,000) market value."

SECTION 3. G.S. 58-5-50 reads as rewritten:

"§ 58-5-50. Deposits of foreign life insurance companies.

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of ~~one hundred thousand dollars (\$100,000)~~ four hundred thousand dollars (\$400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional ~~one hundred thousand dollars (\$100,000)~~ two hundred thousand dollars (\$200,000) where such companies cannot show three years of net operational gains prior to admission. Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section."

SECTION 4. G.S. 58-7-162(2) reads as rewritten:

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

- a. ~~Interest due or accrued on any bond or evidence of indebtedness that is not in default.~~
- b. ~~Declared and unpaid dividends on stock and shares, unless that amount has otherwise been allowed as an asset.~~
- e. ~~Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.~~
- d. ~~Interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or~~

~~accrued on other assets, if the interest is, in the Commissioner's judgment, a collectible asset.~~

- e. ~~Interest due or accrued on a current mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.~~
- f. ~~Rent due or accrued on real property if the rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of the rent is adequately secured by property held in the tenant's name and conveyed to the insurer as collateral and the underlying collateral is admissible under this Chapter.~~
- g. ~~The unaccrued portion of taxes paid before the due date on real property.~~

~~Chapter."~~

SECTION 5. G.S. 58-7-162(5) and G.S. 58-7-162(7) are repealed.

SECTION 6. G.S. 58-7-162(12) reads as rewritten:

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

SECTION 7. G.S. 58-7-163 reads as rewritten:

"§ 58-7-163. Assets not allowed.

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

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

- (8) Certificates of ~~contribution~~ contribution, surplus notes, or other similar evidences of ~~indebtedness.~~ indebtedness, to the extent that admission of these investments results in the double counting of these investments in the reporting entity's balance sheet.
- (9) Any asset that is encumbered in any manner unless the asset is authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

SECTION 8. G.S. 58-7-192 reads as rewritten:

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

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

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

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

(d) ~~No valuations under this section shall be greater than any applicable valuation or method contained in the latest edition of the NAIC publications entitled "Valuations of Securities" "Purposes and Procedures Manual of the NAIC Securities Valuation Office" or the "Accounting Practices and Procedures Manual", unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.~~

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

SECTION 9. G.S. 58-7-193 reads as rewritten:

"§ 58-7-193. Valuation of property.

(a) ~~Real property acquired pursuant to a mortgage loan or contract for sale shall be valued at the net realizable value, but in no event shall the property be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of the acquisition and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.~~

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

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

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

SECTION 10. G.S. 58-7-195 is repealed.

SECTION 11. G.S. 58-7-179(d) reads as rewritten:

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

SECTION 12. G.S. 58-23-26(c) reads as rewritten:

"(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195~~, 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 13. G.S. 58-47-80 reads as rewritten:

"§ 58-47-80. Assets and invested assets.

Funds shall be held and invested by the board under G.S. 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195~~, 58-7-197, 58-7-200, and 58-19-10."

SECTION 14. G.S. 58-8-15 reads as rewritten:

"§ 58-8-15. Directors in mutual companies.

Every mutual insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the bylaws provide and until their successors are qualified. The directors need not be residents of this State or members of the company. In companies with a guaranty capital, no more than one-half one-half of the directors shall be ~~chosen~~ elected by ~~and from the stockholders~~ holders of guaranty capital, except where guaranty capital holders are policyholders. Policyholders which are holders of guaranty capital shall be entitled to one vote for each policy that person holds and one vote for each unit of guaranty capital that person holds."

SECTION 15. G.S. 58-8-20 reads as rewritten:

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

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

(a1) Guaranty capital may be issued by an existing domestic mutual insurance company only under the following terms and conditions:

- (1) To aid and assist a financially troubled domestic mutual insurance company which otherwise faces rehabilitation or liquidation by this Department; or
- (2) For any other reason as presented in a petition to the Commissioner and which is found by the Commissioner to be reasonable, justifiable, and in the best interest of all the policyholders of the company.

Guaranty capital issued under subdivision (2) of this subsection shall require written notification of the action proposed by the board of directors of the company to be mailed to the policyholders of the company not less than 30 days before the meeting when the action may be taken. The written notification shall be advertised in two newspapers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to

vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. The proposed action shall be effected by a vote of two-thirds of the policyholders voting thereon in person or by proxy.

~~(b) The board of directors of a company may declare and pay dividends to the stockholders of the guaranty capital of a company, subject to the notification requirements of G.S. 58-19-25(d) and the prior approval requirements of G.S. 58-19-30(e).~~ distribute interest to the holders of guaranty capital in accordance with the guaranty capital filing approved by the Department.

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

~~(d) Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in mutual companies. Guaranty capital holders are entitled to one vote per unit of guaranty capital. Guaranty capital holders who are not policyholders are not entitled to participate in the policyholder votes prescribed under subdivision (a1)(2) and subsection (e) of this section.~~

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

~~(f) No insurance company with guaranty capital shall distribute to its holders of guaranty capital its assets, except as provided in the guaranty capital filing as approved by the Commissioner.~~

~~(g) In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the holders of guaranty capital to the extent that the guaranty capital has been contributed together with accrued interest as specified in the filing approved by the Commissioner."~~

SECTION 16. G.S. 58-8-50 reads as rewritten:

"§ 58-8-50. Guaranty against assessments prohibited.

If any director, officer, or agent of a mutual insurance company, either officially or privately, ~~shall give~~ gives a guaranty to a policyholder ~~thereof of the company~~ against an assessment to which ~~such that~~ policyholder would otherwise be liable, ~~he the~~ director, officer, or agent shall be punished by a fine not exceeding ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000) for each offense."

SECTION 17. G.S. 58-65-1 reads as rewritten:

"§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.

(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes contracting for the payment ~~2of of~~ fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article ~~and Article 66 of this Chapter~~ is intended to mean any nonprofit corporation operating a hospital or medical or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this ~~Article and Article 66 of this Chapter, Article,~~ the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the ~~Commissioner of Insurance, Commissioner,~~ issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

The term "preferred provider" as used in this Article ~~and Article 66 of this Chapter~~ with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article ~~and Article 66 of this Chapter~~ or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this Article ~~and Article 66 of this Chapter. Article.~~ Except to the extent prohibited either by G.S. 58-65-140 or by rules ~~promulgated adopted~~ by the ~~Department of Insurance Commissioner~~ not inconsistent with this Article ~~and Article 66 of this Chapter, Article,~~ the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

~~licensed licensed~~

(b) through (c) Repealed by Session Laws 2001-297.
~~licensed licensed Social Work and Licensure~~

(d) No foreign or alien hospital or medical or dental service corporation as herein defined shall be authorized to do business in this State."

SECTION 18. G.S. 58-65-95(a) reads as rewritten:

"(a) ~~No corporation~~ Corporations subject to this Article shall invest in ~~any securities other than securities~~ or hold only those assets permitted by Article 7 of this Chapter for the investment of assets of life and health insurance companies."

SECTION 19. G.S. 58-67-5(i) reads as rewritten:

"(i) "Net worth" means the excess of total assets over the total liabilities and may include borrowed funds that are repayable only from the net earned income of the health maintenance organization and repayable only with the advance permission of the Commissioner. For the purposes of this subsection, "assets" means (i) tangible assets and (ii) other investments permitted under ~~G.S. 58-67-60~~; ~~provided, however, that the depreciated cost of office furniture and equipment in the principal office shall not exceed ten percent (10%) of a health maintenance organization's net worth.~~ G.S. 58-67-60."

SECTION 20. G.S. 58-67-40 is repealed.

SECTION 21. G.S. 58-67-110 reads as rewritten:

"§ 58-67-110. Protection against insolvency.

(a) The Commissioner shall require deposits in accordance with the provisions of G.S. 58-67-25.

(b) Each full service ~~medical~~ health maintenance organization shall maintain a minimum net worth of ~~not less than one million dollars (\$1,000,000), which shall be increased by the amount of the contingency reserves calculated annually in accordance with the provisions of G.S. 58-67-40. The net worth calculation shall be computed in accordance with statutory accounting principles generally recognized in the regulation of health maintenance organizations and the Commissioner may promulgate such regulations as he deems appropriate to carry out the provisions of this section. If a health maintenance organization fails to comply with the net worth requirement of this subsection or subsections (c) or (d) of this section, the Commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.~~ equal to the greater of one million dollars (\$1,000,000) or the amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter. Each single service health maintenance organization shall maintain a minimum net worth equal to the greater of fifty thousand dollars (\$50,000) or that amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter.

(c) ~~The minimum net worth for a health maintenance organization authorized to operate on July 17, 1987, and having a net worth of less than one million dollars (\$1,000,000) shall be as follows:~~

- ~~(1) \$150,000 by December 31, 1987~~
- ~~(2) \$300,000 by December 31, 1988~~
- ~~(3) \$450,000 by December 31, 1989~~
- ~~(4) \$750,000 by December 31, 1990~~
- ~~(5) \$1,000,000 by December 31, 1991~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

(d) ~~Notwithstanding any other provision of this Article, a health maintenance organization authorized to offer only a single health care service plan providing a single health care service must have a minimum net worth of fifty thousand dollars (\$50,000). The minimum net worth for such plan authorized to operate on July 17, 1987, and having a net worth of less than fifty thousand dollars (\$50,000) shall be as follows:~~

- ~~(1) Twenty five thousand dollars (\$25,000) by December 31, 1987; and~~
- ~~(2) Fifty thousand dollars (\$50,000) by December 31, 1988;~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

(e) Every full service medical health maintenance organization shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the Commissioner may consider:

- (1) A reinsurance agreement preapproved by the Commissioner covering excess loss, stop loss, or catastrophes. The agreement must provide that the Commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.
- (2) A conversion policy or policies that will be offered by an insurer to the enrollees in the event of the health maintenance organization's insolvency.
- (3) Any other arrangements offering protection against insolvency that the Commissioner may require."

SECTION 22. G.S. 58-67-140(a)(3) reads as rewritten:

"(3) ~~No longer maintains the financial reserve specified in G.S. 58-67-40 or is~~ Is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees."

SECTION 23. G.S. 58-67-140(a)(7) reads as rewritten:

"(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under ~~G.S. 58-3-210.~~ G.S. 58-3-191."

SECTION 24. G.S. 58-47-65(a) reads as rewritten:

"(a) No group shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Part. This subsection does not apply to a group that was organized and approved under the North Carolina law before July 1, 1995, and whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 25. G.S. 97-170(a) reads as rewritten:

"(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 26.(a) G.S. 58-3-100 reads as rewritten:

"§ 58-3-100. Insurance company licensing provisions.

(a) The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, ~~restrict, or refuse to renew or restrict~~ the license of any insurer if:

- (1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.
- (2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.
- (3) The insurer has published or made to the Department or to the public any false statement or report.
- (4) The insurer or any of the insurer's officers, directors, employees, or other representatives refuse to submit to any examination authorized by law or refuse to perform any legal obligation in relation to an examination.
- (5) The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any suspension, revocation or refusal to renew suspension or revocation of an insurer's license under this section may also be made applicable to the license or

registration of any individual regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section."

SECTION 26.(b) G.S. 58-4-15 reads as rewritten:

"§ 58-4-15. Revocation or suspension of license.

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

SECTION 26.(c) G.S. 58-6-7 reads as rewritten:

"§ 58-6-7. Licenses; perpetual licensing; annual license continuation Annual license fees for insurance companies.

(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the ~~Commissioner by March 1 of each year.~~ Commissioner. The license shall ~~be perpetual and become effective the following July 1 and shall remain in effect for one year.~~ shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. Except as provided in subsection (b) of this section, the insurance company shall pay ~~an annual~~ a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company	\$ 25.00
For each fraternal order... ..	100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	1,000.00

The fees levied in this subsection are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock or surplus, or both, of an insurance company, other than a farmer's mutual assessment company or a fraternal order, does not exceed one hundred thousand dollars (\$100,000), the fee levied in this section shall be one-half the amount specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars (\$100.00) for each such additional classification of business done. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees in this section."

SECTION 26.(d) G.S. 58-6-15 reads as rewritten:

"§ 58-6-15. Licenses run from July 1. Annual license continuation fee definition; requirements.

The license required of insurance companies shall ~~continue, continue for the next ensuing 12 months after July 1 of each year, unless revoked as provided in Articles 1 through 64 of this Chapter. Application for renewal of the company license~~ For purposes of this Chapter only, "annual license continuation fee means" the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the license is in effect after the company's year of initial licensing. The annual license continuation fee must be submitted on or before the first day of March on a form to be supplied by the Commissioner. ~~Commissioner each year the license is to remain in effect. If the Commissioner is satisfied~~ Upon satisfying himself that the company has met all requirements of law and appears to be financially solvent ~~he shall forward the renewal license to the company. Any company which does not qualify for a renewal license before July 1 shall cease to do business in the State of North Carolina as of July 1,~~

~~unless its license is sooner revoked by the Commissioner, solvent, the Commissioner shall not revoke or suspend the license of the company, and the company shall be authorized to do business in this State, subject to all other applicable provisions of the insurance laws of this State. Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."~~

SECTION 26.(e) G.S. 58-6-30 reads as rewritten:

"§ 58-15-30. License, surplus, and deposit requirements.

(a) No reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of Articles 1 through 64 of this Chapter. ~~Such~~The license shall continue in full force and effect, subject to timely payment of an annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State, expire on the last day of June of each year.

(b) No domestic or foreign reciprocal shall be licensed in this State unless it has a surplus to policyholders of at least eight hundred thousand dollars (\$800,000); and no alien reciprocal shall be licensed unless it has a trusted surplus of at least eight hundred thousand dollars (\$800,000).

(c) Each domestic, foreign, or alien reciprocal licensed in this State must maintain a minimum deposit with the Commissioner of at least one hundred thousand dollars (\$100,000) in cash or in value of securities of the kind specified in G.S. 58-5-15, which shall be subject to the same conditions as contained in Article 5 of this Chapter."

SECTION 26.(f) G.S. 58-19-65 reads as rewritten:

"§ 58-19-65. ~~Revocation, suspension, or nonrenewal~~ Revocation or suspension of insurer's license.

Whenever it appears to the Commissioner that any person has committed a violation of this Article that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, ~~suspend, revoke, or refuse to renew~~ suspend or revoke such insurer's license to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law."

SECTION 26.(g) G.S. 58-24-130 reads as rewritten:

"§ 58-24-130. ~~Annual Perpetual license.~~

~~Societies which are now authorized to transact business in this State may continue such business until the 30th day of June next succeeding January 1, 1988. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the 30th day of the succeeding June. However, a license so issued~~ Subject to timely payment of the annual license continuation fee and subject to any other applicable provisions of the insurance laws of this State, a license, other than a preliminary license, to a fraternal benefit society under this Article shall continue in full force and effect until the new license be issued or specifically refused. ~~effect.~~ For each ~~such license or renewal~~ the society shall pay the Commissioner the fee specified in G.S. 58-6-5. The society shall pay the Commissioner, as an annual license continuation fee and a condition of the continuation of the license, the fee specified in G.S. 58-6-7 on or before the first day of March on a form to be supplied by the Commissioner. A duly certified copy or duplicate of ~~such~~the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of Articles 1 through 64 of this Chapter."

SECTION 26.(h) G.S. 58-26-10 reads as rewritten:

"§ 58-26-10. Financial statements and licenses required.

Title insurance companies are subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-165, 58-2-180, and 58-6-5. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The license to do business in this State issued to a title insurance company shall continue in full force and effect, subject to timely payment of

the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State. The Commissioner shall annually license such companies and their agents. the agents of title insurance companies."

SECTION 26.(i) G.S. 58-30-62 reads as rewritten:

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

(a) As used in this section, an insurer has "exceeded its powers" when it: has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers, accounts or records necessary for an examination of the insurer; has failed to comply promptly with applicable financial reporting statutes or rules and related Department requests; continues to transact the business of insurance after its license has been ~~revoked, suspended, or not renewed~~ revoked or suspended by the Commissioner; by contract or otherwise, has unlawfully, or has in violation of an order of the Commissioner, or has without first having obtained any legally required written approval of the Commissioner, totally reinsured its entire outstanding business or merged or consolidated substantially its entire property or business with another insurer; has engaged in any transaction in which it is not authorized to engage under the laws of this State; has not complied with G.S. 58-7-73; or has refused to comply with a lawful order of the Commissioner. As used in this section, "Commissioner" includes an authorized representative or designee of the Commissioner."

SECTION 26.(j) G.S. 58-65-55 reads as rewritten:

"§ 58-65-55. Issuance of certificate, and continuation of license.

(a) Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a ~~certificate of authority or license~~ upon the payment of ~~an annual~~ a fee of one thousand dollars (\$1,000) and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.
- (2) The rates charged and benefits to be provided are fair and reasonable.
- (3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of one thousand dollars (\$1,000), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(k) G.S. 58-65-125 reads as rewritten:

"§ 58-65-125. ~~Revocation, suspension, and refusal to renew~~ Revocation and suspension of license; unfair trade practices.

(a) The Commissioner may ~~revoke, suspend, or refuse to renew~~ revoke or suspend the license of any service corporation if:

- (1) The service corporation fails or refuses to comply with any law, order, or rule applicable to the service corporation.
- (2) The service corporation's financial condition is unsound.
- (3) The service corporation has published or made to the Department or to the public any false statement or report.

- (4) The service corporation refuses to submit to any examination authorized by law.
- (5) The service corporation is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any ~~suspension, revocation, or refusal to renew~~ suspension or revocation of a service corporation's license under this section may also be made applicable to the license or registration of any natural person regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section.

(c) Article 63 of this Chapter applies to service corporations and their agents and representatives."

SECTION 26.(l) G.S. 58-67-140 reads as rewritten:

"§ 58-67-140. Suspension or revocation of license.

(a) The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke an HMO license if the Commissioner finds that the HMO:

- (1) Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.
- (2) Issues evidences of coverage or uses a schedule of premiums for health care services that do not comply with G.S. 58-67-50.
- (3) No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.
- (4) Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.
- (5) Is operating in a manner that would be hazardous to its enrollees.
- (6) Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.
- (7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210."

SECTION 26.(m) G.S. 58-67-160 reads as rewritten:

"§ 58-67-160. Fees.

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars (\$250.00) for filing an application for a license and ~~a an annual license continuation~~ license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(n) G.S. 58-67-20 reads as rewritten:

"§ 58-67-20. Issuance of certificate, and continuation of license.

(a) Before issuing or continuing any such ~~certificate, license,~~ the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a ~~certificate of authority license~~ upon the payment of the application fee prescribed in G.S. 58-67-160 and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide health maintenance organization as defined by this Article;
- (2) The rates charged and benefits to be provided are fair and reasonable;

- (3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the ~~certificate~~ license and that the health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. Such working capital shall initially be a minimum of one million five hundred thousand dollars (\$1,500,000) for any full service medical health maintenance organization. Initial working capital for a single service health maintenance organization shall be a minimum of one hundred thousand dollars (\$100,000) or such higher amount as the Commissioner shall determine to be adequate.

(b) In making the determinations required under this section, the Commissioner shall consider:

- (1) The financial soundness of the health care plan's arrangements for health care services and the schedule of premiums used in connection therewith;
- (2) The adequacy of working capital;
- (3) Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of alternative coverage in the event of discontinuance of the plan;
- (4) Any agreement with providers for the provision of health care services; and
- (5) Any firm commitment of federal funds to the health maintenance organization in the form of a grant, even though such funds have not been paid to the health maintenance organization, provided that the health maintenance organization certifies to the Commissioner that such funds have been committed, that such funds are to be paid to the health maintenance organization with a current fiscal year and that such funds may be used directly for operating purposes and for the benefit of enrollees of the health maintenance organization.

(c) A ~~certificate of authority~~ license shall be denied only after compliance with the requirements of G.S. 58-67-155."

SECTION 27. Article 31 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-31-66. Public construction contract surety bonds.

(a) Neither the State nor any county, city, or other political subdivision of the State, or any officer, employee, or other person acting on behalf of any such entity shall, with respect to any public building or construction contract, require any contractor, bidder, or proposer to procure a bid bond, payment bond, or performance bond from a particular surety, agent, producer, or broker.

(b) Nothing in this section prohibits an officer or employee acting on behalf of the State or a county, city, or other political subdivision of the State from:

- (1) Approving the form, sufficiency, or manner of execution of the surety bonds furnished by the surety selected by the bidder to underwrite the bonds.
- (2) Disapproving, on a reasonable, nondiscriminatory basis, the surety selected by the bidder to underwrite the bonds because of the financial condition of the surety.

(c) A violation of this section renders the public building or construction contract void ab initio."

SECTION 28. Sections 26(a) through (n) become effective January 1, 2004, and apply to all company licenses issued or otherwise eligible for renewal or continuation after that date. The remainder of this act becomes effective October 1, 2003.

In the General Assembly read three times and ratified this the 9th day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:33 p.m. this 19th day of June, 2003