

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 681
SENATE BILL 342

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

- (1) 'Commissioner' includes an authorized representative or designee of the Commissioner.
- (2) 'Examination' means an examination conducted under the Examination Law.
- (3) 'Examiner' means any person authorized by the Commissioner to conduct an examination.
- (4) 'Insurance regulator' means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.
- (5) 'Person' includes a trust or any affiliate of a person.

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

(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct an examination of every domestic insurer not less frequently than once every three years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook.

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

(f) Instead of examining any foreign or alien insurer licensed in this State, the Commissioner may accept an examination report on that insurer prepared by the insurer's insurance regulator until January 1, 1994. Thereafter, reports may only be accepted if (i) the insurance regulator was at the time of the examination accredited under NAIC Financial Regulation Standards and Accreditation Program, or (ii) the examination is performed under the supervision of an NAIC-accredited insurance

regulator or with the participation of one or more examiners who are employed by the regulator and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the regulator.

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

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

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

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

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

(l) Pending, during, and after the examination of any insurer the Commissioner shall not make public the financial statement, findings, or examination report, or any report affecting the status or standing of the insurer examined, until the insurer has either accepted and approved the final examination report or has been given a

reasonable opportunity to be heard on the report and to answer or rebut any statements or findings in the report. The hearing, if requested, shall be informal and private.

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

"§ 58-2-132. Examination reports.

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

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

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

(1) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the insurer is operating in violation of any law, rule, or prior order of the Commissioner, the Commissioner may order the insurer to take any action the Commissioner considers necessary and appropriate to cure the violation; or

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

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

(d) All orders entered under subdivision (c)(1) of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final

administration decision and shall be served upon the insurer by certified mail. Any hearing conducted under subdivision (c)(3) of this section shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent on the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant work papers or by the written submission or rebuttal of the insurer. Within 20 days after the conclusion of any such hearing, the Commissioner shall enter an order under subdivision (c)(1) of this section. The Commissioner may not appoint a member of the Department's examination staff as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer limited to the examiner's work papers that tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner may issue subpoenas for the attendance of any witnesses or the production of any documents the Commissioner considers to be relevant to the investigation, whether they are under the control of the Department, the insurer, or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner shall be under oath and preserved for the record. Nothing in this section requires the Department to disclose any information or records that would show the existence or content of any investigation or activity of any federal or state criminal justice agency. In the hearing, the Commissioner shall question the persons subpoenaed. Thereafter the insurer and the Department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the Commissioner. The insurer and the Department may make closing statements and may be represented by counsel of their choice.

(e) Upon completion of the examination report under subdivision (c)(1) of this section, the Commissioner shall hold the content of the examination report as private and confidential information for the 30-day period provided for written submissions or rebuttals. If after 30 days after the examination report has been submitted to it, the insurer examined has neither notified the Commissioner of its acceptance and approval of the report nor requested to be heard on the report, the report shall then be filed as a public document and shall be open to public inspection, as long as no court of competent jurisdiction has stayed its publication. Nothing in the Examination Law prohibits the Commissioner from disclosing the content of the examination report, preliminary examination report or results, or any related matter, to an insurance regulator or to law enforcement officials of this or any other state or country or of the United States government at any time, as long as the person or agency receiving the report or related matters agrees in writing and is authorized by law to hold it confidential and in a manner consistent with this section. If the Commissioner determines that further regulatory action is appropriate as a result of any examination, the Commissioner may initiate such proceedings or actions as provided by law.

(f) All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person during an examination shall be given confidential treatment and is not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in G.S. 58-2-131(l) or subsection (e) of this section. Access may also be

granted to the NAIC. Such parties must agree in writing before receiving the information to give it the same confidential treatment as this section requires, unless the prior written consent of the insurer to which it pertains has been obtained. The provisions of this section do not prohibit the Commissioner from taking any action provided for, or from exercising any power conferred by, any provision of this Chapter to suspend or revoke the license of any insurer.

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

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

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to an insurer if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settler or beneficiary of a blind trust into which any otherwise nonpermissible holdings have been placed.

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

(c) Any insurer examined shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner. The charges and expenses shall be reasonable as determined by the Commissioner and in accordance with guidelines established by the NAIC set forth in the NAIC Examiners' Handbook. The refusal of any insurer to submit to examination, or the refusal or failure of any insurer to pay the expenses of examination upon presentation by the Commissioner of a bill for those expenses, is grounds for the revocation, suspension, or refusal of a license. The Commissioner may make public any such revocation, suspension, or refusal of license and may give reasons for that action. The Commissioner shall promptly begin a civil action to recover the expenses of examination against any insurer that refuses or fails to pay.

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

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

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

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

The provisions of G.S. 58-2-130, 58-2-140, 58-2-131 through G.S. 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to employers that furnish proof of financial responsibility to the Commissioner under G.S.

97-93(a)(2) and to persons that administer workers' compensation self-insurance for such those employers."

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

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

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

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

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

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

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

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

(a) Every insurance company shall file in the Commissioner's office, ~~office of the Commissioner of Insurance~~, on or before the first day of March 1 in ~~of~~ each year, ~~in form and detail as the Commissioner of Insurance prescribes~~, a statement showing the business standing and financial condition of ~~such the~~ company, association, or order on the preceding ~~thirty first day of December~~, December 31, signed and sworn to by the chief managing agent or officer thereof, before the ~~Commissioner of Insurance~~ or some officer authorized by law to administer oaths. ~~The Commissioner of Insurance shall, in December of each year, furnish to each of the insurance companies authorized to do business in the State two or more blanks adapted for their annual statements.~~ Provided,

the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of ~~such the company's annual statement for such company, statement~~, for a reasonable period of time, not to exceed 30 days. ~~Provided further, However,~~ the Commissioner ~~may, in his discretion, may require the statement required by this section to be filed semiannually or quarterly by any insurance company, association, or order.~~ ~~order to file its statement semiannually or quarterly.~~

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

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

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

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

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

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

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

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

(a) ~~As used in this section:~~

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

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

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

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

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

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

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

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

- (1) Biographical information in a form acceptable to the Commissioner for each new owner, director, or management person;
- (2) A detailed and complete plan of operation describing the kinds of insurance to be written and the method in which the reorganized insurer will perform its various functions;
- (3) Financial projections of the anticipated operational results of the reorganized insurer for the succeeding three years based on the capitalization of the reorganized insurer and its plan of operation, which must be prepared by a properly qualified individual, be in sufficient detail for a complete analysis to be performed, and be

accompanied by a list of the assumptions used in making the projections; and

- (4) Any other information the Commissioner considers to be pertinent for a proper analysis of the reorganized insurer."

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

"§ 58-4-5. Filing requirements.

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

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

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

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

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

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

Financial test ratios, data, or information generated by the NAIC Insurance Regulatory Information System, any successor program, or any similar program shall be disseminated by the Commissioner consistent with procedures established by the NAIC."

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

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

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

Sec. 15. 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 ~~following amounts: amount of twenty-five thousand dollars (\$25,000) market value.~~

- (1) ~~Companies whose premium income derived from this State is less than fifty thousand dollars (\$50,000) per annum, ten thousand dollars (\$10,000);~~
- (2) ~~Companies whose premium income is more than fifty thousand dollars (\$50,000) but less than one hundred thousand dollars (\$100,000) per annum, twenty thousand dollars (\$20,000);~~
- (3) ~~Companies whose premium income is more than one hundred thousand dollars (\$100,000) per annum, twenty five thousand dollars (\$25,000),~~

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

Sec. 16. 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 ~~following amounts: amount of fifty thousand dollars (\$50,000) market value.~~

- (1) ~~Companies whose premium income derived from this State is less than one hundred thousand dollars (\$100,000), twenty five thousand dollars (\$25,000);~~
- (2) ~~Companies whose premium income is in excess of one hundred thousand dollars (\$100,000), fifty thousand dollars (\$50,000),~~

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

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

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

Upon admission to do business in the State of North Carolina every foreign or alien fire, marine, or fire and marine, fidelity, surety or casualty company shall deposit with the Commissioner securities in the ~~minimum amounts required under the provisions of G.S. 58-5-5 and 58-5-10.~~"

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

"§ 58-5-20. Type of deposits.

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

- (a) Interest-bearing bonds of the United States, States of America;
- (b) Interest-bearing bonds of the State of North Carolina, or of the its cities or counties of this State, counties; or
- (c) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

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

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

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

- (a) Interest-bearing bonds of the United States of America;
- (b) Interest-bearing bonds of the State of North Carolina or of its cities or counties;
- (c) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina;
- (d) Interest-bearing AA or better rated corporate bonds and classified as investment grade in the latest NAIC Securities Valuation Manual; or
- (e) Other interest-bearing bonds or notes considered to be acceptable by the Commissioner on a case by case basis."

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

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

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

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

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

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

- (a) As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-32:
 - (1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer to an assuming insurer.
 - (2) 'Insurance risk' means an uncertainty regarding the ultimate amount of any claim payment (underwriting risk) or an uncertainty regarding the timing of such payments (timing risk), or both.
- (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this subsection. If meeting the requirements of subdivisions (3) or (4) of this subsection, the reinsurer must also meet the requirements of subdivision (6) of this subsection.
 - (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.

- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:
- a. Files with the Commissioner evidence of its submission to this State's jurisdiction;
 - b. Submits to this State's authority to examine its books and records;
 - c. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;
 - d. Files annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile and a copy of its most recent audited financial statement; and either
 1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
 2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.
- No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and opportunity for a hearing.
- (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that uses standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:
- a. Maintains a policyholders' surplus in an amount not less than twenty million dollars (\$20,000,000); and
 - b. Submits to the authority of this State to examine its books and records.
- However, the requirement in sub-subdivision (3)a. of this subsection does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system.
- (4) a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors

in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent certified public accountants.

- b. In the case of a group of incorporated insurers under common administration which (i) complies with the filing requirements contained in the previous paragraph, (ii) has continuously transacted an insurance business outside the United States for at least three years immediately before making application for accreditation, (iii) submits to this State's authority to examine its books and records and bears the expense of the examination, and (iv) has aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000); the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group under reinsurance contracts issued in the name of the group. In addition, the group shall maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.
- c. The trust shall be established in a form approved by the Commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United

States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

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

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

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

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

- b. To designate the Commissioner as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding begun by or on behalf of the ceding company.

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

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

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

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

- (1) Cash;
- (2) Securities that are listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subsection (b) of this section, no later than December 31 of the year for which the filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first; or
- (4) Any other form of security acceptable to the Commissioner.

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

- (1) Is organized, or in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any of its states;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

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

- (1) Is organized, or in the case of a United States branch or agency office of a foreign banking organization licensed, under the laws of the

United States or any of its states and has been granted authority to operate with fiduciary powers; and

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

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

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

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

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

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

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

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

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

- (1) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a risk charge and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: mortality, morbidity, investment, or surrender benefit;
- (2) The reserve credit taken by the ceding insurer is not in compliance with insurance statutes or with rules or actuarial interpretations or standards adopted by the Commissioner;
- (3) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the reinsurance agreement;
- (4) The ceding insurer is required to reimburse the reinsurer for negative experience under the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;
- (5) The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

- (6) The ceding insurer must, at scheduled times specified or implied in the agreement, terminate or automatically recapture all or part of the coverage ceded;
- (7) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements before the termination date of the agreement made only in a reinsurance account, and no funds in the account are available for the payment of benefits; or
- (8) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies.

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

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

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

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

- (1) The agreements were executed and in force before the effective date of this section;
- (2) No new business is ceded under the agreements after the effective date of this section;
- (3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1992, or a later date approved by the Commissioner as a result of an application made by the ceding insurer before January 1, 1992; and
- (4) The Commissioner is notified, within 90 days after the effective date of this section, of the existence of the reinsurance agreements and all corresponding credits taken in the ceding insurer's 1990 Annual Statement."

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

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

(a) Notwithstanding any other provision of law, no domestic property or casualty insurer with less than ten million dollars (\$10,000,000) in policyholders' surplus may,

without the Commissioner's prior written approval, assume reinsurance on any risk that it is otherwise permitted to assume except where the reinsurance is:

- (1) Required by applicable law or regulation; or
- (2) Assumed under pooling arrangement among members of the same holding company system.
- (b) This section applies to reinsurance contracts entered into or renewed on or after the effective date of this section.
- (c) This section does not invalidate any reinsurance contract that was entered into before the effective date of this section as between the parties to the contract."

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

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

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

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

- (a) As used in this section:
 - (1) 'Accredited state' means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the NAIC.
 - (2) 'Captive insurer' means an insurance company that is owned by another organization and whose exclusive purpose is to insure risks of the parent organization and affiliated companies. In the case of groups and associations, 'captive insurer' means an insurance organization that is owned by the insureds, and whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.
 - (3) 'Control' and its cognates mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.
 - (4) 'Controlled insurer' means an insurer that is controlled, directly or indirectly, by a producer.
 - (5) 'Controlling producer' means a producer who, directly or indirectly, controls an insurer.

- (6) 'Insurer' means any person licensed to write property or casualty insurance in this State. 'Insurer' does not mean a risk retention group under Article 22 of this Chapter, residual market mechanism, joint underwriting authority, nor captive insurer.
- (7) 'Producer' means an insurance broker or brokers or any other person, when, for any compensation, commission, or other thing of value, that person acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than that person. 'Producer' does not mean an exclusive agent or any independent agent acting on behalf of a controlled insurer, including any subagent or representative of the agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting in the capacity of an insurance broker in the transaction in question.

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

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

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

- (1) The controlling producer places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with that insurance; and the controlling producer accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and
- (2) The controlled insurer, except for insurance business written through a residual market mechanism, accepts insurance business only from a

controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

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

- (1) The insurer may terminate the contract for cause, upon written notice to the producer. The insurer shall suspend the producer's authority to write business during the pendency of any dispute regarding the cause for the termination.
- (2) The producer shall render accounts to the insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the producer.
- (3) The producer shall remit all funds due under the contract terms to the insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than 90 days after the effective date of any policy placed with the insurer under this contract.
- (4) The producer shall hold all funds collected for the insurer's account in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of this Chapter as applicable. Funds of a producer who is not required to be licensed in this State shall be maintained in compliance with the requirements of the producer's domiciliary jurisdiction.
- (5) The producer shall maintain separately identifiable records of business written for the insurer.
- (6) The producer shall not assign the contract in whole or in part.
- (7) The insurer shall provide the producer with its underwriting standards, rules and procedures, the manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the insurer by a producer other than a controlling producer.
- (8) The rates and terms of the producer's commissions, charges, or other fees and the purposes for the charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the insurer by producers other than controlling producers. For the purposes of this subdivision and subdivision (7) of this subsection, 'comparable business' includes

the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that the producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the insurer's reserves on remaining claims has been independently verified under subsection (g) of this section.

(10) A limit on the producer's writings in relation to the insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The insurer shall notify the producer when the applicable limit is approached and shall not accept business from the producer if the limit is reached. The producer shall not place business with the insurer if it has been notified by the insurer that the limit has been reached.

(11) The producer may negotiate but shall not bind reinsurance on behalf of the insurer on business the producer places with the insurer; however, the producer may bind facultative reinsurance contracts under obligatory facultative agreements if the producer's contract with the insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(f) Every controlled insurer shall have an audit committee, consisting of independent directors, of the insurer's board of directors. The audit committee shall meet annually with the insurer's management, the insurer's independent certified public accountants, and an independent casualty actuary or another independent loss reserve specialist acceptable to the Commissioner, to review the adequacy of the insurer's loss reserves.

(g) In addition to any other required loss reserve certification, the controlled insurer shall, on or before April 1 of each year, file with the Commissioner an opinion of an independent casualty actuary or of another independent loss reserve specialist acceptable to the Commissioner, reporting loss ratios for each kind of insurance written and attesting to the adequacy of loss reserves established for losses incurred and outstanding and for incurred but not reported losses as of the end of the prior calendar year on business placed by the producer.

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

(i) The controlling producer, before the effective date of any policy, shall deliver written notice to the prospective insured disclosing the relationship between the

producer and the controlled insurer: However, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the prospective insured.

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

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

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

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

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

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

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

Whenever it appears by examination as authorized by law that a domestic insurer has acquired any assets in violation of the law in force on the date of the acquisition, the Commissioner shall disallow the amount of the assets, if wholly ineligible, or the amount of the value thereof in excess of any limitation prescribed by this Chapter and shall deduct that amount as a nonadmitted asset of the insurer.

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

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

- (1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent United States bank, savings and loan association, or trust company, and the balance of any such deposit in an insolvent United States bank, savings and loan association, or trust company, to the extent insured by a federal agency.
- (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.
 - c. 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.
- (3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.
- (4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.
- (5) Premiums in the course of collection, other than for life insurance, not more than 90 days past due, less commissions payable thereon, except for premiums payable directly or indirectly by the United States government or by any of its instrumentalities.
- (6) All premiums not more than 90 days past due, excluding commissions payable thereon, due from any person that solely or in combination

with the person's affiliates owes the insurer an amount that exceeds five percent (5%) of the insurer's total premiums in course of collection, but only if:

- a. The premiums collected by the person or affiliates and not remitted to the insurer are held in a trust account with a bank or other depository approved by the Commissioner. The funds shall be held as trust funds and may not be commingled with any other funds of the person or affiliates. Disbursements from the trust account may be made only to the insurer, the insured, or, for the purpose of returning premiums, a person that is entitled to returned premiums on behalf of the insured. A written copy of the trust agreement shall be filed with and approved by the Commissioner before becoming effective. The Commissioner shall disapprove any trust agreement filed under this sub-subdivision that does not assure the safety of the premiums collected. The investment income derived from the trust may be allocated as the parties consider to be proper. The person or affiliates shall deposit premiums collected into the trust account within 15 business days after collection; or
- b. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, an unexpired, clean, irrevocable letter of credit, payable to the insurer, issued for a term of no less than one year and in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during the period that the letter of credit is in effect, for premiums collected by the person or affiliates. The letter of credit shall be issued under arrangements satisfactory to the Commissioner and the letter shall be issued by a banking institution that is a member of the Federal Reserve System and that has a financial standing satisfactory to the Commissioner; or
- c. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, evidence that the person or affiliates have purchased and have currently in effect a financial guaranty bond, payable to the insurer, issued for a term of not less than one year and that is in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during which the financial guaranty bond is in effect, for the premiums collected by the person or persons. The financial guaranty bond shall be issued under an arrangement satisfactory to the Commissioner and the financial guaranty bond shall be issued by an insurer that is authorized to

transact that business in this State, that has a financial standing satisfactory to the Commissioner, and that is neither controlled nor controlling in relation to either the insurer or the person or affiliates for whom the bond is purchased.

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

- (7) Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which the premiums apply.
- (8) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried thereon.
- (9) The full amount of reinsurance which is recoverable by a ceding insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.
- (10) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.
- (11) Deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds, or from any suspended banking institution, to the extent considered by the Commissioner to be available for the payment of losses and claims and at values to be determined by the Commissioner.
- (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.
- (13) Other assets, not inconsistent with the provisions of this section, considered by the Commissioner to be available for the payment of losses and claims, at values to be determined by the Commissioner.

"§ 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 of 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 or other similar evidences of indebtedness.

"§ 58-7-165. Eligible investments.

- (a) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this Chapter.
- (b) Any particular investment held by an insurer on December 31, 1991, that was a legal investment when it was made, and that the insurer was legally entitled to possess immediately before January 1, 1992, is an eligible investment.
- (c) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated otherwise in this Chapter.
- (d) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to those assets or funds shown by the insurer's annual statement as of the December 31 preceding the date of acquisition of the investment by the insurer, or, if applicable, as shown by the most current quarterly financial statement filed by the insurer.

"§ 58-7-167. General qualifications.

- (a) No security or investment, other than real or personal property acquired under G.S. 58-7-187, is eligible for acquisition unless it is interest-bearing or interest-accruing, is entitled to receive dividends if and when declared and paid, or is otherwise income-producing, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

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

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

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

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

"§ 58-7-170. Diversification.

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

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

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

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

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

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

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

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

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

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

(g) The provisions of subsections (d), (e), and (f) of this section apply to any investment made after December 31, 1991. If an insurer's investments in medium to lower quality obligations equal or exceed the maximum amounts permitted by subsection (d) as of December 31, 1991, the insurer shall not acquire any additional medium to lower quality obligations without the Commissioner's prior written approval. An insurer that is not in compliance with subsection (d) of this section as of December 31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner, only those medium to lower quality obligations it owns on that date, if the obligations were obtained in compliance with the law in effect when the investments were made. If the insurer sells, transfers, or otherwise disposes of the securities before maturity, the

insurer may not acquire any medium to lower quality obligations as substitutions or replacements without the Commissioner's prior approval.

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

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

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

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

"§ 58-7-172. Cash and deposits.

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

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

An insurer may invest in:

- (1) Bonds, notes, warrants, and other evidences of indebtedness that are direct obligations of the U.S. Government or for which the full faith and credit of the U.S. Government is pledged for the payment of principal and interest.
- (2) Loans insured or guaranteed as to principal and interest by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.
- (3) Student loans insured or guaranteed as to principal by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.
- (4) Bonds, notes, warrants, and other securities not in default that are the direct obligations of any state or United States territory or the government of Canada or any Canadian province, or for which the full faith and credit of such state, government, or province has been pledged for the payment of principal and interest.
- (5) Bonds, notes, warrants, and other securities not in default of any county, district, incorporated city, or school district in any state of the United States, or the District of Columbia, or in any Canadian province, that are the direct obligations of the county, district, city, or school district and for payment of the principal and interest of which

the county, district, city, or school district has lawful authority to levy taxes or make assessments.

- (6) Bonds, notes, certificates of indebtedness, warrants, or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor of any public toll bridge, structure, or improvement owned by any state, incorporated city, or legally constituted public corporation or commission, all within the United States or Canada, for the payment of the principal and interest of which a lawful sinking fund has been established and is being maintained and if no default by the issuer in payment of principal or interest has occurred on any of its bonds, notes, warrants, or other securities within five years prior to the date of investment therein.
- (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences of indebtedness that are valid obligations issued, assumed, or guaranteed by the United States, any state, any county, city, district, political subdivision, civil division, or public instrumentality of any such government or unit therof, or in any province of Canada; if by statute or other legal requirements the obligations are payable as to both principal and interest from revenues or earnings from the whole or any part of any utility supplying water, gas, a sewage disposal facility, electricity, or any other public service, including but not limited to a toll road or toll bridge.
- (8) Bonds, debentures, or other securities of the following agencies, whether or not those obligations are guaranteed by the U.S. Government:
- a. The Federal National Mortgage Association, and stock thereof when acquired in connection with the sale of mortgage loans to the Association.
 - b. Any federal land bank, when the securities are issued under the Farm Loan Act;
 - c. Any federal home loan bank, when the securities are issued under the Home Loan Bank Act;
 - d. The Home Owners' Loan Corporation, created by the Home Owners' Loan Act of 1933;
 - e. Any federal intermediate credit bank, created by the Agricultural Credits Act;
 - f. The Central Bank for Cooperatives and regional banks for cooperatives organized under the Farm Credit Act of 1933, or by any of such banks; and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions under the Farm Credit Act of 1971;
 - g. Any other similar agency of the U.S. Government that is of similar financial quality.

- (9) Bonds, debentures, or other securities of public housing authorities, issued under the Housing Act, of 1949, the Municipal Housing Commission Act, or the Rural Housing Commission Act, or issued by any public housing authority or agency in the United States, if the bonds, debentures, or other securities are secured by a pledge of annual contributions to be paid by the United States or any United States agency; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus.
- (10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer admitted assets or ten percent (10%) of the insurer's capital and surplus.
- (11) Bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent institution organized under the laws of the United States, of any state, Canada or any Canadian province; provided such instruments are rated and approved by the Securities Valuation Office of the NAIC.
- (12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the insurer's admitted assets or five percent (5%) of the insurer's capital and surplus.
- (13) Equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of that transportation equipment; and the cost of investments made under this subdivision shall not exceed twenty percent (20%) of the insurer's admitted assets.
- (14) Share or savings accounts of savings and loan associations or building and loan associations; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer's admitted assets or five percent (5%) of the insurer's capital and surplus.
- (15) Loans with a maturity not in excess of 12 years from the date thereof that are secured by the pledge of securities eligible for investment under this Chapter or by the pledge or assignment of life insurance policies issued by other insurers authorized to transact insurance in this State. On the date made, no such loan shall exceed in amount seventy-five percent (75%) of the market value of the collateral pledged,

except that loans upon the pledge of U.S. Government bonds and loans upon the pledge or assignment of life insurance policies shall not exceed ninety-five percent (95%) of the market value of the bonds or the cash surrender value of the policies pledged. The market value of the collateral pledge shall at all times during the continuance of the loans meet or exceed the minimum percentages herein. Loans made under this section shall not be renewable beyond a period of 12 years from the date of the loan.

- (16) Stocks, common or preferred, of any corporation created or existing under the laws of the United States, any U.S. territory, Canada or any Canadian province, or of any state. An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country other than Canada if the stocks are listed and traded on a national securities exchange in the United States or if the investment in stocks of any corporation created or existing under the laws of any foreign country are first approved by the Commissioner. Nothing in this section applies to qualifying investments made by an insurer in a foreign country under authority of G.S. 58-7-178.
- (17) Mortgage pass-through securities and derivatives thereof, including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class, and investment quality as those eligible for investment under G.S. 58-7-179, but not including investments permitted under G.S. 58-7-173(2), (8), or (11).

"§ 58-7-175. Policy loans.

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

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

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

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

(c) For purposes of this section:

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

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

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

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

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

- (1) An insurer may invest in Eurodollar certificates of deposit issued by foreign branches of United States commercial banks.
- (2) In addition to Canadian securities eligible for investment and to investments in countries in which an insurer transacts insurance, an insurer may invest in bonds, notes, or stocks of any foreign country or alien corporation if the security meets the general requirements of G.S. 58-7-167 and does not exceed, in total, five percent (5%) of admitted assets.

"§ 58-7-179. Mortgage loans.

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

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

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

- (1) Ninety-five percent (95%) of the value of the real property or leasehold securing the real property in the case of a mortgage on a dwelling primarily intended for occupancy by not more than four families if they insure down to seventy-five percent (75%) with a licensed mortgage insurance company, or seventy-five percent (75%) of the value in the case of other real estate mortgages;
- (2) The amount of any insurance or guaranty of the loan by the United States or by an agency or instrumentality thereof; or
- (3) The percentage-of-value limit on the amount of the loan applicable under subdivision (1) of this subsection, plus the amount by which the excess of the loan over the percentage-of-value limit is insured or guaranteed by the United States or by any agency or instrumentality thereof.

(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.

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

"§ 58-7-180. Chattel mortgages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-7-187. Real estate, in general.

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

(b) An insurer may acquire and hold:

- (1) Land and buildings thereon used or acquired for use as its principal home office and branch offices, or used in conjunction with such offices, for the convenient transaction of its own business.
- (2) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer, in the course of its business.
- (3) Real property acquired in part payment of the consideration on the sale of other real property owned by it, if the transaction effects a net reduction in the insurer's investment in real estate.
- (4) Real property acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this Chapter.
- (5) Additional real property and equipment incident to real property, if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by it under subdivisions (2) through (4) of this subsection.

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

- (1) The amount shall not exceed in the aggregate the lesser of five percent (5%) of the insurer's admitted assets or fifteen percent (15%) of the insurer's capital and surplus.
- (2) The amount in any one property shall not exceed one percent (1%) of the insurer's admitted assets.
- (3) The amount in unimproved land shall not exceed one-half of one percent (0.5%) of the insurer's admitted assets.
- (4) There shall be no time limit for the disposal of investment real estate.

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

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

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

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

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

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

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

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

"§ 58-7-192. Valuation of other 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 publication entitled 'Valuations of Securities', unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.

"§ 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.

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

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

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

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

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

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

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

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

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

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

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

"§ 58-7-200. Investment transactions.

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

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

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

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

(e) Nothing in this section prohibits:

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

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

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

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

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

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

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

"**§ 58-13-5. Purposes.**

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

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

"**§ 58-13-10. Scope.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding 31st day of December 31, next preceding.
- (2) Loans or extensions of credit to any person who is not affiliated, where the insurer makes such the loans or extensions of credit with the agreement or understanding that the proceeds of such the transactions, in whole or in substantial part, are to be used to make loans or

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

- (3) Reinsurance agreements or modifications thereto to the agreements in which the reinsurance premium or a change in the the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the preceding 31st day of December 31, next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such the assets will be transferred to one or more affiliates of the insurer.
- (4) All management agreements that would place control of the insurer outside of the insurance holding company system agreements, service contracts, or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection.
- (5) All service contracts or cost sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection.
- (6)(5) Any material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, an alien insurer qualifies under this subdivision if it maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than one million five hundred thousand dollars (\$1,500,000) two million five hundred thousand dollars (\$2,500,000) for the protection of all of its policyholders in the United States United States, and such the trust fund consists of cash, securities, letters of credit, or of investment of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. Such—The trust fund, which shall be included in any calculation of capital and surplus or its

- equivalent, shall have an expiration date which at no time shall be less than five years; or
- b. In the case of any Lloyd's plans or other similar unincorporated group of ~~alien~~ individual insurers, maintains a trust fund of not less than fifty million dollars (\$50,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and ~~such the~~ trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and
 - c. In the case of an 'insurance exchange' created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than ~~fifteen million dollars (\$15,000,000)~~ ~~fifty million dollars (\$50,000,000)~~ in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than ~~one million five hundred thousand dollars (\$1,500,000)~~ ~~three million dollars (\$3,000,000)~~. ~~In the event If~~ the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section."

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

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

(a) As used in this section:

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

(b) Whenever an insurer is impaired, its chief executive officer shall, as soon as is reasonably possible, notify the Commissioner in writing of the impairment and shall at the same time notify in writing all of the members of the board of directors or trustees of the insurer, if the chief executive officer knows or has reason to know of the impairment. An officer, director, or trustee of an insurer shall notify the chief executive

officer of the impairment of the insurer if the officer, director, or trustee knows or has reason to know that the insurer is impaired. Any person who knowingly violates this subsection shall, upon conviction, be guilty of a misdemeanor and fined not more than fifty thousand dollars (\$50,000) or imprisoned for not more than two years, or both.

(c) Any person who willfully:

- (1) Conceals any property belonging to an insurer; or
- (2) Transfers or conceals in contemplation of a delinquency proceeding the person's own property or property belonging to an insurer; or
- (3) Conceals, destroys, mutilates, alters, or makes a false entry in any document that affects or relates to the property of an insurer or withholds any such document from a receiver, trustee, or other officer of a court entitled to its possession; or
- (4) Gives, obtains, or receives a thing of value for acting or forbearing to act in any court proceedings;

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

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

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

- (1) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation; or
- (2) If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or
- (3) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence, in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the ~~insurer~~ insurer; or
- (4) If the person served is or was, when the delinquency proceeding was begun against the insurer, holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or
- (5) If the person served is obligated to the insurer in any way whatsoever, in any action on or incident to the obligation."

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

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

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

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

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

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

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

- (1) Adverse findings reported in financial condition and market conduct examination reports;
- (2) The NAIC Insurance Regulatory Information System and its related reports;
- (3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;
- (4) Whether an insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;
- (5) The ability of an assuming reinsurer to perform and whether the ceding insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) Whether an insurer's operating loss in the last 12-month period or any shorter time, including net capital gain or loss, changes in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining policyholders' surplus in excess of the minimum required;
- (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation;

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

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

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

- (1) Notify the insurer of histhat determination; and
- (2) Furnish to the insurer a written list of the Commissioner's requirements to abate histhat determination.

The written list may include requirements that the insurer: reduce the total amount of present and potential liability for policy benefits by reinsurance; reduce, suspend, or limit the volume of insurance being accepted or renewed; reduce general insurance and commission expenses by specified methods; increase its capital and surplus; suspend or limit its declaration and payment of dividends to its stockholders or policyholders; file reports in a form acceptable to the Commissioner concerning the market value of its assets; limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner considers to be necessary; document the adequacy of premium rates in relation to the risks insured; or file, in addition to regular annual financial statements, interim financial reports on the form adopted by the NAIC or on such format prescribed by the Commissioner. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, the Commissioner may include in his the list of requirements such any rate adjustments for any kinds of insurance written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer."

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

"§ 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 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; 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.

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

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

(d) If the Commissioner determines that the conditions set forth in subsection (c) of this section exist, the Commissioner shall: notify the insurer of that determination; furnish to the insurer a written list of the requirements to abate those conditions; and

notify the insurer that it is under the supervision of the Commissioner and that the Commissioner is applying and effectuating the provisions of this section.

(e) If placed under administrative supervision, the insurer shall have 60 days, or a different period of time determined by the Commissioner, to comply with the requirements of the Commissioner under this section. If the Commissioner determines after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified in this subsection, the Commissioner may extend the period; or if the Commissioner determines that none of the conditions giving rise to the supervision exist, the Commissioner shall release the insurer from supervision.

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

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

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

(i) This section does not limit powers granted to the Commissioner by any other provision of law. This section does not preclude the Commissioner from initiating

judicial proceedings to place an insurer in a delinquency proceeding under this Article, regardless of whether the Commissioner has previously initiated administrative supervision proceedings under this section or under G.S. 58-30-60 against the insurer. The determination as to actions under this section is in the Commissioner's discretion.

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

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

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

"§ 58-30-127. Duties of agents.

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

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

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

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

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

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

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

"§ 58-30-160. Setoffs and counterclaims. Setoffs.

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

- (b) No setoff or counterclaim shall be allowed in favor of any person where:
- (1) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;
 - (2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
 - (3) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or
 - (4) The obligation of the person is to pay earned premiums to the insurer;
 - (5) The obligation of the insurer is owed to an affiliate of the person, or to any other entity or association other than the person;
 - (6) The obligation of the person is owed to an affiliate of the insurer, or to any other entity or association other than the insurer;
 - (7) The obligations between the person and the insurer arise out of transactions where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations;
 - (8) The obligation of the person is to pay to the insurer sums held in a fiduciary capacity for the insurer; or
 - (9) The person alone or together with any other member of its insurance company holding system owns fifty percent (50%) or more of the voting stock of the insurer.

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

(d) The receiver shall provide persons with accounting statements identifying debts which are currently due and payable. Where a person owes to the insurer

currently due and payable balances, against which the person asserts setoff of mutual credits which may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the currently due and payable amount; provided that, notwithstanding any other provision of this Article, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer.

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

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

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

"Managing General Agents. Agency and Management Contracts."

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

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

"§ 58-34-2. Managing general agents.

(a) As used in this Article:

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

managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with persons under common control, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year. 'MGA' does not mean an employee of the insurer; an underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, is subject to Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written; or a person who, under Article 15 of this Chapter, is designated and authorized by subscribers as the attorney-in-fact for a reciprocal having authority to obligate them on reciprocal and other insurance contracts.

- (4) 'Qualified actuary' means a person who meets the standards of a qualified actuary as specified in the NAIC Annual Statement Instructions, as amended or clarified by rule, order, directive, or bulletin of the Department, for the type of insurer for which the MGA is establishing loss reserves.
- (5) 'Underwrite' means the authority to accept or reject risk on behalf of the insurer.

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

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

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

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

suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

- (8) Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- (9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or by any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under subsection (m) of this section.
- (10) The MGA shall not:
 - a. Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
 - b. Commit the insurer to participate in insurance or reinsurance syndicates;
 - c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;
 - d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
 - e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without the insurer's prior approval. If prior approval is given, a report must be promptly forwarded to the insurer;
 - f. Permit its subproducer to serve on the insurer's board of directors;
 - g. Jointly employ an individual who is employed with the insurer; or
 - h. Appoint a sub-MGA.

(e) An insurer shall have on file by June 1 of each year an audited financial report of each MGA with which it is doing business. The report shall include the opinion of an independent certified public accountant, report the financial position of the MGA as of the most recent year-end and the results of its operations and cash flows,

and include appropriate notes to financial statements. The insurer shall provide a copy of the report to the Commissioner within 15 days of receipt by the insurer.

(f) If an MGA establishes loss reserves, the insurer shall provide with its annual statement, in addition to any other required statement of actuarial opinion, the statement of a qualified actuary attesting to the adequacy of loss reserves established on business produced by the MGA. The statement shall comply in all respects with the NAIC Annual Statement Instructions regarding the Statement of Actuarial Opinion.

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

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

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

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

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

Failure of the Commissioner to disapprove any such contract within 30 days after the contract has been filed with the Commissioner constitutes the Commissioner's approval of the contract. An insurer may continue to accept business from such person until the Commissioner disapproves the contract. Any disapproval shall be in writing. The Commissioner may, after a hearing held under G.S. 58-2-50, withdraw approval of any contract the Commissioner has previously approved upon finding that the basis of the

original approval no longer exists or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds in this subsection.

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

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

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

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

- (1) For each separate violation, a civil penalty of one thousand dollars (\$1,000) to be credited to the General Fund;
- (2) Revocation or suspension of the agent's license; or
- (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this Article committed by the MGA.

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

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

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

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

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

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

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

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

- (1) That the service or management charges are based upon criteria unrelated either to the managed insurer's profits or to the reasonable customary and usual charges for such services or are based on factors unrelated to the value of such services to the insurer; or
- (2) That management personnel or other employees of the insurer are to be performing management functions and receiving any remuneration

therefor through the management or service contract in addition to the compensation by way of salary received directly from the insurer for their services; or

- (3) That the contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurance company management; or
- (4) That the contract contains provisions that would be clearly detrimental to the best interest of policyholders, stockholders, or members of the insurer; or
- (5) That the officers and directors of the management firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person ~~or persons~~ known to have been involved in the improper manipulation of assets, accounts, or reinsurance."

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

"Life ~~and Accident~~ and Health Insurance Guaranty
Association."

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

"§ 58-62-2. Title.

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

"§ 58-62-6. Purpose.

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

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

"§ 58-62-11. Construction.

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

"§ 58-62-16. Definitions.

As used in this Article:

- (1) 'Account' means any of the two accounts created under G.S. 58-62-26.
- (2) 'Association' means the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.
- (3) 'Board' means the board of directors of the Association established under G.S. 58-62-31.

- (4) 'Contractual obligation' means any obligation under a policy or certificate under a group policy, or part thereof, for which coverage is provided under G.S. 58-62-21.
- (5) 'Covered policy' means any policy within the scope of this Article under G.S. 58-62-21.
- (6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer; and 'delinquency' means an insurer impairment or insolvency.
- (7) 'Health insurance' includes accident and health insurance, accident insurance, and disability insurance.
- (8) 'Impaired insurer' means a member insurer that, after the effective date of this Article, is not an insolvent insurer, and (i) is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations or (ii) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (9) 'Insolvent insurer' means a member insurer that, after the effective date of this Article, is placed under an order of liquidation with a finding of insolvency by a court of competent jurisdiction.
- (10) 'Insurance regulator' means the official or agency of another state that is responsible for the regulation of a foreign insurer.
- (11) 'Member insurer' means any insurer licensed or that holds a license to transact in this State any kind of insurance for which coverage is provided under G.S. 58-62-21; and includes any insurer whose license in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include an entity governed by Articles 65 through 67 of this Chapter; fraternal order or fraternal benefit society; mandatory State pooling plan; mutual assessment company or any entity that operates on an assessment basis; insurance exchange; or any entity similar to any of the foregoing.
- (12) ''Moody's Corporate Bond Yield Average' means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.
- (13) 'Person' includes an individual, corporation, company, partnership, association, or aggregation of individuals.
- (14) 'Plan' means the plan of operation established under G.S. 58-62-46.
- (15) 'Policy' includes a contract of insurance and an annuity contract.
- (16) 'Premiums' means amounts received in any calendar year on covered policies less premiums, considerations, and deposits returned thereon, and less dividends and experience credits thereon. 'Premiums' does not include any amounts received for any policies or for the parts of any policies for which coverage is not provided under G.S. 58-62-21(b); except that assessable premium shall not be reduced on account of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-21(d)(2) relating to limitations with respect to any one individual, any one participant, and any one contract holder.

- (17) 'Resident' means any person who resides in this State when a member insurer is determined to be a delinquent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.
- (18) 'Unallocated annuity contract' means any annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

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

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

- (1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this subsection, and
- (2) To persons who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the associations.

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

(c) This Article does not provide coverage for:

- (1) Any part of a policy not guaranteed by the insurer, or under which the risk is borne by the policyholder;
- (2) Any policy or contract of reinsurance, unless assumption certificates have been issued;
- (3) Any part of a policy to the extent that the rate of interest on which it is based:
- a. Averaged over the period of four years before the date on which the Association becomes obligated with respect to the policy, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average

- averaged for that same four-year period or for a lesser period if the policy was issued less than four years before the Association became obligated; and
- b. On and after the date on which the Association becomes obligated with respect to the policy, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;
- (4) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:
- a. A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
- b. A minimum premium group insurance plan;
- c. A stop-loss group insurance plan; or
- d. An administrative services only contract;
- (5) Any part of a policy to the extent that it provides dividends or experience-rating credits, or provides that any fees or allowances be paid to any person, including the policyholder, in connection with the service to or administration of the policy;
- (6) Any policy issued in this State by a member insurer at a time when it was not licensed to issue the policy in this State;
- (7) Any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; and
- (8) Any part of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

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

- (1) The contractual obligations for which the insurer is liable or would have been liable if it were not a delinquent insurer; or
- (2) With respect to any one individual, regardless of the number of policies, three hundred thousand dollars (\$300,000) for all benefit, including cash values.

(e) In no event is the Association liable to expend more than three hundred thousand dollars (\$300,000) in the aggregate with respect to any one individual under this section.

"§ 58-62-26. Creation of the Association.

(a) There is created a nonprofit legal entity to be known as the North Carolina Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact

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

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

- a. Life insurance account;
- b. Annuity account.

(2) The health insurance account.

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

"§ 58-62-31. Board of directors.

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

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

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

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

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

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

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

(3) Lend money to the impaired insurer.

(b) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims in a timely manner, then subject to the

preconditions specified in subsection (c) of this section, the Association shall, in its discretion, either:

- (1) Take any of the actions specified in subsection (a) of this section, subject to the conditions therein; or
- (2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policyowners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the Association and approved by the Commissioner.

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

- (1) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all the payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations, the delinquency proceeding shall not be dismissed; neither the impaired insurer nor its assets may be returned to the control of its shareholders or private management; and the impaired insurer may not solicit or accept new business or have any suspended or revoked license restored; and
- (2) The impaired insurer is a domestic insurer that has been placed under an order of rehabilitation by a court of competent jurisdiction in this State; or the impaired insurer is a foreign or alien insurer that has been prohibited from soliciting or accepting new business in this State, its license has been suspended or revoked in this State, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by that state's insurance regulator.

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

- (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies of the insolvent insurer; or
- (2) Assure payment of the contractual obligations of the insolvent insurer; and
- (3) Provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge those duties; or
- (4) With respect only to life and health insurance policies, provide benefits and coverages in accordance with subsection (e) of this section.

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

- (1) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that

would have been payable under the policies of the insolvent insurer, for claims incurred:

- a. With respect to group policies, not later than the earlier of the next renewal date under the policies or 45 days, but in no event less than 30 days after the date on which the Association becomes obligated with respect to the policies;
 - b. With respect to individual policies, not later than the earlier of the next renewal date (if any) under the policies or one year, but in no event less than 30 days from the date on which the Association becomes obligated with respect to the policies;
- (2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies 30 days' notice of the termination of the benefits provided; and
- (3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subsection (f) of this section, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(f) In providing the substitute coverage required under subdivision (e)(3) of this section, the Association may offer either to reissue the terminated coverage or to issue an alternative policy. An alternative or reissued policy shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy. The Association may reinsure any alternative or reissued policy.

(g) Alternative life or health insurance policies adopted by the Association are subject to the Commissioner's approval. The Association may adopt alternative policies of various types for future issuance without regard to any particular delinquency. Alternative policies shall contain at least the minimum statutory provisions required in this State and provide benefits that are not unreasonable in relation to the premium charged. The Association shall set the premium in accordance with a table of rates, which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but it shall not reflect any changes in the health of the insured after the original policy was last underwritten. Any alternative policy issued by the Association shall provide coverage of a type similar to that of the policy issued by the delinquent insurer, as determined by the Association.

(h) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated life or health insurance policy, the premium shall be set by the Association in accordance with the amount of insurance

provided and the age and class of risk, subject to the approval of the Commissioner or by a court of competent jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

(s) The Association may:

- (1) Enter into contracts that are necessary or proper to carry out the provisions and purposes of this Article;
- (2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under G.S. 58-62-41 and to settle claims or potential claims against it;
- (3) Borrow money to effect the purposes of this Article; any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
- (4) Employ or retain persons that are necessary to handle the financial transactions of the Association, and to perform other functions that become necessary or proper under this Article;
- (5) Take legal action that may be necessary to avoid payment of improper claims;
- (6) Exercise, for the purposes of this Article and to the extent approved by the Commissioner, the powers of a domestic life or health insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this Article.

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

"§ 58-62-41. Assessments.

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

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

- (1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of G.S. 58-62-56(e). Class A assessments may be made whether or not they are related to a particular delinquent insurer.
- (2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under G.S. 58-62-36 with regard to a delinquent insurer.

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

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

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

(f) The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the Board's opinion, payment of the assessment would endanger the member insurer's ability to fulfill its contractual obligations. If an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers

in a manner consistent with the basis for assessments set forth in this section, recognizing that exact determinations may not always be possible.

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

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

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

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

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

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

"§ 58-62-46. Plan of operation.

(a) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments shall become

effective upon the Commissioner's written approval or unless the Commissioner has not disapproved it within 30 days.

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

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

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

- (1) Procedures for handling the assets of the Association;
- (2) The amount and method of reimbursing members of the Board under G.S. 58-62-31;
- (3) Regular places and times for meetings, including telephone conference calls, of the Board;
- (4) Procedures for records to be kept of all financial transactions of the Association, its agents, and the Board;
- (5) The procedures whereby selections for the Board will be made and submitted to the Commissioner;
- (6) Any additional procedures for assessments under G.S. 58-62-41;
- (7) Additional provisions necessary or proper for the execution of the powers and duties of the Association.

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

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

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

- (1) Upon request of the Board, provide the Association with a statement of the premiums in this State and any other appropriate states for each member insurer;
- (2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to comply promptly with the demand does not excuse the

Association from the performance of its powers and duties under this Article; and

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

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

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

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

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

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

- (1) Notify insurance regulators when revoking or suspending the license of a member insurer, or making any formal order that the insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from this State, reinsurance all or any part of its business, or

increase capital, surplus, or any other account for the security of policyholders or creditors. That notice shall be sent electronically through the NAIC headquarters and mailed to all insurance regulators within 30 days following the action taken or the date on which the action occurs.

- (2) Report to the Board when the Commissioner has taken any of the actions in subdivision (1) of this subsection or has received a report from another insurance regulator indicating that any such action has been taken in another state. The report to the Board shall contain all significant details of the action taken or the report received from another insurance regulator.
- (3) Report to the Board when the Commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be delinquent.
- (4) Furnish the Board with the NAIC Insurance Regulatory Information System financial test ratios and a listing of companies that are not included in the ratios developed by the NAIC; and the Board may use that data in carrying out its duties and responsibilities under this section. The data shall be kept confidential by the Board until it is made public by the Commissioner or another lawful authority.

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

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

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

(e) The Board may, upon majority vote, request that the Commissioner order an examination of any member insurer that the Board in good faith believes may be delinquent. Within 30 days of the receipt of the request, the Commissioner shall begin the examination. The examination may be conducted as an NAIC examination or may be conducted by persons the Commissioner designates. The cost of the examination shall be paid by the Association; and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the Board before its release to the public; but this does not preclude the Commissioner from complying with subsection (a) of this section. The Commissioner shall notify the Board when the examination is completed. The request for an examination shall be kept on file by the Commissioner, but shall not be open to public inspection before the release of the examination report to the public.

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

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

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

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

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

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

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

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

(f) If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under the order has a right to recover on

behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (g) through (i) of this section.

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

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

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

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

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

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

"§ 58-62-76. Immunity.

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

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

All proceedings in which the insolvent insurer is a party in any court in this State shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default, the Association may apply to have the judgment set aside by the same court that made the judgment and may defend against such suit on the merits.

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

(a) No person shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or

placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any oral or written advertisement, announcement, or statement that uses the existence of the Association or this Article for the purpose of sale or solicitation of or inducement to purchase any kind of insurance covered by this Article. However, this subsection does not apply to the Association or any other person who does not sell or solicit insurance.

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

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

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

(d) No insurer or agent may deliver a policy described in G.S. 58-62-21(b) and excluded under G.S. 58-62-21(c) from coverage under this Article unless the insurer or agent, before or at the time of delivery, gives the policyholder a separate written notice that clearly and conspicuously discloses that the policy is not covered by the Association. The Commissioner shall prescribe the form and content of the notice."

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

Sec. 58. The Commissioner and the Commissioner's staff shall maintain close relations with the insurance regulators of other states and shall actively participate

in the activities and affairs of the National Association of Insurance Commissioners, the National Conference of Insurance Legislators, and other organizations or successor organizations insofar as it will, in the Commissioner's judgment, enhance the purposes of the regulation of insurance. The actual and necessary travel and related expenses incurred by the Commissioner and members of the Commissioner's staff in attending meetings of such organizations, their committees, subcommittees, hearings, and other official activities, as well as the general expenses of participation in such organizations shall be a charge on available funds and the appropriation of the Department.

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

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

In the General Assembly read three times and ratified this the 13th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives