

1 Article 2.

2 Commissioner of Insurance.

3 **§ 58-2-1. Department established.**

4 The Department is hereby established as a separate and distinct department, which is
5 charged with the execution of laws relating to insurance and other subjects placed under the
6 Department. (1899, c. 54, s. 3; 1901, c. 391, s. 1; Rev., s. 4680; C.S., s. 6263; 1991, c. 720, s.
7 5.)
8

9 **§ 58-2-5. Commissioner's election and term of office.**

10 The chief officer of the Insurance Department shall be called the Commissioner of
11 Insurance; whenever in the statutes of this State the words "Insurance Commissioner" appear,
12 they shall be deemed to refer to and to be synonymous with the term "Commissioner of
13 Insurance." He shall be elected by the people in the manner prescribed for the election of
14 members of the General Assembly and State officers, and the result of the election shall be
15 declared in the same manner and at the same time as the election of State officers is now
16 declared. His term of office begins on the first day of January next after his election, and is for
17 four years or until his successor is elected and qualified. If a vacancy occurs during the term, it
18 shall be filled by the Governor for the unexpired term. (Rev., ss. 4680, 4681; 1907, c. 868;
19 C.S., s. 6264; 1943, c. 170.)
20

21 **§ 58-2-10. Salary of Commissioner.**

22 The salary of the Commissioner shall be set by the General Assembly in the Current
23 Operations Appropriations Act. In addition to the salary set by the General Assembly in the
24 Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is
25 provided to employees of the State who are subject to the State Personnel Act. (1899, c. 54, ss.
26 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c.
27 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C.S., s. 3874; 1921, c. 25,
28 s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278;
29 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6; 1967, c. 1130; c. 1237, s. 6; 1969, c. 1214, s. 6;
30 1971, c. 912, s. 6; 1973, c. 778, s. 6; 1975, 2nd Sess., c. 983, s. 21; 1977, c. 802, s. 42.12; 1983,
31 c. 761, s. 206; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b); 1991, c. 720, s.
32 4.)
33

34 **§ 58-2-15. Chief deputy commissioner.**

35 The Commissioner shall appoint and may remove at his discretion a chief deputy
36 commissioner, who, in the event of the absence, death, resignation, disability or disqualification
37 of the Commissioner, or in case the office of Commissioner shall for any reason become
38 vacant, shall have and exercise all the powers and duties vested by law in the Commissioner.
39 He shall receive such compensation as fixed and provided by the Department of
40 Administration. (1945, c. 383; 1987, c. 864, s. 19(a).)
41

42 **§ 58-2-20. Chief actuary.**

43 The Commissioner shall appoint and may remove at his discretion a chief actuary, who
44 shall receive such compensation as fixed and provided by the Department of Administration.
45 (1945, c. 383; 1987, c. 864, s. 19(b).)
46

47 **§ 58-2-25. Other deputies, actuaries, examiners and employees.**

48 (a) The Commissioner shall appoint or employ such other deputies, actuaries,
49 economists, financial analysts, financial examiners, licensed attorneys, rate and policy analysts,
50 accountants, fire and rescue training instructors, market conduct analysts, insurance complaint
51 analysts, investigators, engineers, building inspectors, risk managers, clerks and other

1 employees that the Commissioner considers to be necessary for the proper execution of the
2 work of the Department, at the compensation that is fixed and provided by the Department of
3 Administration. If the Commissioner considers it to be necessary for the proper execution of
4 the work of the Department to contract with persons, except to fill authorized employee
5 positions, all of those contracts, except those provided for in Articles 36 and 37 and Part 2 of
6 Article 44 of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter
7 143 of the General Statutes.

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

13 (b) The minimum education requirements for financial analysts and examiners referred
14 to in subsection (a) of this section are a bachelors degree, with the appropriate courses in
15 accounting as defined in 21 NCAC 8A.0309, and other courses that are required to qualify the
16 applicant as a candidate for the uniform certified public accountant examination, based on the
17 examination requirements in effect at the time of graduation by the analyst or examiner from an
18 accredited college or university. (1945, c. 383; 1981, c. 859, s. 94; 1987, c. 864, s. 20; 1989
19 (Reg. Sess., 1990), c. 1069, s. 20; 1991, c. 681, s. 1; 2000-122, s. 4; 2006-145, s. 4.)
20

21 **§ 58-2-30. Appointments of committees or councils.**

22 (a) As used in this section, the term "committee" means a collective body that consults
23 with and advises the Commissioner or his designee in detailed technical areas; and the term
24 "council" means a collective body that consults with and advises the Commissioner or his
25 designee as representative of citizen advice in specific areas of interest.

26 (b) The Commissioner may create and appoint committees and councils, each of which
27 shall consist of no more than 13 members unless otherwise provided by law. The members of
28 any committee or council shall serve at the pleasure of the Commissioner and may be paid per
29 diem and necessary travel and subsistence expenses within the limits of appropriations and in
30 accordance with G.S. 138-5. Per diem, travel, and subsistence payments to members of
31 committees or councils that are created in connection with federal programs shall be paid from
32 federal funds unless otherwise provided by law. (1985, c. 666, s. 44.)
33

34 **§ 58-2-31. Seniors' Health Insurance Information Program.**

35 The Seniors' Health Insurance Information Program is established within the Department as
36 a statewide health benefits counseling program to provide the State's Medicare beneficiaries
37 with counseling in Medicare, Medicare supplement insurance, long-term care insurance, and
38 related health care coverage plans. (2011-196, s. 2.)
39

40 **§ 58-2-35. Seal of Department.**

41 The Commissioner, with the approval of the Governor, shall devise a seal, with suitable
42 inscription, for his office, a description of which, with the certificate of approval by the
43 Governor, shall be filed in the office of the Secretary of State, with an impression thereof,
44 which seal shall thereupon become the seal of office of the Commissioner of the Department.
45 The seal may be renewed whenever necessary. (1899, c. 54, s. 11; Rev., s. 4682; C.S., s. 6266;
46 1991, c. 720, ss. 4, 5.)
47

48 **§ 58-2-40. Powers and duties of Commissioner.**

49 The Commissioner shall:

- 50 (1) See that all laws of this State that the Commissioner is responsible for
51 administering and the provisions of this Chapter are faithfully executed; and

1 to that end the Commissioner is authorized to adopt rules in accordance with
2 Chapter 150B of the General Statutes, in order to enforce, carry out and
3 make effective the provisions of those laws. The Commissioner is also
4 authorized to adopt such further rules not contrary to those laws that will
5 prevent persons subject to the Commissioner's regulatory authority from
6 engaging in practices injurious to the public.

- 7 (2) Have the power and authority to adopt rules pertaining to and governing the
8 solicitation of proxies, including financial reporting in connection therewith,
9 with respect to the capital stock or other equity securities of any domestic
10 stock insurance company.
- 11 (3) Prescribe to the companies, associations, orders, or bureaus required by
12 Articles 1 through 64 of this Chapter to report to the Commissioner, the
13 necessary forms for the statements required. The Commissioner may change
14 those forms from time to time when necessary to secure full information as
15 to the standing, condition, and such other information desired of companies,
16 associations, orders, or bureaus under the jurisdiction of the Department.
- 17 (4) Receive and thoroughly examine each financial statement required by
18 Articles 1 through 64 of this Chapter.
- 19 (5) Report in detail to the Attorney General any violations of the laws relative to
20 insurance companies, associations, orders and bureaus or the business of
21 insurance; and the Commissioner may institute civil actions or criminal
22 prosecutions either by the Attorney General or another attorney whom the
23 Attorney General may select, for any violation of the provisions of Articles 1
24 through 64 of this Chapter.
- 25 (6) Upon a proper application by any citizen of this State, give a statement or
26 synopsis of the provisions of any insurance contract offered or issued to the
27 citizen.
- 28 (7) Administer, or the Commissioner's deputy may administer, all oaths required
29 in the discharge of the Commissioner's official duty.
- 30 (8) Compile and make available to the public such lists of rates charged,
31 including deviations, and such explanations of coverages that are provided
32 by insurers for and in connection with contracts or policies of (i) insurance
33 against loss to residential real property with not more than four housing units
34 located in this State and any contents thereof or valuable interest therein and
35 other insurance coverages written in connection with the sale of such
36 property insurance and (ii) private passenger (nonfleet) motor vehicle
37 liability, physical damage, theft, medical payments, uninsured motorists, and
38 other insurance coverages written in connection with the sale of such
39 insurance, as may be advisable to inform the public of insurance premium
40 differentials and of the nature and types of coverages provided. The
41 explanations of coverages provided for in this section must comply with the
42 provisions of Article 38 of this Chapter.
- 43 (9) Repealed by Session Laws 2000, ch. 19, s. 3, effective on or after April 1,
44 1998.
- 45 (10) Administer and enforce the provisions of the federal Patient Protection and
46 Affordable Care Act (Public Law 111-148) and the provisions of the Health
47 Care and Education Reconciliation Act of 2010 (Public Law 111-152) to the
48 extent that the provisions apply to persons subject to the Commissioner's
49 jurisdiction and to the extent that the provisions are not under the exclusive
50 jurisdiction of any federal agency. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev.,
51 s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c.

1 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s.
2 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3;
3 2010-31, s. 24.2(a).)

4
5 **§ 58-2-45. Orders of Commissioner; when writing required.**

6 Whenever by any provision of Articles 1 through 64 of this Chapter, the Commissioner is
7 authorized to grant any approval, authorization or permission or to make any other order
8 affecting any insurer, insurance agent, insurance broker or other person or persons subject to
9 the provisions of Articles 1 through 64 of this Chapter, such order shall not be effective unless
10 made in writing and signed by the Commissioner or by his authority. (1945, c. 383.)

11
12 **§ 58-2-46. State of disaster; automatic stay of proof of loss requirements; premium and**
13 **debt deferrals; loss adjustments for separate windstorm policies.**

14 Whenever a state of disaster is proclaimed for the State or for an area within the State under
15 G.S. 166A-6 or whenever the President of the United States has issued a major disaster
16 declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. §
17 5121, et seq., as amended:

- 18 (1) The application of any provision in an insurance policy insuring real
19 property and its contents that are located within the geographic area
20 designated in the proclamation or declaration, which provision requires an
21 insured to file a proof of loss within a certain period of time after the
22 occurrence of the loss, shall be stayed for the time period not exceeding the
23 expiration of the disaster proclamation or declaration and all renewals of the
24 proclamation or 45 days, whichever is later.
- 25 (2) As used in this subdivision, "insurance company" includes a service
26 corporation, HMO, MEWA, surplus lines insurer, and the underwriting
27 associations under Articles 45 and 46 of this Chapter. All insurance
28 companies, premium finance companies, collection agencies, and other
29 persons subject to this Chapter shall give their customers who reside within
30 the geographic area designated in the proclamation or declaration the option
31 of deferring premium or debt payments that are due during the time period
32 covered by the proclamation or declaration. This deferral period shall be 30
33 days from the last day the premium or debt payment may be made under the
34 terms of the policy or contract. This deferral period shall also apply to any
35 statute, rule, or other policy or contract provision that imposes a time limit
36 on an insurer, insured, claimant, or customer to perform any act during the
37 time period covered by the proclamation or declaration, including the
38 transmittal of information, with respect to insurance policies or contracts,
39 premium finance agreements, or debt instruments when the insurer, insured,
40 claimant, or customer resides or is located in the geographic area designated
41 in the proclamation or declaration. Likewise, the deferral period shall apply
42 to any time limitations imposed on insurers under the terms of a policy or
43 contract or provisions of law related to individuals who reside within the
44 geographic area designated in the proclamation or declaration. Likewise, the
45 deferral period shall apply to any time limitations imposed on insurers under
46 the terms of a policy or contract or provisions of law related to individuals
47 who reside within the geographic area designated in the proclamation or
48 declaration. The Commissioner may extend any deferral period in this
49 subdivision, depending on the nature and severity of the proclaimed or
50 declared disaster. No additional rate or contract filing shall be necessary to
51 effect any deferral period.

- 1 (3) With respect to health benefit plans, after a deferral period has expired, all
2 premiums in arrears shall be payable to the insurer. If premiums in arrears
3 are not paid, coverage shall lapse as of the date premiums were paid up, and
4 preexisting conditions shall apply as permitted under this Chapter; and the
5 insured shall be responsible for all medical expenses incurred since the
6 effective date of the lapse in coverage.
- 7 (4) In addition to the requirements of G.S. 58-45-35(e), for separate windstorm
8 policies that are written by an insurer other than the Underwriting
9 Association, losses shall be adjusted by the insurer that issued the property
10 insurance and not by the insurer that issued the windstorm policy. The
11 insurer that issued the windstorm policy shall reimburse the insurer that
12 issued the property insurance for reasonable expenses incurred by that
13 insurer in adjusting the windstorm losses. (2006-145, s. 3.)
14

15 **§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer**
16 **provisions.**

17 Regardless of whether a state of disaster has been proclaimed under G.S. 166A-6 or
18 declared under the Stafford Act, whenever an incident beyond the Department's reasonable
19 control, including an act of God, insurrection, strike, fire, power outage, or systematic
20 technological failure, substantially affects the daily business operations of the Department, the
21 Commissioner may issue an order, effective immediately, to stay the application of any
22 deadlines and deemer provisions imposed by law or rule upon the Commissioner or
23 Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and
24 deemer provisions would otherwise operate during the time period for which the operations of
25 the Department have been substantially affected. The order shall remain in effect for a period
26 not exceeding 30 days. The order may be renewed by the Commissioner for successive periods
27 not exceeding 30 days each for as long as the operations of the Department remain substantially
28 affected, up to a period of one year from the effective date of the initial order. (2006-145, s. 3.)
29

30 **§ 58-2-50. Examinations, hearings, and investigations.**

31 All examinations, hearings, and investigations provided for by this Chapter may be
32 conducted by the Commissioner personally or by one or more deputies, investigators, actuaries,
33 examiners or employees designated for the purpose. If the Commissioner or any investigator
34 appointed to conduct the investigations is of the opinion that there is evidence to charge any
35 person or persons with a criminal violation of any provision of this Chapter, the Commissioner
36 may arrest with warrant or cause the person or persons to be arrested. All hearings shall, unless
37 otherwise specially provided, be held in accordance with this Article and Article 3A of Chapter
38 150B of the General Statutes and at a time and place designated in a written notice given by the
39 Commissioner to the person cited to appear. The notice shall state the subject of inquiry and the
40 specific charges, if any. (1945, c. 383; 1969, c. 1009; 1995, c. 193, s. 6; 1999-219, s. 1.1.)
41

42 **§ 58-2-52. Appeals and rate-making hearings before the Commissioner.**

43 (a) The Commissioner may adopt rules for the hearing of appeals by the Commissioner
44 or the Commissioner's designated hearing officer under G.S. 58-36-35, 58-37-65, 58-45-50,
45 58-46-30, 58-48-40(c)(7), 58-48-42, and 58-62-51(c). These rules may provide for prefiled
46 evidence and testimony of the parties, prehearing statements and conferences, settlement
47 conferences, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases,
48 continuances, rights and responsibilities of parties, witnesses, and evidence.

49 (b) Notwithstanding G.S. 150B-38(h), hearing procedures for rate filings made by the
50 North Carolina Rate Bureau shall be governed by the provisions of Article 36 of this Chapter

1 and G.S. 150B-39 through G.S. 150B-41. The Commissioner may adopt rules for those
2 hearings.

3 (c) Appeals under the statutes cited in subsection (a) of this section are not contested
4 cases within the meaning of G.S. 150B-2(2). (1993, c. 409, s. 23; 1995, c. 193, s. 7.)
5

6 **§ 58-2-53. Filing approvals and disapprovals; clarification of law.**

7 Whenever any provision of this Chapter requires a person to file rates, forms, classification
8 plans, rating plans, plans of operation, the Safe Driver Incentive Plan, or any other item with
9 the Commissioner or Department for approval, the approval or disapproval of the filing is an
10 agency decision under Chapter 150B of the General Statutes only with respect to the person
11 making the filing or any person that intervenes in the filing. (2001-423, s. 2.)
12

13 **§ 58-2-55. Designated hearing officers.**

14 In any contested case under this Chapter or Article 9A or Article 9B of Chapter 143 of the
15 General Statutes, the Commissioner may designate a member of his staff to serve as a hearing
16 officer. When the Commissioner is unable or elects not to hear a contested case and elects not
17 to designate a hearing officer to hear a contested case, he shall apply to the director of the
18 Office of Administrative Hearings for the designation of an administrative law judge to preside
19 at the hearing of a contested case. Upon receipt of the application, the Director shall, without
20 undue delay, assign an administrative law judge to hear the case. (1989, c. 485, s. 30;
21 1999-393, s. 4.)
22

23 **§ 58-2-60. Restraining orders; criminal convictions.**

24 (a) Whenever it appears to the Commissioner that any person has violated, is violating,
25 or threatens to violate any provision of Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of
26 this Chapter, or Article 9A of Chapter 143 of the General Statutes, he may apply to the superior
27 court of any county in which the violation has occurred, is occurring, or may occur for a
28 restraining order and injunction to restrain such violation. If upon application the court finds
29 that any provision of said statutes has been violated, is being violated, or a violation thereof is
30 threatened, the court shall issue an order restraining and enjoining such violations; and such
31 relief may be granted regardless of whether criminal prosecution is instituted under any
32 provision of law.

33 (b) The conviction in any court of competent jurisdiction of any licensee for any
34 criminal violation of the statutes referred to in subsection (a) of this section automatically has
35 the effect of suspending the license of that person until such time that the license is reinstated
36 by the Commissioner. As used in this subsection, "conviction" includes an adjudication of
37 guilt, a plea of guilty, and a plea of nolo contendere. (1989, c. 485, s. 30.)
38

39 **§ 58-2-65. License surrenders.**

40 This section applies to persons or entities licensed under Articles 1 through 64, 65 and 66,
41 67, 69, 70, or 71 of this Chapter, or Article 9A of Chapter 143 of the General Statutes. When a
42 licensee is accused of any act, omission, or misconduct that would subject the license to
43 suspension or revocation, the licensee, with the consent and approval of the Commissioner,
44 may surrender the license for a period of time established by the Commissioner. A person or
45 entity who surrenders a license shall not thereafter be eligible for or submit any application for
46 licensure during the period of license surrender. (1989, c. 485, s. 30.)
47

48 **§ 58-2-69. Notification of criminal convictions and changes of address; service of notice;
49 contracts for online services, administrative services, or regulatory data
50 systems.**

51 (a) As used in this section:

1 (1) "License" includes any license, certificate, registration, or permit issued
2 under this Chapter.

3 (2) "Licensee" means any person who holds a license.

4 (b) Every applicant for a license shall inform the Commissioner of the applicant's
5 residential address and provide the applicant's e-mail address to which the Commissioner can
6 send electronic notifications and other messages. Every licensee shall give written notification
7 to the Commissioner of any change of the licensee's residential or e-mail address within 10
8 business days after the licensee moves into the licensee's new residence or obtains a different
9 e-mail address. This requirement applies if the change of residential address is by governmental
10 action and there has been no actual change of residence location; in which case the licensee
11 shall notify the Commissioner within 10 business days after the effective date of the change. A
12 violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the
13 license or for the imposition of any other penalty by the Commissioner, though a licensee who
14 violates this subsection shall pay an administrative fee of fifty dollars (\$50.00) to the
15 Commissioner.

16 (c) If a licensee is convicted in any court of competent jurisdiction for any crime or
17 offense other than a motor vehicle infraction, the licensee shall notify the Commissioner in
18 writing of the conviction within 10 days after the date of the conviction. As used in this
19 subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo
20 contendere.

21 (d) Notwithstanding any other provision of law, whenever the Commissioner is
22 authorized or required to give any notice under this Chapter to a licensee, the notice may be
23 given personally or by sending the notice by first-class mail to the licensee at the address that
24 the licensee has provided to the Commissioner under subsection (b) of this section.

25 (e) The giving of notice by mail under subsection (d) of this section is complete upon
26 the expiration of four days after the deposit of the notice in the post office. Proof of the giving
27 of notice by mail may be made by the certificate of any employee of the Department.

28 (f) Notification by licensees under subsection (b) of this section may be accomplished
29 by submitting written notification directly to the Commissioner or by using any online services
30 approved by the Commissioner for this purpose.

31 (g) The Commissioner may contract with the NAIC or other persons for the provision
32 of online services to applicants and licensees, for the provision of administrative services, for
33 the provision of license processing and support services, and for the provision of regulatory
34 data systems to the Commissioner. The NAIC or other person with whom the Commissioner
35 contracts may charge applicants and licensees a reasonable fee for the provision of online
36 services, the provision of administrative services, the provision of license processing and
37 support services, and the provision of regulatory data systems to the Commissioner. The fee
38 shall be agreed to by the Commissioner and the other contracting party and shall be stated in
39 the contract. The fee is in addition to any applicable license application and renewal fees.
40 Contracts for the provision of online services, contracts for the provision of administrative
41 services, and contracts for the provision of regulatory data systems shall not be subject to
42 Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the
43 General Statutes. However, the Commissioner shall: (i) submit all proposed contracts for
44 supplies, materials, printing, equipment, and contractual services that exceed one million
45 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney
46 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be
47 awarded by the Commissioner under this subsection a standard clause which provides that the
48 State Auditor and internal auditors of the Commissioner may audit the records of the contractor
49 during and after the term of the agreement or contract to verify accounts and data affecting fees
50 and performance. The Commissioner shall not award a cost plus percentage of cost agreement

1 or contract for any purpose. (1998-211, s. 16; 2007-507, s. 15; 2009-566, s. 20; 2010-194, s. 6;
2 2011-196, s. 1; 2011-326, s. 15(f).)

3
4 **§ 58-2-70. Civil penalties or restitution for violations; administrative procedure.**

5 (a) This section applies to any person who is subject to licensure or certification under
6 this Chapter.

7 (b) Whenever the Commissioner has reason to believe that any person has violated any
8 of the provisions of this Chapter, and the violation subjects the license or certification of that
9 person to suspension or revocation, the Commissioner may, after notice and opportunity for a
10 hearing, proceed under the appropriate subsections of this section.

11 (c) If, under subsection (b) of this section, the Commissioner finds a violation of this
12 Chapter, the Commissioner may, in addition to or instead of suspending or revoking the license
13 or certification, order the payment of a monetary penalty as provided in subsection (d) of this
14 section or petition the Superior Court of Wake County for an order directing payment of
15 restitution as provided in subsection (e) of this section, or both. Each day during which a
16 violation occurs constitutes a separate violation.

17 (d) If the Commissioner orders the payment of a monetary penalty pursuant to
18 subsection (c) of this section, the penalty shall not be less than one hundred dollars (\$100.00)
19 nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the
20 Commissioner shall consider the degree and extent of harm caused by the violation, the amount
21 of money that inured to the benefit of the violator as a result of the violation, whether the
22 violation was committed willfully, and the prior record of the violator in complying or failing
23 to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the
24 penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
25 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of
26 any other penalty for a violation of the criminal laws of this State.

27 (e) Upon petition of the Commissioner the court may order the person who committed a
28 violation specified in subsection (c) of this section to make restitution in an amount that would
29 make whole any person harmed by the violation. The petition may be made at any time and
30 also in any appeal of the Commissioner's order.

31 (f) Restitution to any State agency for extraordinary administrative expenses incurred
32 in the investigation and hearing of the violation may also be ordered by the court in such
33 amount that would reimburse the agency for the expenses.

34 (g) Nothing in this section prevents the Commissioner from negotiating a mutually
35 acceptable agreement with any person as to the status of the person's license or certificate or as
36 to any civil penalty or restitution.

37 (h) Unless otherwise specifically provided for, all administrative proceedings under this
38 Chapter are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's
39 orders under this section shall be governed by G.S. 58-2-75. (1985, c. 666, s. 35; 1987, c. 752,
40 ss. 3-5; c. 864, s. 1; 1989, c. 485, s. 46; 1998-211, s. 15; 1998-215, s. 83(a).)

41
42 **§ 58-2-75. Court review of orders and decisions.**

43 (a) Any order or decision made, issued or executed by the Commissioner, except an
44 order to make good an impairment of capital or surplus or a deficiency in the amount of
45 admitted assets and except an order or decision that the premium rates charged or filed on all or
46 any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are
47 otherwise not in the public interest or that a classification assignment is unwarranted,
48 unreasonable, improper, unfairly discriminatory, or not in the public interest, shall be subject to
49 review in the Superior Court of Wake County on petition by any person aggrieved filed within
50 30 days from the date of the delivery of a copy of the order or decision made by the
51 Commissioner upon such person. A copy of such petition for review as filed with and certified

1 to by the clerk of said court shall be served upon the Commissioner or in his absence upon
2 someone in active charge of the Department within five days after the filing thereof. If such
3 petition for review is not filed within the said 30 days, the parties aggrieved shall be deemed to
4 have waived the right to have the merits of the order or decision reviewed and there shall be no
5 trial of the merits thereof by any court to which application may be made by petition or
6 otherwise, to enforce or restrain the enforcement of the same.

7 (b) The Commissioner shall within 30 days, unless the time be extended by order of
8 court, after the service of the copy of the petition for review as provided in subsection (a) of
9 this section, prepare and file with the clerk of the Superior Court of Wake County a complete
10 transcript of the record of the hearing, if any, had before him, and a true copy of the order or
11 decision duly certified. The order or decision of the Commissioner if supported by substantial
12 evidence shall be presumed to be correct and proper. The court may change the place of
13 hearing,

14 (1) Upon consent of the parties; or

15 (2) When the convenience of witnesses and the ends of justice would be
16 promoted by the change; or

17 (3) When the judge has at any time been interested as a party or counsel.

18 The cause shall be heard by the trial judge as a civil case upon transcript of the record for
19 review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear
20 and determine such petition with all convenient speed and to this end the cause shall be placed
21 on the calendar for the next succeeding term for hearing ahead of all other cases except those
22 already given priority by law. If on the hearing before the trial judge it shall appear that the
23 record filed by the Commissioner is incomplete, he may by appropriate order direct the
24 Commissioner to certify any or all parts of the record so omitted.

25 (c) The trial judge shall have jurisdiction to affirm or to set aside the order or decision
26 of the Commissioner and to restrain the enforcement thereof.

27 (d) Appeals from all final orders and judgments entered by the superior court in
28 reviewing the orders and decisions of the Commissioner may be taken to the appellate division
29 of the General Court of Justice by any party to the action as in other civil cases.

30 (e) The commencement of proceedings under this section shall not operate as a stay of
31 the Commissioner's order or decision, unless otherwise ordered by the court. (1945, c. 383;
32 1947, c. 721; 1969, c. 44, s. 55; 1971, c. 703, s. 1.)
33

34 **§ 58-2-80. Court review of rates and classification.**

35 Any order or decision of the Commissioner that the premium rates charged or filed on all or
36 any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are
37 otherwise not in the public interest or that a classification or classification assignment is
38 unwarranted, unreasonable, improper, unfairly discriminatory or not in the public interest may
39 be appealed to the North Carolina Court of Appeals by any party aggrieved thereby. Any such
40 order shall be based on findings of fact, and if applicable, findings as to trends related to the
41 matter under investigation, and conclusions of law based thereon. Any order or decision of the
42 Commissioner, if supported by substantial evidence, shall be presumed to be correct and
43 proper. For the purposes of the appeal the Insurance Commissioner, who shall be represented
44 by his general counsel, shall be deemed an aggrieved party. (1971, c. 703, s. 2.)
45

46 **§ 58-2-85. Procedure on appeal under § 58-2-80.**

47 Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be subject to
48 the following provisions:

49 (1) No party to a proceeding before the Commissioner may appeal from any
50 final order or decision of the Commissioner unless within 30 days after the
51 entry of such final order or decision, or within such time thereafter as may

1 be fixed by the Commissioner, by order made within 30 days, the party
2 aggrieved by such decision or order shall file with the Commissioner notice
3 of appeal.

- 4 (2) Any party may appeal from all or any portion of any final order or decision
5 of the Commissioner in the manner herein provided. Copy of the notice of
6 appeal shall be mailed by the appealing party at the time of filing with the
7 Commissioner, to each party to the proceeding to the addresses as they
8 appear in the files of the Commissioner in the proceeding. The failure of any
9 party, other than the Commissioner, to be served with or to receive a copy of
10 the notice of appeal shall not affect the validity or regularity of the appeal.
- 11 (3) Repealed by Session Laws 2009-566, s. 26, effective October 1, 2009, and
12 applicable to appeals filed on or after that date.
- 13 (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The
14 procedure for the appeal shall be as provided by the rules of appellate
15 procedure.
- 16 (5), (6) Repealed by Session Laws 1975, c. 391, s. 11.
- 17 (7) The Court of Appeals shall hear and determine all matters arising on such
18 appeal, as in this Article provided, and may in the exercise of its discretion
19 assign the hearing of said appeal to any panel of the Court of Appeals.
- 20 (8) Unless otherwise provided by the rules of appellate procedure, the cause on
21 appeal from the Commissioner of Insurance shall be entitled "State of North
22 Carolina ex rel. Commissioner of Insurance (here add any additional parties
23 in support of the Commissioner's order and their capacity before the
24 Commissioner). Appellee(s) v. (here insert name of appellant and his
25 capacity before the Commissioner), Appellant." Appeals from the Insurance
26 Commissioner pending in the superior courts on January 1, 1972, shall
27 remain on the civil issue docket of such superior court and shall have
28 priority over other civil actions. Appeals to the Court of Appeals under G.S.
29 7A-29 shall be docketed in accordance with the rules of appellate procedure.
- 30 (9) In any appeal to the Court of Appeals, the complainant in the original
31 complaint before the Commissioner shall be a party to the record and each of
32 the parties to the proceeding before the Commissioner shall have a right to
33 appear and participate in said appeal.
- 34 (10) An appeal under this section shall operate as a stay of the Commissioner's
35 order or decision until said appeal has been dismissed or the questions raised
36 by the appeal determined according to law. (1971, c. 703, s. 3; 1975, c. 391,
37 s. 11; 2009-566, s. 26.)
38

39 **§ 58-2-90. Extent of review under § 58-2-80.**

40 (a) On appeal the court shall review the record in accordance with the rules of the Court
41 of Appeals, and any alleged irregularities in procedures before the Commissioner, not shown in
42 the record, shall be considered under the rules of the Court of Appeals.

43 (b) So far as necessary to the decision and where presented, the court shall decide all
44 relevant questions of law, interpret constitutional and statutory provisions, and determine the
45 meaning and applicability of the terms of any action of the Commissioner. The court may
46 affirm or reverse the decision of the Commissioner, declare the same null and void, or remand
47 the case for further proceedings; or it may reverse or modify the decision if the substantial
48 rights of the appellants have been prejudiced because the Commissioner's findings, inferences,
49 conclusions or decisions are:

- 50 (1) In violation of constitutional provisions, or
51 (2) In excess of statutory authority or jurisdiction of the Commissioner, or

- 1 (3) Made upon unlawful proceedings, or
- 2 (4) Affected by other errors of law, or
- 3 (5) Unsupported by material and substantial evidence in view of the entire
- 4 record as submitted, or
- 5 (6) Arbitrary or capricious.

6 (c) In making the foregoing determinations, the court shall review the whole record or
7 such portions thereof as may be cited by any party and due account shall be taken of the rule of
8 prejudicial error.

9 (d) The court shall also compel action of the Commissioner unlawfully withheld or
10 unlawfully or unreasonably delayed.

11 (e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or
12 order made by the Commissioner under the provisions of Articles 1 through 64 of this Chapter
13 shall be prima facie correct. (1971, c. 703, s. 4; 2009-566, s. 27.)

14
15 **§ 58-2-95. Commissioner to supervise local inspectors.**

16 The Commissioner shall exercise general supervision over local investigators of fires and
17 fire prevention inspectors. Whenever the Commissioner has reason to believe that the local
18 inspectors are not doing their duty, he or his deputy shall make special trips of inspection and
19 take proper steps to have all the provisions of the law relative to the investigation of fires and
20 the prevention of fire waste enforced. (1905, c. 506, s. 6; Rev., s. 4690; C.S., s. 6270; 1925, c.
21 89; 1969, c. 1063, s. 2.)

22
23 **§ 58-2-100. Office of Commissioner a public office; records, etc., subject to inspection.**

24 The office of the Commissioner shall be a public office and the records, reports, books and
25 papers thereof on file therein shall be accessible to the inspection of the public, except that the
26 records compiled as a part of an investigation for the crime of arson, that of unlawful burning,
27 or of fraud, shall not be considered as public records and may be made available to the public
28 only upon an order of court of competent jurisdiction. Provided that such records shall upon
29 request be made available to the district attorney of any district if the same concerns persons or
30 investigations in his district. (1899, c. 54, ss. 9, 77; Rev., s. 4683; 1907, c. 1000, s. 1; C.S., s.
31 6271; 1945, c. 383; 1951, c. 781, s. 11; 1955, c. 456; 1973, c. 47, s. 2.)

32
33 **§ 58-2-105. Confidentiality of medical and credentialing records.**

34 (a) All patient medical records in the possession of the Department are confidential and
35 are not public records pursuant to G.S. 58-2-100 or G.S. 132-1. As used in this section, "patient
36 medical records" includes personal information that relates to an individual's physical or mental
37 condition, medical history, or medical treatment, and that has been obtained from the individual
38 patient, a health care provider, or from the patient's spouse, parent, or legal guardian.

39 (b) Under Part 4 of Article 50 of this Chapter, the Department may disclose patient
40 medical records to an independent review organization, and the organization shall maintain the
41 confidentiality of those records as required by this section, except as allowed by G.S. 58-39-75
42 and G.S. 58-39-76.

43 (c) Under Part 4 of Article 50 of this Chapter, all information related to the
44 credentialing of medical professionals that is in the possession of the Commissioner is
45 confidential and is a public record neither under this section nor under Chapter 132 of the
46 General Statutes. (1989 (Reg. Sess., 1990), c. 1021, s. 4; 1993 (Reg. Sess., 1994), c. 678, s. 3;
47 2001-446, s. 5(a); 2002-187, s. 3.4.)

48
49 **§ 58-2-110. Original documents and certified copies as evidence.**

50 Every certificate, assignment, or conveyance executed by the Commissioner, in pursuance
51 of any authority conferred on him by law and sealed with his seal of office, may be used as

1 evidence and may be recorded in the proper recording offices, in the same manner and with like
2 effect as a deed regularly acknowledged or proved before an officer authorized by law to take
3 the probate of deeds; and all copies of papers in the office of the Commissioner, certified by
4 him and authenticated by his official seal, shall be evidence as the original. (1899, c. 54, s. 11;
5 Rev., s. 4684; C.S., s. 6272.)
6

7 **§ 58-2-115. Admissibility of certificate as evidence of agent's authority.**

8 In any case or controversy arising in any court of original jurisdiction within this State
9 wherein it is necessary to establish the question as to whether any insurance or other
10 corporation or agent thereof is or has been licensed by the Department to do business in this
11 State, the certificate of the Commissioner under the seal of his office shall be admissible in
12 evidence as proof of such corporation or agent's authority as conferred by the Department.
13 (1929, c. 289, s. 1; 1991, c. 720, ss. 4, 5.)
14

15 **§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.**

16 The Commissioner shall, from time to time, report to the Governor and the General
17 Assembly any change or changes that in the Commissioner's opinion should be made in the
18 laws relating to insurance and other subjects pertaining to the Department. (1899, c. 54, ss. 6, 7,
19 10; 1901, c. 391, s. 2; Rev., ss. 4687, 4688; 1911, c. 211, s. 2; C.S., s. 6273; 1927, c. 217, s. 5;
20 1945, c. 383; 1999-219, s. 8.)
21

22 **§ 58-2-125. Authority over all insurance companies; no exemptions from license.**

23 Every insurance company must be licensed and supervised by the Commissioner, and must
24 pay all licenses, taxes, and fees as prescribed in the insurance laws of the State for the class of
25 company, association, or order to which it belongs. No provision in any statute, public or
26 private, may relieve any company, association, or order from the supervision prescribed for the
27 class of companies, associations, or orders of like character, or release it from the payment of
28 the licenses, taxes, and fees prescribed for companies, associations, and orders of the same
29 class; and all such special provisions or exemptions are hereby repealed. It is unlawful for the
30 Commissioner to grant or issue a license to any company, association, or order, or agent for
31 them, claiming such exemption from supervision by his Department and release for the
32 payment of license, fees, and taxes. (1903, c. 594, ss. 1, 2, 3; Rev., s. 4691; C.S., s. 6274; 1945,
33 c. 383; 1991, c. 720, s. 4.)
34

35 **§ 58-2-128. Interagency consultation.**

36 (a) Purpose. – It is the stated intention of the Congress in P.L. 106-102, the
37 Gramm-Leach-Bliley Act, that the Board of Governors of the Federal Reserve System, as the
38 umbrella supervisor for financial holding companies, and the Commissioner, as the functional
39 regulator of persons engaged in insurance activities, coordinate efforts to supervise persons that
40 control both a depository institution and a person engaged in insurance activities regulated
41 under State law. In particular, Congress believes that the Board and the Commissioner should
42 share, on a confidential basis, information relevant to the supervision of persons that control
43 both a depository institution and a person engaged in insurance activities, including information
44 regarding the financial health of the consolidated organization and information regarding
45 transactions and relationships between persons engaged in insurance activities and affiliated
46 depository institutions. The purpose of this section is to encourage this coordination and
47 confidential sharing of information and to thereby improve both the efficiency and the quality
48 of the supervision of financial holding companies and their affiliated depository institutions and
49 persons engaged in insurance activities.

50 (b) Commissioner's Authority. – Upon the request of the Board or the appropriate
51 federal banking agency, the North Carolina Secretary of State, or the North Carolina

1 Commissioner of Banks, the Commissioner may provide any examination or other reports,
2 records, or other information to which the Commissioner has access with respect to a person
3 that:

- 4 (1) Is engaged in insurance activities and regulated by the Commissioner.
- 5 (2) Is an affiliate of a depository institution or financial holding company.

6 Upon the request of the Board or the appropriate federal banking agency, the North
7 Carolina Secretary of State, or the North Carolina Commissioner of Banks, the Commissioner
8 may provide any examination or other reports, records, or other information to which the
9 Commissioner has access with respect to any insurance producer.

10 (c) Privilege. – The provision of information or material under this section by the
11 Commissioner does not constitute a waiver of, or otherwise affect, any privilege to which the
12 information or material is otherwise subject.

13 (d) Definitions. – As used in this section, the terms:

- 14 (1) "Appropriate federal banking agency" and "depository institution" have the
15 same meanings as in section 3 of the Federal Deposit Insurance Act, 12
16 U.S.C. § 1813.
- 17 (2) "Board" and "financial holding company" have the same meanings as in
18 section 2 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1841, et
19 seq.
- 20 (3) "Insurance producer" or "producer" means a person required to be licensed
21 under this Article to sell, solicit, or negotiate insurance. "Insurance
22 producer" or "producer" includes an agent, a broker, and a limited
23 representative. (2001-215, s. 1.)

24
25 **§ 58-2-130: Repealed by Session Laws 1991, c. 681, s. 3.**

26
27 **§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct of**
28 **examinations.**

29 (a) This section and G.S. 58-2-132 through G.S. 58-2-134 shall be known and may be
30 cited as the Examination Law. The purpose of the Examination Law is to provide an effective
31 and efficient system for examining the activities, operations, financial condition, and affairs of
32 all persons transacting the business of insurance in this State and all persons otherwise subject
33 to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of
34 examinations that directs resources that are appropriate and necessary for the administration of
35 the insurance statutes and rules of this State.

36 (b) As used in this section and G.S. 58-2-132 through G.S. 58-2-134, unless the context
37 clearly indicates otherwise:

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

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

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

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

12 (f) Instead of examining any foreign or alien insurer licensed in this State, the
13 Commissioner may accept an examination report on that insurer prepared by the insurer's
14 domiciliary insurance regulator. In making a determination to accept the domiciliary insurance
15 regulator's report, the Commissioner may consider whether (i) the insurance regulator was at
16 the time of the examination accredited under NAIC Financial Regulation Standards and
17 Accreditation Program, or (ii) the examination is performed under the supervision of an
18 NAIC-accredited insurance regulator or with the participation of one or more examiners who
19 are employed by the regulator and who, after a review of the examination work papers and
20 report, state under oath that the examination was performed in a manner consistent with the
21 standards and procedures required by the regulator.

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

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

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

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

1 (k) When making an examination, the Commissioner may retain attorneys, appraisers,
2 independent actuaries, independent certified public accountants, or other professionals and
3 specialists as examiners. In the case of an examination of an insurer, the insurer shall bear the
4 cost of retaining those persons.

5 (l) Pending, during, and after the examination of any entity, the Commissioner shall not
6 make public the financial statement, findings, or examination report, or any report affecting the
7 status or standing of the entity examined, until the entity examined has either accepted and
8 approved the final examination report or has been given a reasonable opportunity to be heard
9 on the report and to answer or rebut any statements or findings in the report. The hearing, if
10 requested, shall be informal and private.

11 (m) Nothing in the Examination Law limits the Commissioner's authority to terminate or
12 suspend any examination in order to pursue other legal or regulatory action under the laws and
13 rules of this State and to use any final or preliminary examination report, any examiner or
14 insurer work papers or other documents, or any other information discovered or developed
15 during any examination in the furtherance of any legal or regulatory action that the
16 Commissioner may consider to be appropriate. Findings of fact and conclusions made pursuant
17 to any examination are prima facie evidence in any legal or regulator action. (1991, c. 681, s. 2;
18 1995, c. 360, s. 2(c); c. 517, s. 1; 1998-212, s. 26B(b), (c), (f); 2001-180, ss. 1, 2, 3; 2002-144,
19 s. 6; 2002-187, ss. 2.1, 2.2; 2003-284, s. 22.2; 2004-124, s. 21.1.)
20

21 **§ 58-2-132. Examination reports.**

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

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

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

- 39 (1) Adopting the examination report as filed or with modifications or
40 corrections. If the examination report reveals that the entity examined is
41 operating in violation of any law, rule, or prior order of the Commissioner,
42 the Commissioner may order the entity examined to take any action the
43 Commissioner considers necessary and appropriate to cure the violation; or
- 44 (2) Rejecting the examination report with directions to the examiners to reopen
45 the examination to obtain additional data, documentation of the information,
46 and refiling under subdivision (1) of this subsection; or
- 47 (3) Calling for an investigatory hearing with no less than 20 days' notice to the
48 insurer for purposes of obtaining additional documentation, data, and
49 testimony.

50 (d) All orders entered under subdivision (c)(1) of this section shall be accompanied by
51 findings and conclusions resulting from the Commissioner's consideration and review of the

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

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

39 (f) All working papers, information, documents, and copies thereof produced by,
40 obtained by, or disclosed to the Commissioner or any other person in connection with an
41 examination, market analysis, market conduct action, or financial analysis shall be given
42 confidential treatment, are not subject to subpoena, and shall not be made public by the
43 Commissioner or any other person. The Commissioner may use the documents, materials, or
44 other information in the furtherance of any regulatory or legal action brought as part of the
45 Commissioner's official duties.

46 (g) In order to assist in the performance of the Commissioner's duties, the
47 Commissioner may:

- 48 (1) Share documents, materials, or other information, including the confidential
49 and privileged documents, materials, or information subject to subsection (f)
50 of this section, with other state, federal, and international regulatory
51 agencies, with the NAIC, and with state, federal, and international law

1 enforcement authorities, provided that the recipient agrees to maintain the
2 confidentiality and privileged status of the document, material,
3 communication, or other information.

4 (2) Receive documents, materials, communications, or information, including
5 otherwise confidential and privileged documents, materials, or information,
6 from the NAIC, and from regulatory and law enforcement officials of other
7 foreign or domestic jurisdictions, and shall maintain as confidential or
8 privileged any document, material, or information received with notice or
9 the understanding that it is confidential or privileged under the laws of the
10 jurisdiction that is the source of the document, material, or information.

11 (3) Enter into agreements governing sharing and use of information consistent
12 with this section.

13 (h) No waiver of an existing privilege or claim of confidentiality in the documents,
14 materials, or information shall occur as a result of disclosure to the Commissioner under this
15 section or as a result of sharing as authorized in subsection (g) of this section.

16 (i) A privilege established under the law of any state or jurisdiction that is substantially
17 similar to the privilege established under this section shall be available and enforced in any
18 proceeding in, and in any court of, this State.

19 (j) In this section, "department," "insurance regulator," "law enforcement official or
20 authority," "NAIC," and "regulatory official or agency" include employees, agents, consultants,
21 and contractors of those entities. (1991, c. 681, s. 2; 2001-180, s. 4; 2005-206, s. 2.)
22

23 **§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.**

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

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

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

32 (3) An investment owner in shares of regulated diversified investment
33 companies; or

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

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

42 (c) The refusal of any insurer to submit to examination is grounds for the revocation,
43 suspension, or refusal of a license. The Commissioner may make public any such revocation,
44 suspension, or refusal of license and may give reasons for that action.

45 (d) The provisions of G.S. 58-2-160 apply to examinations conducted under the
46 Examination Law. (1991, c. 681, s. 2; 1995, c. 360, s. 2(d); 2002-144, s. 7; 2003-284, s. 22.2;
47 2004-124, s. 21.1.)
48

49 **§ 58-2-134. Cost of certain examinations.**

1 (a) An insurer shall reimburse the State Treasurer for the actual expenses incurred by
2 the Department in any examination of those records or assets conducted under G.S. 58-2-131,
3 58-2-132, or 58-2-133 under any of the following circumstances:

- 4 (1) The insurer maintains part of its records or assets outside this State under
5 G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets
6 outside this State.
7 (2) The insurer requests an examination of its records or assets.
8 (3) The Commissioner examines an insurer that is impaired or insolvent or is
9 unlikely to be able to meet obligations with respect to known or anticipated
10 claims or to pay other obligations in the normal course of business.
11 (4) The examination involves analysis of the company's investment portfolio, a
12 material portion of which comprises a sophisticated derivatives program,
13 material holdings of collateralized mortgage obligations with high flux
14 scores, unusual real estate or limited partnership holdings, high or unusual
15 portfolio turnover, material asset movement between related parties, or
16 unusual securities lending activities.

17 (b) The amount paid by an insurer for an examination of records or assets under this
18 section shall not exceed one hundred thousand dollars (\$100,000), unless the insurer and the
19 Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received
20 under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds
21 received under this section shall be used by the Department for offsetting the actual expenses
22 incurred by the Department for examinations under this section. (1998-212, s. 26B(d);
23 1999-435, s. 7; 2002-187, s. 2.3.)
24

25 **§ 58-2-135: Repealed by Session Laws 1991, c. 681, s. 3.**
26

27 **§ 58-2-136. Insurer records sent to Department for examination; expenses.**

28 (a) As used in this section, "records" means all data relating to the property, assets,
29 business, and affairs of the insurer being examined.

30 (b) In addition to the Commissioner's authority in G.S. 58-2-185 through G.S. 58-2-200
31 to compel the production of records, in lieu of sending examiners to the location of an insurer's
32 records to conduct an examination under the Examination Law, the Commissioner may require
33 the insurer to send copies of its records to the Department. The chief executive or financial
34 officer of the insurer shall certify under oath that the copies are true and accurate copies of the
35 insurer's records. The insurer being examined shall pay all expenses associated with the
36 examination. The insurer is not liable for the salaries and benefits of Department employees.
37 The refusal by an insurer to pay for expenses under this subsection is grounds for the
38 suspension, revocation, or refusal of a license.

39 (c) If the Commissioner sends examiners to the location of an insurer's records to
40 conduct an examination under the Examination Law, the insurer shall pay for the travel and
41 subsistence expenses and other administrative expenses associated with the examination. The
42 insurer is not liable for the salaries and benefits of Department employees. The refusal by an
43 insurer to pay for expenses under this subsection is grounds for the suspension, revocation, or
44 refusal of a license. (2002-144, s. 8; 2003-284, s. 22.2; 2004-124, s. 21.1.)
45

46 **§ 58-2-140: Repealed by Session Laws 1991, c. 681, s. 3.**
47

48 **§ 58-2-145: Repealed by Session Laws 1997-362, s. 7.**
49

50 **§ 58-2-150. Oath required for compliance with law.**

1 Before issuing a license to any insurance company to transact the business of insurance in
2 this State, the Commissioner shall require, in every case, in addition to the other requirements
3 provided for by law, that the company file with the Commissioner the affidavit of its president
4 or other chief officer that it accepts the terms and obligations of this Chapter as a part of the
5 consideration of the license. (1899, c. 54, s. 110; 1901, c. 391, s. 8; Rev., s. 4693; C.S., s. 6276;
6 1991, c. 720, s. 4; 2004-199, s. 20(a); 2005-215, s. 1; 2006-105, s. 1.1.)
7

8 **§ 58-2-155. Investigation of charges.**

9 Upon his own motion or upon complaint being filed by a citizen of this State that a
10 company authorized to do business in the State has violated any of the provisions of Articles 1
11 through 64 of this Chapter, the Commissioner shall investigate the matter, and, if necessary,
12 examine, under oath, by himself or his accredited representatives the president and such other
13 officer or agents of such companies as may be deemed proper; also all books, records, and
14 papers of the same. In case the Commissioner shall find upon substantial evidence that any
15 complaint against a company is justified, said company, in addition to such penalties as are
16 imposed for violation of any of the provisions of Articles 1 through 64 of this Chapter, shall be
17 liable for the expenses of the investigation, and the Commissioner shall promptly present said
18 company with a statement of such expenses. If the company refuses or neglects to pay, the
19 Commissioner is authorized to bring a civil action for the collection of these expenses. (1899, c.
20 54, s. 111; 1903, c. 438, s. 11; Rev., s. 4694; C.S., s. 6277; 1921, c. 136, s. 4; 1925, c. 275, s. 6;
21 1945, c. 383.)
22

23 **§ 58-2-160. Reporting and investigation of insurance and reinsurance fraud and the**
24 **financial condition of licensees; immunity from liability.**

25 (a) As used in this section, "Commissioner" includes an employee, agent, or designee of
26 the Commissioner. A person, or an employee or agent of that person, acting without actual
27 malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of
28 furnishing to the Commissioner under the requirements of law or at the direction of the
29 Commissioner reports or other information relating to (i) any known or suspected fraudulent
30 insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee.
31 In the absence of actual malice, members of the NAIC, their duly authorized committees,
32 subcommittees, task forces, delegates, and employees, and all other persons charged with the
33 responsibility of collecting, reviewing, analyzing, or disseminating the information developed
34 from filings of financial statements or examinations of licensees are not subject to civil liability
35 for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or
36 dissemination of the data and information collected from such filings or examinations.

37 (b) The Commissioner, acting without actual malice, is not subject to civil liability for
38 libel or slander by virtue of an investigation of (i) any known or suspected fraudulent insurance
39 or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee; or by
40 virtue of the publication or dissemination of any official report related to any such
41 investigation, which report is published or disseminated in the absence of fraud, bad faith, or
42 actual malice on the part of the Commissioner. The Commissioner is not subject to civil
43 liability in relation to the collecting, reviewing, analyzing, or dissemination of information that
44 is developed by the NAIC from the filing of financial statements with the NAIC or from the
45 examination of insurers by the NAIC and that is communicated to the Commissioner, including
46 any investigation or publication or dissemination of any report or other information in relation
47 thereto, which report is published or disseminated in the absence of fraud, bad faith,
48 negligence, or actual malice on the part of the Commissioner.

49 (c) During the course of an investigation of (i) a known or suspected fraudulent
50 insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee,
51 the Commissioner may request any person to furnish copies of any information relative to the

1 (i) known or suspected claim, transaction, or act or (ii) financial condition of the licensee. The
2 person shall release the information requested and cooperate with the Commissioner pursuant
3 to this section. (1985 (Reg. Sess., 1986), c. 1013, s. 3; 1987, c. 864, s. 43; 1987 (Reg. Sess.,
4 1988), c. 975, s. 3; 1989 (Reg. Sess., 1990), c. 1054, s. 1.)
5

6 **§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.**

7 (a) For the purposes of this section:

8 (1) "Insurer" has the same meaning as in G.S. 58-1-5(3) and also includes:

- 9 a. Any hull insurance and protection and indemnity club operating
10 under Article 20 of this Chapter.
- 11 b. Any surplus lines insurer operating under Article 21 of this Chapter.
- 12 c. Any risk retention group or purchasing group operating under Article
13 22 of this Chapter.
- 14 d. Any local government risk pool operating under Article 23 of this
15 Chapter.
- 16 e. Any risk-sharing plan operating under Article 42 of this Chapter.
- 17 f. The North Carolina Insurance Underwriting Association operating
18 under Article 45 of this Chapter.
- 19 g. The North Carolina Joint Insurance Underwriting Association
20 operating under Article 46 of this Chapter.
- 21 h. The North Carolina Insurance Guaranty Association operating under
22 Article 48 of this Chapter.
- 23 i. Any multiple employer welfare arrangement operating under Article
24 49 of this Chapter.
- 25 j. The North Carolina Life and Health Insurance Guaranty Association
26 operating under Article 62 of this Chapter.
- 27 k. Any service corporation operating under Article 65 of this Chapter.
- 28 l. Any health maintenance organization operating under Article 67 of
29 this Chapter.
- 30 m. The State Health Plan for Teachers and State Employees and any
31 optional plans or programs operating under Part 2 of Article 3 of
32 Chapter 135 of the General Statutes.
- 33 n. A group of employers self-insuring their workers' compensation
34 liabilities under Article 47 of this Chapter.
- 35 o. An employer self-insuring its workers' compensation liabilities under
36 Article 5 of Chapter 97 of the General Statutes.
- 37 p. The North Carolina Self-Insurance Security Association under
38 Article 4 of Chapter 97 of the General Statutes.
- 39 q. Any reinsurer licensed or accredited under this Chapter.

40 (2) "Statement" includes any application, notice, statement, proof of loss, bill of
41 lading, receipt for payment, invoice, account, estimate of property damages,
42 bill for services, diagnosis, prescription, hospital or doctor records, X rays,
43 test result, or other evidence of loss, injury, or expense.

44 (b) Any person who, with the intent to injure, defraud, or deceive an insurer or
45 insurance claimant:

- 46 (1) Presents or causes to be presented a written or oral statement, including
47 computer-generated documents as part of, in support of, or in opposition to,
48 a claim for payment or other benefit pursuant to an insurance policy,
49 knowing that the statement contains false or misleading information
50 concerning any fact or matter material to the claim, or

1 (2) Assists, abets, solicits, or conspires with another person to prepare or make
2 any written or oral statement that is intended to be presented to an insurer or
3 insurance claimant in connection with, in support of, or in opposition to, a
4 claim for payment or other benefit pursuant to an insurance policy, knowing
5 that the statement contains false or misleading information concerning a fact
6 or matter material to the claim is guilty of a Class H felony. Each claim shall
7 be considered a separate count. Upon conviction, if the court imposes
8 probation, the court may order the defendant to pay restitution as a condition
9 of probation. In determination of the amount of restitution pursuant to G.S.
10 15A-1343(d), the reasonable costs and attorneys' fees incurred by the victim
11 in the investigation of, and efforts to recover damages arising from, the
12 claim, may be considered part of the damage caused by the defendant arising
13 out of the offense.

14 In a civil cause of action for recovery based upon a claim for which a defendant has been
15 convicted under this section, the conviction may be entered into evidence against the defendant.
16 The court may award the prevailing party compensatory damages, attorneys' fees, costs, and
17 reasonable investigative costs. If the prevailing party can demonstrate that the defendant has
18 engaged in a pattern of violations of this section, the court may award treble damages. (1899, c.
19 54, s. 60; Rev., s. 3487; 1913, c. 89, s. 28; C.S., s. 4369; 1937, c. 248; 1967, c. 1088, s. 1; 1979,
20 c. 760, s. 5; 1989 (Reg. Sess., 1990), c. 1054, s. 2; 1995, c. 43, s. 1; 1999-294, s. 3; 2005-400, s.
21 17; 2007-298, s. 8.1; 2007-323, s. 28.22A(o); 2007-345, s. 12.)

22
23 **§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.**

24 If any insurance agent, broker, or administrator embezzles or fraudulently converts to his
25 own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or
26 fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money,
27 negotiable instrument, or other consideration received by him in his performance as an agent,
28 broker, or administrator, he shall be guilty of a felony. If the value of the money, negotiable
29 instrument, or other consideration is one hundred thousand dollars (\$100,000) or more,
30 violation of this section is a Class C felony. If the value of the money, negotiable instrument, or
31 other consideration is less than one hundred thousand dollars (\$100,000), violation of this
32 section is a Class H felony. (1889, c. 54, s. 103; Rev., s. 3489; 1911, c. 196, s. 8; C.S., s. 4274;
33 1989 (Reg. Sess., 1990), c. 1054, s. 2; 1997-443, s. 19.25(n).)

34
35 **§ 58-2-163. Report to Commissioner.**

36 Whenever any insurance company, or employee or representative of such company, or any
37 other person licensed or registered under Articles 1 through 67 of this Chapter knows or has
38 reasonable cause to believe that any other person has violated G.S. 58-2-161, 58-2-162,
39 58-2-164, 58-2-180, 58-8-1, 58-24-180(e), or whenever any insurance company, or employee
40 or representative of such company, or any other person licensed or registered under Articles 1
41 through 67 of this Chapter knows or has reasonable cause to believe that any entity licensed by
42 the Commissioner is financially impaired, it is the duty of such person, upon acquiring such
43 knowledge, to notify the Commissioner and provide the Commissioner with a complete
44 statement of all of the relevant facts and circumstances. Such report is a privileged
45 communication, and when made without actual malice does not subject the person making the
46 same to any liability whatsoever. The Commissioner may suspend, revoke, or refuse to renew
47 the license of any licensee who willfully fails to comply with this section. (1945, c. 382; 1987,
48 c. 752, s. 2; 1989 (Reg. Sess., 1990), c. 1054, s. 2; 2007-443, s. 4.)

49
50 **§ 58-2-164. Rate evasion fraud; prevention programs.**

51 (a) The following definitions apply in this section:

- 1 (1) "Applicant" means one or more persons applying for the issuance or renewal
2 of an auto insurance policy.
- 3 (2) "Auto insurance" means nonfleet private passenger motor vehicle insurance.
- 4 (3) "Eligible applicant" means a person who is an eligible risk under G.S.
5 58-37-1(4a).
- 6 (4) "Insurer" means a member of the North Carolina Rate Bureau that is
7 licensed to write and is writing auto insurance in this State.
- 8 (5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).
- 9 (6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S.
10 58-40-10(1).

11 (b) It shall be a Class 3 misdemeanor for any person who, with the intent to deceive an
12 insurer, does any of the following:

- 13 (1) Present or cause to be presented a written or oral statement in support of an
14 application for auto insurance or for vehicle registration pursuant to G.S.
15 20-52(a)(4) and (a)(5), knowing that the application contains false or
16 misleading information that states the applicant is an eligible risk when the
17 applicant is not an eligible risk.
- 18 (2) Assist, abet, solicit, or conspire with another person to prepare or make any
19 written or oral statement that is intended to be presented to an insurer in
20 connection with or in support of an application for auto insurance or for
21 vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), if the person
22 knows that the statement contains false or misleading information that states
23 the applicant is an eligible risk when the applicant is not an eligible risk.

24 In addition to any other penalties authorized by law, a violation of this subsection may be
25 punishable by a fine of not more than one thousand dollars (\$1,000) for each violation.

26 (c) The insurer and its agent shall also take reasonable steps to verify that the
27 information provided by an applicant regarding the applicant's address and the place the motor
28 vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency
29 or eligible risk status or may rely upon the agent verification of residency or eligible risk status
30 to meet the insurer's verification obligations under this section. The agent shall retain copies of
31 any items obtained under this section as required under the record retention rules adopted by
32 the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the
33 requirements of this section by obtaining reliable proof of North Carolina residency from the
34 applicant or the applicant's status as an eligible risk. Reliable proof of residency or eligible risk
35 includes but is not limited to:

- 36 (1) A pay stub with the payee's address.
- 37 (2) A utility bill showing the address of the applicant-payor.
- 38 (3) A lease for an apartment, house, modular unit, or manufactured home with a
39 North Carolina address signed by the applicant.
- 40 (4) A receipt for personal property taxes paid.
- 41 (5) A receipt for real property taxes paid to a North Carolina locality.
- 42 (6) A monthly or quarterly financial statement from a North Carolina regulated
43 financial institution.
- 44 (7) A valid unexpired North Carolina driver's license.
- 45 (8) A matricula consular or substantially similar document issued by the
46 Mexican Consulate for North Carolina.
- 47 (9) A document similar to that described in subdivision (8) of this section,
48 issued by the consulate or embassy of another country that would be
49 accepted by the North Carolina Division of Motor Vehicles as set forth in
50 G.S. 20-7(b4)(9).
- 51 (10) A valid North Carolina vehicle registration.

1 (11) A valid military ID.

2 (12) A valid student ID for a North Carolina school or university.

3 (d) In the absence of actual malice, neither an insurer, the authorized representative of
4 the insurer, a producer, the Commissioner, an organization of which the Commissioner is a
5 member, the North Carolina Reinsurance Facility, nor the respective employees and agents of
6 such persons acting on behalf of such persons shall be subject to civil liability as a result of any
7 statement or information provided or action taken pursuant to this section.

8 (e) In any action brought against a person that may have immunity under subsection (d)
9 of this section for making any statement required by this section or for providing any
10 information relating to any statement that may be requested by the Commissioner, the party
11 bringing the action shall plead specifically in any allegation that subsection (d) of this section
12 does not apply because the person making the statement or providing the information did so
13 with actual malice. Subsections (d) and (e) of this section do not abrogate or modify any
14 existing statutory or common law privileges or immunities.

15 (f) Every insurer shall maintain safeguards within its auto insurance business at the
16 point of sale, renewal, and claim to identify misrepresentations by applicants regarding their
17 addresses and the places their motor vehicles are garaged. Identified misrepresentations are
18 subject to the requirements of Article 2 of this Chapter.

19 (g) If an applicant provides false and misleading information as to the applicant's or any
20 named insured's status as an eligible applicant and that fraudulent information makes the
21 applicant or any named insured appear to be an eligible applicant when that person is in fact not
22 an eligible applicant, the insurer may do any or all of the following:

23 (1) Refuse to issue a policy.

24 (2) Cancel or refuse to renew a policy that has been issued.

25 (3) Deny coverage for any claim arising out of bodily injury or property damage
26 suffered by the applicant. This subdivision does not apply to innocent third
27 parties.

28 (h) In a civil cause of action for recovery based upon a claim for which a defendant has
29 been convicted under this section, the conviction may be entered into evidence against the
30 defendant and shall establish the liability of the defendant as a matter of law for such damages,
31 fees, or costs as may be proven. The court may award the prevailing party compensatory
32 damages including but not limited to any costs, losses, expenses, and attorneys' fees incurred in
33 connection with any false statement of eligible risk status made in an application for insurance
34 or incurred in connection with any claim submitted under a policy obtained as a result of a false
35 statement of status as an eligible risk, attorneys' fees, costs, and reasonable investigative costs.
36 If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations
37 of this section, the court may award treble damages. (2007-443, s. 3.)

38
39 **§ 58-2-165. Annual, semiannual, monthly, or quarterly statements to be filed with**
40 **Commissioner.**

41 (a) Except as provided in subsection (a1) of this section, every insurance company shall
42 file in the Commissioner's office, on or before March 1 of each year, a statement showing the
43 business standing and financial condition of the company, association, or order on the
44 preceding December 31, signed and sworn to by the chief managing agent or officer thereof,
45 before the Commissioner or some officer authorized by law to administer oaths. Provided, the
46 Commissioner may, for good and sufficient cause shown by an applicant company, extend the
47 filing date of the company's annual statement, for a reasonable period of time, not to exceed 30
48 days. In addition, except as provided in subsection (a1) of this section, the Commissioner may
49 require any insurance company, association, or order to file its statement semiannually,
50 quarterly, or monthly.

1 (a1) A town or county mutual, organized under G.S. 58-7-75(5)d., is required to file only
2 an annual statement or an audited financial statement that was prepared by a certified public
3 accountant if for the preceding year it had a direct written premium of less than one hundred
4 fifty thousand dollars (\$150,000) and fewer than 400 policyholders. The Commissioner shall
5 not require those mutuals to file statements semiannually, quarterly, or monthly.

6 (b) The Commissioner may require statements under this section, G.S. 58-2-170, and
7 G.S. 58-2-190 to be filed in a format that can be read by electronic data processing equipment,
8 provided that this subsection does not apply to an audited financial statement prepared by a
9 certified public accountant that is submitted by a town or county mutual pursuant to subsection
10 (a1) of this section.

11 (c) Except as provided herein, all statements filed under this section must be prepared
12 in accordance with the appropriate NAIC Annual Statement Instructions Handbook and
13 pursuant to the NAIC Accounting Practices and Procedures Manual and on the NAIC Model
14 Financial Statement Blank, unless further modified by the Commissioner as the Commissioner
15 considers to be appropriate. This subsection does not apply to statements filed by a town or
16 county mutual organized under G.S. 58-7-75(5)d. if for the preceding year it had a direct
17 written premium of less than one hundred fifty thousand dollars (\$150,000) and fewer than 400
18 policyholders. (1899, c. 54, ss. 72, 73, 83, 90, 97; 1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s.
19 4698; C.S., s. 6280; 1945, c. 383; 1957, c. 407; 1985, c. 666, ss. 50, 51; 1985 (Reg. Sess.,
20 1986), c. 1013, s. 11; 1991, c. 681, s. 7; 1993, c. 504, s. 1; 1998-211, s. 22; 1999-192, s. 1.)
21

22 **§ 58-2-170. Annual statements by professional liability insurers; medical malpractice**
23 **claim reports.**

24 (a) In addition to the financial statements required by G.S. 58-2-165, every insurer,
25 self-insurer, and risk retention group that provides professional liability insurance in the State
26 shall file with the Commissioner, on or before the first day of February in each year, in form
27 and detail as the Commissioner prescribes, a statement showing the items set forth in
28 subsection (b) of this section, as of the preceding 31st day of December. The annual statement
29 shall not be reported or disclosed to the public in a manner or format which identifies or could
30 reasonably be used to identify any individual health care provider or medical center. The
31 statement shall be signed and sworn to by the chief managing agent or officer of the insurer,
32 self-insurer, or risk retention group, before the Commissioner or some officer authorized by
33 law to administer oaths. The Commissioner shall, in December of each year, furnish to each
34 such person that provides professional liability insurance in the State forms for the annual
35 statements. The Commissioner may, for good cause, authorize an extension of the report due
36 date upon written application of any person required to file. An extension is not valid unless
37 the Commissioner's authorization is in writing and signed by the Commissioner or one of his
38 deputies.

39 (b) The statement required by subsection (a) of this section shall contain:

- 40 (1) Number of claims pending at beginning of year;
- 41 (2) Number of claims pending at end of year;
- 42 (3) Number of claims paid;
- 43 (4) Number of claims closed no payment;
- 44 (5) Number and amounts of claims in court in which judgment paid:
 - 45 a. Highest amount
 - 46 b. Lowest amount
 - 47 c. Average amount
 - 48 d. Median amount;
- 49 (6) Number and amounts of claims out of court in which settlement paid:
 - 50 a. Highest amount
 - 51 b. Lowest amount

- c. Average amount
- d. Median amount;
- (7) Average amount per claim set up in reserve;
- (8) Total premium collection;
- (9) Total expenses less reserve expenses; and
- (10) Total reserve expenses.

(c) Every insurer, self-insurer, and risk retention group that provides professional liability insurance to health care providers in this State shall file, within 90 days following the request of the Commissioner, a report containing information for the purpose of allowing the Commissioner to analyze claims. The report shall be in the form prescribed by the Commissioner. The form prescribed by the Commissioner shall be a form that permits the public inspection, examination, or copying of any information contained in the report: Provided, however, that any data or other characteristics that identify or could be used to identify the names or addresses of the claimants or the names or addresses of the individual health care provider or medical center against whom the claims are or have been asserted or any data that could be used to identify the dollar amounts involved in such claims shall be treated as privileged information and shall not be made available to the public. The Commissioner shall analyze these reports and shall file statistical and other summaries based on these reports with the General Assembly as soon as practicable after receipt of the reports. The Commissioner shall assess a penalty against any person that willfully fails to file a report required by this subsection. Such penalty shall be one thousand dollars (\$1,000) for each day after the due date of the report that the person willfully fails to file: Provided, however, the penalty for an individual who self insures shall be two hundred dollars (\$200.00) for each day after the due date of the report that the person willfully fails to file: Provided, however, that upon the failure of a person to file the report as required by this subsection, the Commissioner shall send by certified mail, return receipt requested, a notice to that person informing him that he has 10 business days after receipt of the notice to either request an extension of time or file the report. The Commissioner may, for good cause, authorize an extension of the report due date upon written application of any person required to file. An extension is not valid unless the Commissioner's authorization is in writing and signed by the Commissioner or one of his deputies.

(d) Every person that self-insures against professional liability in this State shall provide the Commissioner with written notice of such self-insurance, which notice shall include the name and address of the person self-insuring. This notice shall be filed with the Commissioner each year for the purpose of apprising the Commissioner of the number and locations of persons that self-insure against professional liability. (1975, 2nd Sess., c. 977, s. 6; 1985, c. 666, s. 53; 1987, c. 343.)

§ 58-2-171. Qualifications of actuaries.

The Commissioner may adopt rules setting forth requisite qualifications of consulting actuaries for the sole purpose of qualifying them to certify financial statements filed and rate filings made by entities under this Chapter as to the actuarial validity of those filings. The qualifications shall be commensurate with the degree of complexity of the actuarial principles applicable to the various statements filed or rate filings made. Nothing in this section affects the scope of practice or the professional qualifications of actuaries. (1995, c. 517, s. 2.)

§ 58-2-175: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-2-180. Punishment for making false statement.

If any person in any financial or other statement required by this Chapter willfully misstates information, that person making oath to or subscribing the statement is guilty of a Class I

1 felony; and the entity on whose behalf the person made the oath or subscribed the statement is
2 subject to a fine imposed by the court of not less than two thousand dollars (\$2,000) nor more
3 than ten thousand dollars (\$10,000). (1899, c. 54, s. 97; Rev., s. 3493; C.S., s. 6281; 1985, c.
4 666, s. 13; 1989 (Reg. Sess., 1990), c. 1054, s. 5; 1993 (Reg. Sess., 1994), c. 767, s. 23.)

5
6 **§ 58-2-185. Record of business kept by companies and agents; Commissioner may**
7 **inspect.**

8 All companies, agents, or brokers doing any kind of insurance business in this State must
9 make and keep a full and correct record of the business done by them, showing the number,
10 date, term, amount insured, premiums, and the persons to whom issued, of every policy or
11 certificate or renewal. Information from these records must be furnished to the Commissioner
12 on demand, and the original books of records shall be open to the inspection of the
13 Commissioner when demanded. (1899, c. 54, s. 108; 1903, c. 438, s. 11; Rev., s. 4696; C.S., s.
14 6284; 1945, c. 383; 1991, c. 720, s. 4.)

15
16 **§ 58-2-190. Commissioner may require special reports.**

17 The Commissioner may also address to any authorized insurer, statistical organization, joint
18 underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor
19 Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or
20 condition or any matter connected therewith. Every corporation or person so addressed shall
21 reply in writing to the inquiry promptly and truthfully, and the reply shall be verified, if
22 required by the Commissioner, by such individual, or by such officer or officers of a
23 corporation, as he shall designate. (1945, c. 383; 1985 (Reg. Sess., 1986), c. 1027, s. 8;
24 2005-210, s. 1.)

25
26 **§ 58-2-195. Commissioner may require records, reports, etc., for agencies, agents and**
27 **others.**

28 (a) The Commissioner is empowered to make and promulgate reasonable rules and
29 regulations governing the recording and reporting of insurance business transactions by
30 insurance agencies, agents, brokers and producers of record, any of which agencies, agents,
31 brokers or producers of record are licensed in this State or are transacting insurance business in
32 this State to the end that such records and reports will accurately and separately reflect the
33 insurance business transactions of such agency, agent, broker or producer of record in this
34 State. Information from records required to be kept pursuant to the provisions of this section
35 must be furnished the Commissioner on demand and the original records required to be kept
36 pursuant to the provisions of this section shall be open to the inspection for the Commissioner
37 or any other authorized employee described in G.S. 58-2-25 when demanded.

38 (b) Every insurance agency transacting insurance business in this State shall at all times
39 have appointed some person employed or associated with such agency who shall have the
40 responsibility of seeing that such records and reports as are required pursuant to the provisions
41 of this section are kept and maintained.

42 (c) Any person subject to the provisions of subsection (a) of this section who violates
43 the provisions of this section or the rules and regulations prescribed by the Commissioner
44 pursuant to the provisions of this section may after notice and hearing: for the first offense have
45 his license or licenses (in case license be issued for more than one company in such person's
46 case) suspended or revoked for not less than one month nor more than six months and for the
47 second offense shall have his license or licenses (in case license be issued from more than one
48 company in his case) suspended or revoked for the period of one year and such person shall not
49 thereafter be licensed for one year from the date said revocation or suspension first became
50 effective.

1 (d) For the purpose of enforcing the provisions of this section the Commissioner or any
2 other authorized employee described in G.S. 58-2-25 is authorized and empowered to examine
3 persons, administer oaths and require production of papers and records relative to this section.

4 (e) Whenever the Commissioner deems it to be prudent for the protection of
5 policyholders in this State, he or any other authorized employee described in G.S. 58-2-25 shall
6 visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage
7 appraiser, or producer of record. The refusal of any agency, agent, broker, adjuster, motor
8 vehicle damage appraiser, or producer of record to submit to examination is grounds for the
9 revocation or refusal of a license. (1971, c. 948, s. 1; 1987, c. 629, ss. 14, 15; c. 752, s. 1; 1995,
10 c. 360, s. 2(e).)

11
12 **§ 58-2-200. Books and papers required to be exhibited.**

13 It is the duty of any person having in his possession or control any books, accounts, or
14 papers of any company licensed under Articles 1 through 64 of this Chapter, to exhibit the
15 same to the Commissioner or to any deputy, actuary, accountant, or persons acting with or for
16 the Commissioner. Any person who shall refuse, on demand, to exhibit the books, accounts, or
17 papers, as above provided, or who shall knowingly or willfully make any false statement in
18 regard to the same, shall be subject to suspension or revocation of his license under Articles 1
19 through 64 of this Chapter; and shall be deemed guilty of a Class 1 misdemeanor. (1899, c. 54,
20 s. 76; Rev., ss. 3494, 4697; 1907, c. 1000, s. 3; C.S., s. 6286; 1945, c. 383; 1985 (Reg. Sess.,
21 1986), c. 1013, s. 6; 1991, c. 720, s. 4; 1993, c. 539, s. 445; 1994, Ex. Sess., c. 24, s. 14(c).)

22
23 **§ 58-2-205. CPA audits of financial statements.**

24 The Commissioner may adopt rules to provide for audits and opinions of insurers' financial
25 statements by certified public accountants. These rules shall be substantially similar to the
26 NAIC model rule that requires audited financial reports, as amended. The Commissioner may
27 adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these
28 rules current with the NAIC model rule. (1989, c. 485, s. 38; 1998-212, s. 26B(g).)

29
30 **§ 58-2-210. Rules for mortgage insurance consolidations.**

31 The Commissioner is authorized to adopt rules governing mortgage insurance
32 consolidations and related rules concerning unfair rate discrimination. In the event the
33 Commissioner adopts such rules, while such rules are in effect the unfair rate discrimination
34 provisions of G.S. 58-58-35 and G.S. 58-63-15(7) will not apply to mortgage insurance
35 consolidations to the extent those provisions are inconsistent with such rules. For purposes of
36 this section, "mortgage insurance consolidation" means any transaction in which a mortgage
37 loan servicer makes its premium collection services available to mortgage debtors in
38 connection with an insurer's offer of mortgage insurance, which offer is made to debtors who,
39 immediately prior to the offer, had mortgage insurance with another insurer and were paying
40 premiums for that insurance with their monthly mortgage payments. (1989, c. 341, s. 1.)

41
42 **§ 58-2-215. Consumer Protection Fund.**

43 (a) A special fund is created in the Office of the State Treasurer, to be known as the
44 Department of Insurance Consumer Protection Fund. The Fund shall be placed in an interest
45 bearing account and any interest or other income derived from the Fund shall be credited to the
46 Fund. Moneys in the Fund shall only be spent pursuant to warrants drawn by the Commissioner
47 on the Fund through the State Treasurer. The Fund shall be subject to the provisions of the
48 Executive Budget Act; except that the provisions of Article 3C of Chapter 143 of the General
49 Statutes do not apply to subdivision (b)(1) of this section.

50 (b) All moneys credited to the Fund shall be used only to pay the following expenses
51 incurred by the Department:

- 1 (1) For the purpose of retaining outside actuarial and economic consultants,
2 legal counsel, and court reporting services in the review and analysis of rate
3 filings and any other insurance regulatory matters, in conducting all
4 hearings, and through any final adjudication.
- 5 (2) In connection with any delinquency proceeding under Article 30 of this
6 Chapter, for the purpose of locating and recovering the assets of or any other
7 obligations or liabilities owed to or due an insurer that has been placed under
8 such proceeding.
- 9 (3) In connection with any civil litigation, other than under Chapter 150B of the
10 General Statutes or any appeal from an order of the Commissioner or his
11 deputies, that is commenced against the Commissioner or his deputies and
12 that arises out of the performance of their official duties, for the purpose of
13 retaining outside consultants, legal counsel, and court reporting services to
14 defend such litigation.

15 (c) Moneys appropriated by the General Assembly shall be deposited in the Fund and
16 shall become a part of the continuation budget of the Department of Insurance. Such
17 continuation budget amount shall equal the actual expenditures drawn from the Fund during the
18 prior fiscal year plus the official inflation rate designated by the Director of the Budget in the
19 preparation of the State Budget for each ensuing fiscal year; provided that if interest income on
20 the Fund exceeds the amount yielded by the application of the official inflation rate, such
21 continuation budget amount shall be the actual expenditures drawn from the Fund, except that
22 the appropriation for the 1995-96 fiscal year shall not exceed the sum of seven hundred fifty
23 thousand dollars (\$750,000) and for the 1996-97 fiscal year shall not exceed the sum of two
24 hundred fifty thousand dollars (\$250,000). In the event the amount in the Fund exceeds two
25 hundred fifty thousand dollars (\$250,000) at the end of any fiscal year, beginning with the
26 1995-96 fiscal year, such excess shall revert to the General Fund.

27 (d) Repealed by Session Laws 1996, c. 507, s. 11A(a), (b). (1989 (Reg. Sess., 1990), c.
28 1069, s. 22; 1993 (Reg. Sess., 1994), c. 769, s. 14.1; 1995, c. 507, s. 11A(a), (b), (c); 2005-215,
29 s. 21.)
30

31 **§ 58-2-220. Insurance Regulatory Information System and similar program test data not**
32 **public records.**

33 Except as provided in G.S. 58-4-25, financial test ratios, data, or information generated by
34 the Commissioner pursuant to the NAIC Insurance Regulatory Information System, any
35 successor program, or any similar program developed by the Commissioner, are not public
36 records and are not subject to Chapter 132 of the General Statutes or G.S. 58-2-100. (1985
37 (Reg. Sess., 1986), c. 1013, s. 9; 1989 (Reg. Sess., 1990), c. 1021, s. 7; 1991, c. 681, s. 14.)
38

39 **§ 58-2-225: Repealed by Session Laws 1995, c. 193, s. 8.**
40

41 **§ 58-2-230. Commissioner to share information with Department of Labor.**

42 The Commissioner shall provide or cause to be provided to the Department of Labor, on an
43 annual basis, the name and business address of every employer that is self-insured for workers'
44 compensation. Information provided or caused to be provided by the Commissioner to the
45 Department of Labor under this section is confidential and not open for public inspection under
46 G.S. 132-6. (1991 (Reg. Sess., 1992), c. 894, s. 5.)
47

48 **§ 58-2-235: Expired.**
49

50 **§ 58-2-240. Market conduct analysis, financial analysis, and related information not**
51 **public record.**

1 (a) Notwithstanding Chapter 132 of the General Statutes, all market analysis,
2 documents arising from market conduct action, and financial statement analysis work papers
3 are confidential, are not open for public inspection, and are not discoverable or admissible in
4 evidence in a civil action brought by a party other than the Department against a person
5 regulated by the Department, its directors, officers, or employees, unless the court finds that the
6 interests of justice require that the documents be discoverable or admissible in evidence or
7 except as provided in G.S. 58-2-128 and G.S. 58-2-132(g) through (j). The Commissioner,
8 however, may use market analysis, documents arising from market conduct action, and
9 financial statement analysis work papers in the furtherance of any regulatory or legal action
10 brought as part of the Commissioner's official duties.

11 (b) As used in this Article:

12 (1) "Financial statement analysis" means a set of systems and procedures
13 designed to provide relevant information derived from basic sources of data
14 for the purpose of evaluating the risk of an insurer's insolvency.

15 (1a) "Financial statement analysis work papers" means:

- 16 a. Documents, programs, findings, and other information produced by
17 persons employed or contracted by the Commissioner during and as
18 part of the financial statement analysis of an insurer.
19 b. Documents, programs, findings, and other information disclosed by
20 an entity to persons employed or contracted by the Commissioner in
21 response to an inquiry from the Commissioner during and as part of
22 the financial statement analysis of the insurer.
23 c. Documents, programs, findings, and other information obtained,
24 during and as part of the financial statement analysis of an insurer, by
25 persons employed or contracted by the Commissioner from or
26 through any regulatory or law enforcement agency or the NAIC
27 when the receipt of that information is conditioned upon the
28 Commissioner maintaining the confidentiality of the information
29 shared with the Commissioner.

30 "Financial statement analysis work papers" includes financial analysis
31 programs and procedures; correspondence between persons employed or
32 contracted by the Commissioner and the insurer during and as part of the
33 financial statement analysis; memos, e-mails, and other correspondence, in
34 any form, produced by persons employed or contracted by the
35 Commissioner detailing findings or recommendations of the financial
36 statement analysis; and the Actuarial Opinion Summary filed by an insurer
37 as required by and in accordance with NAIC Annual Statement Instructions.
38 "Financial statement analysis work papers" does not mean statements filed
39 with the Commissioner under G.S. 58-2-165, CPA audit reports filed with
40 the Commissioner under G.S. 58-2-205, or documents that constitute an
41 initial filing and any supplemental filing necessary to complete a filing made
42 by an insurer, independent of financial statement analysis.

43 (1b) "Market analysis" means work product arising from a process whereby
44 persons employed or contracted by the Commissioner collect and analyze
45 information from filed schedules, surveys, required reports other than
46 periodic reports specifically required by statute, and other sources in order to
47 develop a baseline understanding of the marketplace and to identify patterns
48 or practices of insurers that deviate significantly from the norm or that may
49 pose a potential risk to the insurance consumer.

50 (2) "Market conduct action" means any of the full range of activities, other than
51 an examination that the Commissioner may initiate to assess and address the

1 market practices of insurers, beginning with market analysis. Additional
2 market conduct actions, including those taken subsequent to market analysis
3 as a result of the findings of or indications from market analysis include:
4 correspondence with an insurer; insurer interviews; information gathering;
5 policy and procedure reviews; interrogatories; and review of insurer
6 self-evaluation and compliance programs, including membership in a
7 best-practice organization. The Commissioner's activities to resolve an
8 individual consumer complaint or other report of a specific instance of
9 misconduct are not market conduct actions for purposes of this section.

10 (c) For purposes of subdivisions (b)(1) and (b)(1a) of this section only, the term
11 "insurer" has the same meaning as in G.S. 58-30-10(14) and includes a:

- 12 (1) Reciprocal that is or should be licensed under Article 15 of this Chapter.
- 13 (2) Local government risk pool that chooses to operate under Article 23 of this
14 Chapter.
- 15 (3) Fraternal benefit society that is or should be licensed under Article 24 of this
16 Chapter.
- 17 (4) Self-insurer that is or should be licensed under Article 5 of Chapter 97 of the
18 General Statutes.

19 (d) Nothing in this section limits public access to financial or actuarial information or
20 calculations filed by an insurer or other entity for rating purposes, including rate filings,
21 deviation filings, and loss cost filings. (2005-206, s. 1; 2006-105, s. 2.4; 2007-127, s. 10.)
22

23 **§ 58-2-245. Access to employer taxpayer identification numbers contained in public**
24 **documents.**

25 Notwithstanding G.S. 132-1.10(b)(5), the Department is not required to redact an employer
26 taxpayer identification number on documents that may be made available to the general public.
27 (2006-105, s. 2.5.)
28

29 **§ 58-2-250. Electronic filings.**

30 (a) As used in this section:

- 31 (1) "Commissioner's designee" includes the National Insurance Producer
32 Registry of the NAIC.
- 33 (2) "License" includes any license, certificate, registration, or permit issued
34 under this Chapter.
- 35 (3) "Licensee" means any person who holds a license.

36 (b) Notwithstanding any other provision of this Chapter, the Commissioner may adopt
37 rules that require an applicant for a license or a licensee to file documents electronically with
38 the Commissioner or the Commissioner's designee. The rules adopted under this section may
39 contain procedures for the electronic payment of any fee required under this Chapter and the
40 electronic filing of documents, including:

- 41 (1) Any document required as part of an application for a license under this
42 Chapter.
- 43 (2) Any document required to be filed by an applicant for a license or a licensee
44 to maintain the license in good standing.
- 45 (3) Any other document required or permitted to be filed.

46 (c) The Commissioner or the Commissioner's designee may charge an administrative
47 fee for electronic filing. Fees charged for the processing of an electronic filing are in addition to
48 any other fee imposed for the filing. Fees charged for an electronic filing are limited to the
49 actual cost of the electronic transaction.

1 (d) This section does not supersede any other provision of law that requires the
2 electronic filing of a document or requires an applicant for a license or a licensee to make any
3 other filing electronically. (2009-383, s. 2.)