

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 351*

Short Title: Insurer Solvency Program.

(Public)

Sponsors: Representatives Beard; and Hardaway.

Referred to: Commerce.

March 27, 1991

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

Whenever the Commissioner or any deputy or employee of the Department is requested or subpoenaed to testify as an expert witness in any civil or administrative action, the party making the request or filing the subpoena and on whose behalf the

1 testimony is given shall, upon receiving a statement of the cost from the Commissioner,
2 reimburse the Department for the actual time and expenses incurred by the Department
3 in connection with the testimony.

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

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

12 **"§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct**
13 **of examinations.**

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

22 (b) As used in this section, unless the context clearly indicates otherwise:

23 (1) 'Commissioner' includes an authorized representative or designee of
24 the Commissioner.

25 (2) 'Examination' means an examination conducted under the Examination
26 Law.

27 (3) 'Examiner' means any person authorized by the Commissioner to
28 conduct an examination.

29 (4) 'Insurance regulator' means the official or agency of another
30 jurisdiction that is responsible for the regulation of a foreign or alien
31 insurer.

32 (5) 'Person' includes a trust or any affiliate of a person.

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

37 (d) The Commissioner may conduct an examination of any insurer as often as the
38 Commissioner in his discretion deems to be appropriate; but shall at a minimum
39 conduct an examination of every domestic insurer not less frequently than once every
40 three years. In scheduling and determining the nature, scope, and frequency of
41 examinations, the Commissioner shall consider such matters as the results of financial
42 statement analyses and ratios, changes in management or ownership, actuarial opinions,
43 reports of independent certified public accountants, and other criteria as set forth in the
44 NAIC Examiners' Handbook.

1 (e) For the purpose of completing an examination of any insurer, the
2 Commissioner may authorize an examination or investigation of any person, or the
3 business of any person, insofar as such examination or investigation is necessary or
4 material to the insurer under examination.

5 (f) Instead of examining any foreign or alien insurer licensed in this State, the
6 Commissioner may accept an examination report on that insurer prepared by the
7 insurer's insurance regulator until January 1, 1994. Thereafter, reports may only be
8 accepted if (i) the insurance regulator was at the time of the examination accredited
9 under NAIC Financial Regulation Standards and Accreditation Program or (ii) the
10 examination is performed under the supervision of an NAIC-accredited insurance
11 regulator or with the participation of one or more examiners who are employed by such
12 regulator and who, after a review of the examination work papers and report, state under
13 oath that the examination was performed in a manner consistent with the standards and
14 procedures required by such regulator.

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

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

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

40 (j) The Commissioner may issue subpoenas, administer oaths, and examine
41 under oath any person about any matter pertinent to the examination. Upon the failure
42 or refusal of any person to obey a subpoena, the Commissioner may petition the
43 Superior Court of Wake County; and upon proper showing the Court may enter any

1 order compelling the witness to appear and testify or produce documentary evidence.
2 Failure to obey the Court order is punishable as contempt of court.

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

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

13 (m) Nothing in the Examination Law limits the Commissioner's authority to
14 terminate or suspend any examination in order to pursue other legal or regulatory action
15 pursuant to the laws and rules of this State and to use and, if appropriate, to make public
16 any final or preliminary examination report, any examiner or insurer workpapers or
17 other documents, or any other information discovered or developed during the course of
18 any examination in the furtherance of any legal or regulatory action that the
19 Commissioner may, in his discretion, deem to be appropriate. Findings of fact and
20 conclusions made pursuant to any examination are **prima facie** evidence in any legal or
21 regulator action.

22 **"§ 58-2-132. Examination reports.**

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

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

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

40 (1) Adopting the examination report as filed or with modification or
41 corrections. If the examination report reveals that the insurer is
42 operating in violation of any law, rule, or prior order of the
43 Commissioner, the Commissioner may order the insurer to take any

- 1 action the Commissioner considers necessary and appropriate to cure
2 such violations; or
- 3 (2) Rejecting the examination report with directions to the examiners to
4 reopen the examination for purposes of obtaining additional data,
5 documentation of such information, and refiling pursuant to
6 subdivision (1) of this subsection; or
- 7 (3) Calling for an investigatory hearing with no less than 20 days notice to
8 the insurer for purposes of obtaining additional documentation, data,
9 and testimony.
- 10 (d) All orders entered pursuant to subdivision (c)(1) of this section shall be
11 accompanied by findings and conclusions resulting from the Commissioner's
12 consideration and review of the examination report, relevant examiner workpapers, and
13 any written submissions or rebuttals. Any such order shall be considered a final
14 administration decision and shall be served upon the insurer by certified mail. Any
15 hearing conducted under subdivision (c)(3) of this section shall be conducted as a
16 nonadversarial confidential investigatory proceeding as necessary for the resolution of
17 any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed
18 examination report or raised by or as a result of the Commissioner's review of relevant
19 workpapers or by the written submission or rebuttal of the insurer. Within 20 days after
20 the conclusion of any such hearing, the Commissioner shall enter an order pursuant to
21 subdivision (c)(1) of this section. The Commissioner may not appoint a member of the
22 Department's examination staff as an authorized representative to conduct the hearing.
23 The hearing shall proceed expeditiously with discovery by the insurer limited to the
24 examiner's workpapers that tend to substantiate any assertions set forth in any written
25 submission or rebuttal. The Commissioner may issue subpoenas for the attendance of
26 any witnesses or the production of any documents he deems to be relevant to the
27 investigation, whether they are under the control of the Department, the insurer, or other
28 persons. The documents produced shall be included in the record and testimony taken
29 by the Commissioner and shall be under oath and preserved for the record. Nothing in
30 this section requires the Department to disclose any information or records that would
31 indicate or show the existence or content of any investigation or activity of any federal
32 or state criminal justice agency. The hearing shall proceed with the Commissioner
33 posing questions to the persons subpoenaed. Thereafter the insurer and the Department
34 may present testimony relevant to the investigation. Cross examination shall be
35 conducted only by the Commissioner. The insurer and the Department shall be
36 permitted to make closing statements and may be represented by counsel of their choice.
- 37 (e) Upon completion of the examination report under subdivision (c)(1) of this
38 section, the Commissioner shall hold the content of the examination report as private
39 and confidential information for the 30-day period provided for written submissions or
40 rebuttals. If after 30 days after the examination report has been submitted to it, the
41 insurer examined has neither notified the Commissioner of its acceptance and approval
42 of the report nor requested to be heard thereon, the report shall thereupon be filed as a
43 public document and shall be open to public inspection, as long as no court of
44 competent jurisdiction has stayed its publication. Nothing in the Examination Law

1 prohibits the Commissioner from disclosing the content of the examination report,
2 preliminary examination report or results, or any related matter, to an insurance
3 regulator or to law enforcement officials of this or any other state or country or of the
4 U.S. government at any time, as long as such person or agency receiving the report or
5 related matters agrees in writing and is authorized by law to hold it confidential and in a
6 manner consistent with this section. In the event the Commissioner determines that
7 further regulatory action is appropriate as a result of any examination, he may initiate
8 any such proceedings or actions as provided by law.

9 (f) All working papers, recorded information, documents, and copies thereof
10 produced by, obtained by, or disclosed to the Commissioner or any other person in the
11 course of an examination shall be given confidential treatment and is not subject to
12 subpoena and may not be made public by the Commissioner or any other person, except
13 to the extent provided in subsection (e) of this section. Access may also be granted to
14 the NAIC. Such parties must agree in writing prior to receiving the information to
15 provide to it the same confidential treatment as required by this section, unless the prior
16 written consent of the insurer to which it pertains has been obtained. The provisions of
17 this section do not prohibit the Commissioner from taking any action provided for, or
18 from exercising any power conferred by, any provision of this Chapter to suspend or
19 revoke the license of any insurer.

20 **"§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.**

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

25 (1) A policyholder or claimant under an insurance policy.

26 (2) A grantor of a mortgage or similar instrument on such examiner's
27 residence to an insurer if done under customary terms and in the
28 ordinary course of business.

29 (3) An investment owner in shares of regulated diversified investment
30 companies; or

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

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

38 (c) Any insurer examined shall pay the proper charges incurred in the
39 examination, including the expenses and compensation of the Commissioner. Such
40 charges and expenses shall be reasonable as determined by the Commissioner and in
41 accordance with guidelines established by the NAIC set forth in the NAIC Examiners'
42 Handbook. The refusal of any insurer to submit to examination, or the refusal or failure
43 of any insurer to pay the expenses of examination upon presentation of a bill therefor by
44 the Commissioner, is grounds for the revocation, suspension, or refusal of a license.

1 The Commissioner is authorized to make public any such revocation, suspension, or
2 refusal of license as he determines and to give his reasons therefor. The Commissioner
3 shall promptly institute a civil action to recover the expenses of examination against any
4 insurer that refuses or fails to pay.

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

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

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

9 **"§ 58-2-145. Examination, financial statement, and records of employers self-**
10 **insuring for workers' compensation.**

11 The provisions of G.S. ~~58-2-130, 58-2-140, 58-2-131 through 58-2-133, 58-2-150, 58-~~
12 ~~2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5~~ apply to
13 employers that furnish proof of financial responsibility to the Commissioner under G.S.
14 97-93(a)(2) and to persons that administer workers' compensation self-insurance for
15 such employers."

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

17 **"§ 58-20-30. Financial monitoring and evaluation of clubs.**

18 Each club shall be audited annually, at the Club's expense, by a certified public
19 accounting firm. A copy of the audit report shall be furnished to each member, and to
20 the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the
21 loss and loss adjustment expenses reserves of the Club, including estimate of losses and
22 loss adjustment expenses incurred but not reported. The provisions of ~~G.S. 58-2-130~~
23 ~~(examination of companies by the Commissioner before authority to transact business granted),~~
24 G.S. 58-2-131 through 58-2-133, G.S. 58-2-150 ~~(affidavit of compliance with law~~
25 ~~required), G.S. 58-2-160~~ ~~(immunity from liability for reporting insurance fraud), G.S. 58-2-~~
26 ~~165~~ ~~(annual, semiannual, or quarterly statements filed with the Commissioner), G.S. 58-2-180~~
27 ~~(punishment for false statement), G.S. 58-2-185~~ ~~(making and keeping business records for the~~
28 ~~Commissioner's inspection), G.S. 58-2-190~~ ~~(Commissioner's authority to require special~~
29 ~~reports), G.S. 58-2-200~~ ~~(exhibition of books, accounts and other papers to the Commissioner),~~
30 and G.S. 58-6-5 ~~(Commissioner authorized to collect and pay fees and charges for~~
31 ~~examination to State Treasury)~~ shall apply to each Club and to persons that administer the
32 Clubs."

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

34 **"§ 58-23-25. Financial monitoring and evaluation of pools.**

35 Each pool must be audited annually at the expense of the pool by a certified public
36 accounting firm, with a copy of the report available to the governing body or chief
37 executive officer of each member of the pool and to the Commissioner. The board of
38 trustees of the pool must obtain an appropriate actuarial evaluation of the loss and loss
39 adjustment expense reserves of the pool, including an estimate of losses and loss
40 adjustment expenses incurred but not reported. The provisions of G.S. ~~58-2-130, 58-2-~~
41 131 through 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190,
42 58-2-200, and 58-6-5 apply to each pool and to persons that administer pools for local
43 governments. Annual financial statements required by G.S. 58-2-165 shall be filed by
44 each pool within 60 days after the end of the pool's fiscal year."

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

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

4 (a) Every insurance company shall file in the office of the Commissioner ~~of~~
5 ~~Insurance~~, on or before the first day of March in each year, ~~in form and detail as the~~
6 ~~Commissioner of Insurance prescribes~~, a statement showing the business standing and
7 financial condition of such company, association, or order on the preceding thirty-first
8 day of December, signed and sworn to by the chief managing agent or officer thereof,
9 before the Commissioner of Insurance or some officer authorized by law to administer
10 oaths. ~~The Commissioner of Insurance shall, in December of each year, furnish to each of the~~
11 ~~insurance companies authorized to do business in the State two or more blanks adapted for their~~
12 ~~annual statements.~~—Provided, the Commissioner may, for good and sufficient cause
13 shown by an applicant company, extend the filing date of such annual statement for
14 such company, for a reasonable period of time, not to exceed 30 days. Provided further,
15 the Commissioner may, in his discretion, require the statement required by this section
16 to be filed semiannually or quarterly by any insurance company, association, or order.

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

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

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

27 "**§ 58-2-225. Regulation of reinsurance intermediaries.**

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

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

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

39 "**§ 58-3-155. Business transacted with insurer-controlled brokers.**

40 (a) As used in this section:

41 (1) 'Broker' means a person who, being a licensed agent, procures
42 insurance for a party other than himself through a duly authorized
43 agent of an insurer that is licensed to do business in this State but for
44 which the broker is not authorized to act as agent.

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

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

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

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

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

34 **"§ 58-3-160. Sale of company or major reorganization; certificate of authority to**
35 **be restricted.**

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

- 1 (1) Biographical information in a form acceptable to the Commissioner for
2 each new owner, director, or management personnel;
3 (2) A detailed and complete plan of operation describing the kind or kinds
4 of insurance to be written and the method in which the reorganized
5 insurer will perform its various functions;
6 (3) Financial projections of the anticipated operational results of the
7 reorganized insurer for the succeeding three years based on the
8 capitalization of the reorganized insurer and its plan of operation,
9 which must be prepared by a properly qualified individual, be in
10 sufficient detail for a complete analysis to be performed, and be
11 accompanied by a list of the assumptions utilized in making the
12 projections; and
13 (4) Any other information deemed by the Commissioner to be pertinent
14 for a proper analysis of the reorganized insurer."

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

16 **"§ 58-4-5. Filing requirements.**

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

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

32 **"§ 58-4-15. Revocation of certificate of authority.**

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

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

39 **"§ 58-4-25. Insurance Regulatory Information System and similar program test**
40 **data records.**

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

1 Sec. 14. G.S. 58-2-200 reads as rewritten:

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

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

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

10 **"§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine**
11 **insurance companies.**

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

16 (1) ~~Companies whose premium income derived from this State is less than~~
17 ~~fifty thousand dollars (\$50,000) per annum, ten thousand dollars~~
18 ~~(\$10,000);~~

19 (2) ~~Companies whose premium income is more than fifty thousand dollars~~
20 ~~(\$50,000) but less than one hundred thousand dollars (\$100,000) per~~
21 ~~annum, twenty thousand dollars (\$20,000);~~

22 (3) ~~Companies whose premium income is more than one hundred~~
23 ~~thousand dollars (\$100,000) per annum, twenty five thousand dollars~~
24 ~~(\$25,000);~~

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

26 Sec. 16. G.S. 58-5-10 reads as rewritten:

27 **"§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and**
28 **casualty insurance companies.**

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

33 (1) ~~Companies whose premium income derived from this State is less than~~
34 ~~one hundred thousand dollars (\$100,000), twenty-five thousand dollars~~
35 ~~(\$25,000);~~

36 (2) ~~Companies whose premium income is in excess of one hundred~~
37 ~~thousand dollars (\$100,000), fifty thousand dollars (\$50,000);~~

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

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

40 **"§ 58-5-15. Minimum deposit required upon admission.**

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

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

2 "**§ 58-5-20. Type of deposits.**

3 The deposits required to be made under the provisions of G.S. 58-5-5, 58-5-10, and
4 58-5-50 shall be composed of:

5 (a) Interest bearing bonds of the United States, of America;

6 (b) Interest bearing bonds of the State of North Carolina, or of the its cities or
7 counties of this State; and

8 (c) Certificates of deposit issued by any solvent bank domesticated in the State of
9 North Carolina."

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

11 "**§ 58-5-40. Authority to increase deposit.**

12 When, in the opinion of the Commissioner, it is necessary for the protection of the
13 public interest to increase the amount of deposits specified in G.S. 58-5-5, 58-5-10, and
14 58-5-50, and 58-5-55, the companies described in said sections shall, upon demand,
15 make additional deposits in such sums as the Commissioner may require, and such
16 additional deposits shall be held in accordance with and for the purposes set out in this
17 Article-, and shall be composed of:

18 (a) Interest bearing bonds of the United States of America;

19 (b) Interest bearing bonds of the State of North Carolina or of its cities or
20 counties;

21 (c) Certificates of deposit issued by any solvent bank domesticated in the State of
22 North Carolina;

23 (d) Interest bearing AA or better rated corporate bonds and classified as
24 investment grade in the latest NAIC Securities Valuation Manual, and

25 (e) Other interest bearing bonds or notes deemed to be acceptable by the
26 Commissioner on a case by case basis."

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

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

31 (1) Interest bearing bonds of the United States of America;

32 (2) Interest bearing bonds of the State of North Carolina or of its cities or
33 counties; or

34 (3) Certificates of deposit issued by any solvent bank domesticated in the
35 State of North Carolina."

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

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

39 "**§ 58-7-21. Credit allowed a domestic ceding insurer.**

40 (a) As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-32:

41 (1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer
42 to an assuming insurer.

1 (2) 'Insurance risk' means an uncertainty regarding the ultimate amount of
2 any claim payment (underwriting risk) and an uncertainty regarding
3 the timing of such payments (timing risk).

4 (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an
5 asset or a deduction from liability on account of reinsurance ceded only when the
6 reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this
7 subsection. If meeting the requirements of subdivisions (3) or (4) of this subsection, the
8 requirements of subdivision (6) of this subsection must also be met.

9 (1) Credit shall be allowed when the reinsurance is ceded to an assuming
10 insurer that is licensed to transact insurance or reinsurance in this
11 State.

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

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

17 b. Submits to this State's authority to examine its books and
18 records;

19 c. Is licensed to transact insurance or reinsurance in at least one
20 state, or in the case of a United States branch of an alien
21 assuming insurer is entered through and licensed to transact
22 insurance or reinsurance in at least one state;

23 d. Files annually with the Commissioner a copy of its annual
24 statement filed with the insurance regulator of its state of
25 domicile and a copy of its most recent audited financial
26 statement; and either

27 1. Maintains a policyholders' surplus in an amount that is
28 not less than twenty million dollars (\$20,000,000) and
29 whose accreditation has not been denied by the
30 Commissioner within 90 days after its submission; or

31 2. Maintains a policyholders' surplus in an amount less than
32 twenty million dollars (\$20,000,000) and whose
33 accreditation has been approved by the Commissioner.

34 No credit shall be allowed a domestic ceding insurer
35 if the assuming insurer's accreditation has been revoked
36 by the Commissioner after notice and opportunity for a
37 hearing.

38 (3) Credit shall be allowed when the reinsurance is ceded to an assuming
39 insurer that is domiciled and licensed in, or in the case of a United
40 States branch of an alien assuming insurer is entered through, a state
41 that employs standards regarding credit for reinsurance substantially
42 similar to those applicable under this section and the assuming insurer
43 or United States branch of an alien assuming insurer:

- 1 a. Maintains a policyholders' surplus in an amount not less than
2 twenty million dollars (\$20,000,000); and
3 b. Submits to the authority of this State to examine its books and
4 records.

5 Provided, however, that the requirement of sub-subdivision (3)a of this
6 subsection does not apply to reinsurance ceded and assumed pursuant
7 to pooling arrangements among insurers in the same holding company
8 system.

- 9 (4) a. Credit shall be allowed when the reinsurance is ceded to an
10 assuming insurer that maintains a trust fund in a qualified United
11 States financial institution, as defined in G.S. 58-7-26(b), for the
12 payment of the valid claims of its United States policyholders and
13 ceding insurers, their assigns and successors in interest. The assuming
14 insurer shall report annually to the Commissioner information
15 substantially the same as that required to be reported on the NAIC
16 Annual Statement form by licensed insurers to enable the
17 Commissioner to determine the sufficiency of the trust fund. In the
18 case of a single assuming insurer, the trust shall consist of a trusteeed
19 account representing the assuming insurer's liabilities attributable to
20 business written in the United States and, in addition, the assuming
21 insurer shall maintain a trusteeed surplus of not less than twenty million
22 dollars (\$20,000,000). In the case of a group of individual
23 unincorporated underwriters, the trust shall consist of a trusteeed
24 account representing the group's liabilities attributable to business
25 written in the United States and, in addition, the group shall maintain a
26 trusteed surplus of which one hundred million dollars (\$100,000,000)
27 shall be held jointly for the benefit of United States ceding insurers of
28 any member of the group; and the group shall make available to the
29 Commissioner an annual certification of the solvency of each
30 underwriter by the group's domiciliary regulator and its independent
31 certified public accountants.

- 32 b. In the case of a group of incorporated insurers under common
33 administration which complies with the filing requirements
34 contained in the previous paragraph, and which has
35 continuously transacted an insurance business outside the
36 United States for at least three years immediately prior to
37 making application for accreditation; and submits to this State's
38 authority to examine its books and records and bears the
39 expense of the examination, and which has aggregate
40 policyholders' surplus of ten billion dollars (\$10,000,000,000);
41 the trust shall be in an amount equal to the group's several
42 liabilities attributable to business ceded by United States ceding
43 insurers to any member of the group pursuant to reinsurance
44 contracts issued in the name of such group; plus the group shall

- 1 maintain a joint trusteed surplus of which one hundred million
2 dollars (\$100,000,000) shall be held jointly for the benefit of
3 United States ceding insurers of any member of the group as
4 additional security for any such liabilities, and each member of
5 the group shall make available to the Commissioner an annual
6 certification of the member's solvency by the member's
7 domiciliary regulator and its independent public accountant.
- 8 c. Such trust shall be established in a form approved by the
9 Commissioner. The trust instrument shall provide that
10 contested claims shall be valid and enforceable upon the final
11 order of any court of competent jurisdiction in the United
12 States. The trust shall vest legal title to its assets in the trustees
13 of the trust for its United States policyholders and ceding
14 insurers, their assigns and successors in interest. The trust and
15 the assuming insurer shall be subject to examination as
16 determined by the Commissioner. The trust described herein
17 must remain in effect for as long as the assuming insurer shall
18 have outstanding obligations due under the reinsurance
19 agreements subject to the trust.
- 20 d. No later than February 28 of each year the trustees of the trust
21 shall report to the Commissioner in writing setting forth the
22 balance of the trust and listing the trust's investments at the
23 preceding year end and shall certify the date of termination of
24 the trust, if so planned, or certify that the trust shall not expire
25 prior to the next following December 31.
- 26 (5) Credit shall be allowed when the reinsurance is ceded to an assuming
27 insurer not meeting the requirements of subdivisions (1), (2), (3), or
28 (4) of this subsection, but only with respect to the insurance of risks
29 located in jurisdictions where such reinsurance is required by
30 applicable law or regulation of that jurisdiction.
- 31 (6) If the assuming insurer is not licensed or accredited to transact
32 insurance or reinsurance in this State, the credit permitted by
33 subdivisions (3) and (4) of this subsection shall not be allowed unless
34 the assuming insurer agrees in the reinsurance agreements:
- 35 a. That in the event of the failure of the assuming insurer to
36 perform its obligations under the terms of the reinsurance
37 agreement, the assuming insurer, at the request of the ceding
38 insurer, shall submit to the jurisdiction of any court of
39 competent jurisdiction in any state of the United States, will
40 comply with all requirements necessary to give such court
41 jurisdiction, and will abide by the final decision of such court or
42 of any appellate court in the event of an appeal; and
- 43 b. To designate the Commissioner as its true and lawful attorney
44 upon whom may be served any lawful process in any action,

1 suit, or proceeding instituted by or on behalf of the ceding
2 company.

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

6 (c) This section applies to all reinsurance cessions after the effective date of this
7 section under reinsurance agreements that have had an inception, anniversary, or
8 renewal date not less than six months after the effective date of this section.

9 **"§ 58-7-26. Reduction from liability for reinsurance ceded by a domestic insurer to**
10 **an assuming insurer.**

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

21 (1) Cash;

22 (2) Securities that are listed by the Securities Valuation Office of the
23 NAIC and qualifying as admitted assets;

24 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed
25 by a qualified United States financial institution, as defined in
26 subsection (b), no later than December 31 of the year for which the
27 filing is being made, and in the possession of the ceding company on
28 or before the filing date of its annual statement. Letters of credit
29 meeting applicable standards of issuer acceptability as of the dates of
30 their issuance (or confirmation) shall, notwithstanding the issuing (or
31 confirming) institution's subsequent failure to meet applicable
32 standards of issuer acceptability, continue to be acceptable as security
33 until their expiration, extension, renewal, modification or amendment,
34 whichever first occurs; or

35 (4) Any other form of security acceptable to the Commissioner.

36 (b) For purposes of subsection (3), a 'qualified United States financial institution'
37 means an institution that:

38 (1) Is organized or (in the case of a United States office of a foreign
39 banking organization) licensed, under the laws of the United States or
40 any state thereof;

41 (2) Is regulated, supervised, and examined by United States federal or
42 state authorities having regulatory authority over banks and trust
43 companies; and

1 (3) Has been determined by either the Commissioner or the Securities
2 Valuation Office of the NAIC to meet such standards of financial
3 condition and standing as are considered necessary and appropriate to
4 regulate the quality of financial institutions whose letters of credit will
5 be acceptable to the Commissioner.

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

9 (1) Is organized, or (in the case of a United States branch or agency office
10 of a foreign banking organization) licensed, under the laws of the
11 United States or any state thereof and has been granted authority to
12 operate with fiduciary powers; and

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

15 (d) Subsections (a) through (c) of this section apply to all reinsurance cessions
16 after the effective date of this section under reinsurance agreements that have had an
17 inception, anniversary, or renewal date not less than six months after the effective date
18 of this section."

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

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

21 "(6) Satisfies the Commissioner that it is in substantial compliance with the
22 provisions of ~~G.S. 58-7-20 through G.S. 58-7-30~~ G.S. 58-7-21, 58-7-26,
23 58-7-30, and 58-7-32 and Article 13 of this Chapter."

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

26 **"§ 58-7-32. Life reinsurance agreements.**

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

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

33 (1) The primary effect of the reinsurance agreement is to transfer
34 deficiency reserves or excess interest reserves to the books of the
35 reinsurer for a risk charge and the agreement does not provide for
36 significant participation by the reinsurer in one or more of the
37 following risks: mortality, morbidity, investment, or surrender benefit;

38 (2) The reserve credit taken by the ceding insurer is not in compliance
39 with insurance statutes or with rules or actuarial interpretations or
40 standards adopted by the Commissioner;

41 (3) The reserve credit taken by the ceding insurer is greater than the
42 underlying reserve of the ceding insurer supporting the policy
43 obligations transferred under the reinsurance agreement;

- 1 (4) The ceding insurer is required to reimburse the reinsurer for negative
2 experience under the ceding insurer of an amount equal to prior years'
3 losses upon voluntary termination of in-force reinsurance by that
4 ceding insurer shall be considered such a reimbursement to the
5 reinsurer for negative experience;
- 6 (5) The ceding insurer can be deprived of surplus at the reinsurer's option
7 or automatically upon the occurrence of some event, such as the
8 insolvency of the ceding insurer; except that termination of the
9 reinsurance agreement by the reinsurer for nonpayment of reinsurance
10 premiums shall not be considered to be such a deprivation of surplus;
- 11 (6) The ceding insurer must, at scheduled times specified or implied in the
12 agreement, terminate or automatically recapture all or part of the
13 coverage ceded;
- 14 (7) No cash payment is due from the reinsurer, throughout the lifetime of
15 the reinsurance agreement, with all settlements prior to the termination
16 date of the agreement made only in a reinsurance account, and no
17 funds in such account are available for the payment of benefits; or
- 18 (8) The reinsurance agreement involves the possible payment by the
19 ceding insurer to the reinsurer of amounts other than from income
20 reasonably expected from the reinsured policies.

21 (c) Notwithstanding subsection (b) of this section, an insurer may, with the prior
22 approval of the Commissioner, take such reserve credit as the Commissioner deems to
23 be consistent with insurance statutes or rules, actuarial interpretations, or standards
24 adopted by the commissioner.

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

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

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

- 37 (1) The agreements were executed and in force prior to the effective date
38 of this section;
- 39 (2) No new business is ceded under the agreements after the effective date
40 of this section;
- 41 (3) The reduction of the liability or the asset established for the
42 reinsurance ceded is reduced to zero by December 31, 1992, or such
43 later date approved by the Commissioner as a result of an application
44 made by the ceding insurer prior to January 1, 1992; and

1 (4) The Commissioner is notified, within 90 days after the effective date
 2 of this section, of the existence of such reinsurance agreements and all
 3 corresponding credits taken in the ceding insurer's 1990 Annual
 4 Statement."

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

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

9 (a) Notwithstanding any other provision of law, no domestic property or casualty
 10 insurer with less than ten million dollars (\$10,000,000) in policyholders' surplus may,
 11 without the prior written approval of the Commissioner, assume reinsurance on any risk
 12 that it is otherwise permitted to assume except where such reinsurance is:

13 (1) Required by applicable law or regulation; or

14 (2) Assumed pursuant to pooling arrangement among members of the
 15 same holding company system.

16 (b) This section applies to contracts of reinsurance entered into or renewed on or
 17 after the effective date of this section.

18 (c) This section does not invalidate any reinsurance contract that was entered into
 19 before the effective date of this section as between the parties to the contract."

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

21 "(11) The Commissioner, in his discretion, may require an insurer to have
 22 and maintain a larger amount of capital or surplus than prescribed in
 23 this section, based upon the volume and kind or kinds of insurance
 24 transacted by the insurer."

25 Sec. 28. Article 7 of Chapter 58 of the General Statutes is amended by
 26 adding a new section to read:

27 "**§ 58-7-155. Business transacted with broker-controlled property or casualty**
 28 **insurers.**

29 (a) As used in this section:

30 (1) 'Broker' means a person who, being a licensed agent, procures
 31 insurance for a party other than himself through a duly authorized
 32 agent of an insurer that is licensed to do business in this State but for
 33 which the broker is not authorized to act as agent.

34 (2) 'Captive insurer' means an insurer owned by another person, the
 35 exclusive purpose of which is to insure risks of a parent person or its
 36 affiliates; or, in the case of groups or associations, an insurer owned by
 37 the insured, the exclusive purpose of which is to insure risks of
 38 member organizations or group members and their affiliates.

39 (3) 'Control' or 'controlled' means the direct or indirect possession of the
 40 power to direct or cause the direction of the management and policies
 41 of a person, whether through the ownership of voting securities, by
 42 contract other than a commercial contract for goods or
 43 nonmanagement services, or otherwise, unless the power is the result
 44 of an official position with or corporate office held by the person.

1 Control is presumed to exist if any person directly or indirectly owns,
2 controls, holds with the power to vote, or holds proxies representing
3 ten percent (10%) or more of the voting securities of any other person.

4 (4) 'Insurer' means any person incorporated or organized under the laws of
5 this State and duly licensed to transact property or casualty insurance.
6 'Insurer' does not include a: foreign or nonadmitted insurer; risk
7 retention group under Article 22 of this Chapter; residual market
8 mechanism; joint underwriting authority or association; or captive
9 insurer.

10 (5) 'Qualified actuary' means a person that meets the standards of a
11 qualified actuary as specified in the NAIC Annual Statement
12 Instructions: Property and Casualty, as amended or clarified by rule,
13 order, directive, or bulletin of the Commissioner.

14 (6) 'Reinsurance intermediary' or 'intermediary' means any person that acts
15 as a broker in soliciting, negotiating, or procuring the making of any
16 reinsurance contract or binder on behalf of a ceding insurer; or acts as
17 a broker in accepting any reinsurance contract or binder on behalf of
18 an assuming insurer.

19 (7) 'Violation' means a finding by the Commissioner that:

20 a. A controlling broker did not materially comply with subsections
21 (c) or (d) of this section; or

22 b. A controlled insurer, with respect to business placed by the
23 controlling broker, engaged in a pattern of charging premiums
24 that were lower than those being charged by such insurer or
25 other insurers for similar risks written during the same period
26 and placed by noncontrolling brokers. When determining
27 whether premiums were lower than those prevailing in the
28 market, the Commissioner shall take into consideration
29 applicable industry or actuarial standards at the time the
30 business was written; or

31 c. A controlling broker failed to maintain records sufficient: to
32 demonstrate that such broker's dealings with its controlled
33 insurer were fair and equitable and in compliance with Article
34 19 of this Chapter; and to accurately disclose the nature and
35 details of its transactions with the controlled insurer, including
36 such information that is necessary to support the charges or fees
37 to the respective parties; or

38 d. A controlled insurer, with respect to business placed by a
39 controlling broker, either failed to establish or deviated from its
40 underwriting procedures; or

41 e. A controlled insurer's capitalization at the time business was
42 placed by a controlling broker and with respect to such business
43 was not in compliance with criteria established by the

1 Commissioner or with this Chapter or Title 11 of the North
2 Carolina Administrative Code; or

3 f. A controlling broker or the controlled insurer failed to
4 substantially comply with Article 19 of this Chapter and any
5 rules adopted under that Article.

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

14 (c) No broker that has control of an insurer may directly or indirectly place
15 business with such insurer in any transaction in which such broker, at the time the
16 business is placed, is acting as such on behalf of the insured for any compensation,
17 commission or other thing of value, unless:

18 (1) There is a written contract between the controlling broker and the
19 insurer that has been approved by the board of directors of the insurer
20 and filed with the Commissioner;

21 (2) Such broker, prior to the effective date of any policy, delivers written
22 notice to the prospective insured disclosing the relationship between
23 such broker and the controlled insurer. Such disclosure, signed by the
24 insured, shall be retained in the underwriting file of the insurer until
25 the completion and release of the report on examination for the period
26 in which the coverage is in effect. Except that, if the business is
27 placed through a subbroker who is not a controlling broker, the
28 controlling broker shall retain in his records a signed commitment
29 from the subbroker that the subbroker is aware of the relationship
30 between the insurer and the broker and that the subbroker has notified
31 or will notify, in a form that may be prescribed by the Commissioner,
32 the insured;

33 (3) All funds collected for the account of the insurer by the controlling
34 broker are paid, net of commissions, cancellations, and other
35 adjustments, to the insurer no less often than monthly;

36 (4) In addition to any other required statement of actuarial opinion, the
37 controlled insurer provides with its annual financial statement the
38 statement of a qualified actuary reporting loss ratios for each kind of
39 insurance written and attesting to the adequacy of loss reserves
40 established on insurance placed by such broker; and such statement
41 complies in all respects with the NAIC Annual Statement Instructions
42 regarding the Statement of Actuarial Opinion;

43 (5) The controlled insurer provides with its annual financial statement a
44 report, in a form that may be prescribed by the Commissioner, about

1 the amount of commissions paid to such broker, the percentage such
2 amount represents of the net premiums written, and comparable
3 amounts and percentages paid to noncontrolling brokers for
4 placements of the same kinds of insurance; and

5 (6) Every controlled insurer has an audit committee of its board of
6 directors comprising independent directors; and prior to approval of
7 the annual financial statement, the audit committee meets with the
8 insurer's management, the insurer's independent certified public
9 accountants, and a qualified actuary to review the adequacy of the
10 insurer's loss reserves.

11 (d) No reinsurance intermediary that has control of an assuming insurer may
12 directly or indirectly place business with such insurer in any transaction in which such
13 intermediary is acting as a broker on behalf of the ceding insurer. No intermediary that
14 has control of a ceding insurer may directly or indirectly accept business from such
15 insurer in any transaction in which such reinsurance intermediary is acting as a broker
16 on behalf of the assuming insurer. This subsection does not apply to an intermediary
17 that makes a full and complete written disclosure to the parties of its relationship with
18 the assuming or ceding insurer prior to completion of the transaction.

19 (e) If the Commissioner has reason to believe that any person has committed or
20 is committing an act that could be a violation, he shall serve upon that person a
21 statement of the charges and notice of a hearing to be commenced not later than 30 days
22 after the service of the notice. At such hearing, the Commissioner must establish that
23 the person committed a violation. The person shall have an opportunity to be heard and
24 to present evidence rebutting the charges and to establish that the insolvency of the
25 controlled insurer arose out of events not attributable to the violation. Upon the finding
26 that the person committed a violation, and the person failed to establish that such
27 violation did not substantially contribute to the insolvency, the person shall reimburse
28 the estate of the insolvent insurer for all payments made for losses, loss adjustments,
29 and administrative expenses on the business placed by such broker in excess of gross
30 earned premiums and investment income earned on premiums and loss reserves for such
31 business.

32 (f) This section does not affect the right of the Commissioner to impose any
33 other penalties provided for in this Chapter nor the rights of policyholders, claimants,
34 creditors, or other third parties."

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

37 **"§ 58-7-160. Investments unlawfully acquired.**

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

43 **"§ 58-7-162. Allowable or admitted assets.**

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

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

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

- 4 a. The premiums collected by such person or affiliates and not
5 remitted to the insurer are held in a trust account with a bank or
6 other depository approved by the Commissioner. Such funds
7 shall be held as trust funds and may not be commingled with
8 any other funds of the person or affiliates. Disbursements from
9 the trust account may be made only to the insurer, the insured,
10 or, for the purpose of returning premiums, a person that is
11 entitled to returned premiums on behalf of the insured. A
12 written copy of the trust agreement must be filed with and
13 approved by the Commissioner prior to its becoming effective.
14 The Commissioner shall disapprove any trust agreement filed
15 pursuant to this sub-subdivision that does not assure the safety
16 of the premiums collected. The investment income derived
17 from the trust may be allocated as the parties deem to be proper.
18 Such person or affiliates shall deposit premiums collected into
19 the trust account within 15 business days after collection; or
20 b. Such person or affiliates must provide to the insurer and the
21 insurer must maintain in its possession an unexpired, clean,
22 irrevocable letter of credit, payable to the insurer, issued for a
23 term of no less than one year and in conformity with the
24 requirements set forth in this sub-subdivision, the amount of
25 which equals or exceeds the liability of such person or affiliates
26 to the insurer, at all times during the period that the letter of
27 credit is in effect, for premiums collected by such person or
28 affiliates. Such letter of credit must be issued under
29 arrangements satisfactory to the Commissioner and the letter
30 must be issued by a banking institution that is a member of the
31 Federal Reserve System and that has a financial standing
32 satisfactory to the Commissioner; or
33 c. Such person or affiliates must provide to the insurer and the
34 insurer must maintain in its possession evidence that such
35 person or affiliates have purchased and have currently in effect
36 a financial guaranty bond, payable to the insurer, issued for a
37 term of not less than one year and that is in conformity with the
38 requirements set forth in this sub-subdivision, the amount of
39 which equals or exceeds the liability of such person or affiliates
40 to the insurer, at all times during which the financial guaranty
41 bond is in effect, for the premiums collected by such person or
42 persons. Such financial guaranty bond shall be issued under an
43 arrangement satisfactory to the Commissioner and the financial
44 guaranty bond must be issued by an insurer that is authorized to

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

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

11 (7) Installment premiums other than life insurance premiums to the extent
12 of the unearned premium reserve carried on the policy to which such
13 premiums apply.

14 (8) Notes and like written obligations not past due, taken for premiums
15 other than life insurance premiums, on policies permitted to be issued
16 on such basis, to the extent of the unearned premium reserves carried
17 thereon.

18 (9) The full amount of reinsurance recoverable by a ceding insurer from a
19 solvent reinsurer and which reinsurance is authorized under G.S. 58-7-
20 21.

21 (10) Amounts receivable by an assuming insurer representing funds
22 withheld by a solvent ceding insurer under a reinsurance treaty.

23 (11) Deposits or equities recoverable from underwriting associations,
24 syndicates, and reinsurance funds, or from any suspended banking
25 institution, to the extent deemed by the Commissioner available for the
26 payment of losses and claims and at values to be determined by the
27 Commissioner.

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

33 (13) Other assets, not inconsistent with the provisions of this section,
34 deemed by the Commissioner to be available for the payment of losses
35 and claims, at values to be determined by the Commissioner.

36 **"§ 58-7-163. Assets not allowed.**

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

40 (1) Good will, trade names, and other like intangible assets.

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

- 1 (3) Stock of such insurer, owned by it, or any material equity therein or
2 loans secured thereby, or any material proportionate interest in such
3 stock acquired or held through the ownership by such insurer of an
4 interest in another firm, corporation, or business unit.
- 5 (4) Furniture, fixtures, other equipment, safes, vehicles, libraries,
6 stationery, literature, and supplies, other than data processing and
7 accounting systems authorized under G.S. 58-7-162(12), except in the
8 case of title insurers such materials and plants as the insurer is
9 expressly authorized to invest in under G.S. 58-7-182 and except, in
10 the case of any insurer, such personal property as the insurer is
11 permitted to hold pursuant to this Chapter, or that is acquired through
12 foreclosure of chattel mortgages acquired pursuant to G.S. 58-7-180,
13 or that is reasonably necessary for the maintenance and operation of
14 real estate used by it for home office, branch office, and similar
15 purposes.
- 16 (5) The amount, if any, by which the aggregate book value of investments
17 as carried in the ledger assets of the insurer exceeds the aggregate
18 value thereof as determined under this Chapter.
- 19 (6) Bonds, notes, or other evidences of indebtedness that are secured by
20 mortgages or deeds of trust that are in default.
- 21 (7) Prepaid and deferred expenses.
- 22 (8) Certificates of contribution or other similar evidences of indebtedness.

23 **§ 58-7-165. Eligible investments.**

24 (a) Insurers shall invest in or lend their funds on the security of, and shall hold as
25 invested assets, only eligible investments as prescribed in this Chapter.

26 (b) Any particular investment held by an insurer on January 1, 1992, and that was
27 a legal investment at the time it was made, and that the insurer was legally entitled to
28 possess immediately prior to January 1, 1992, is an eligible investment.

29 (c) Eligibility of an investment shall be determined as of the date of its making or
30 acquisition, except as stated otherwise in this Chapter.

31 (d) Any investment limitation based upon the amount of the insurer's assets or
32 particular funds shall relate to such assets or funds as shown by the insurer's annual
33 statement as of December 31 next preceding date of acquisition of the investment by the
34 insurer, or as shown by a current financial statement of the insurer.

35 **§ 58-7-167. General qualifications.**

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

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

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

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

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

14 **"§ 58-7-170. Diversification.**

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

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

22 (1) The cost of investments made by insurers in stock authorized by G.S.
23 58-7-173 shall not exceed fifteen percent (15%) of the insurer's
24 admitted assets; the cost of such investment in common stocks shall
25 not exceed ten percent (10%) of the insurer's admitted assets; and the
26 cost of such investment in stock of any one corporation shall not
27 exceed three percent (3%) of the insurer's admitted assets.
28 Notwithstanding any other provision in this Chapter, the cost basis or
29 market value, if lower, of all stock investments shall be used for the
30 purpose of determining the asset value against which such percentage
31 limitations are to be applied.

32 (2) Such other limitations, if any, as are expressly provided for in any
33 provision under which the investment is authorized.

34 (c) The cost of investments made by insurers in a mortgage loan authorized by
35 G.S. 58-7-179 shall not exceed the lesser of five percent (5%) of the insurer's admitted
36 assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not
37 invest in additional mortgage loans without the consent of the Commissioner if the
38 admitted value of all mortgage loans held by the insurer exceeds:

39 (1) With respect to life and health insurers, forty percent (40%) of the
40 admitted assets of the insurer.

41 (2) With respect to property and casualty insurers, ten percent (10%) of
42 the admitted assets of the insurer.

43 An insurer that, as of October 1, 1991, has mortgage investments that exceed the
44 aggregate limitation specified in this subsection shall submit to the Commissioner no

1 later than January 31, 1992, a plan to bring the amount of mortgage investments into
2 compliance with such limitations by January 1, 2001.

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

8 (1) No more than twenty percent (20%) of an insurer's admitted assets;

9 (2) No more than ten percent (10%) of an insurer's admitted assets in
10 obligations that have been given a rating of 4, 5, or 6 by the Securities
11 Valuation Office of the NAIC;

12 (3) No more than three percent (3%) of an insurer's admitted assets in
13 obligations that have been given a rating of 5 or 6 by the Securities
14 Valuation Office of the NAIC;

15 (4) No more than one percent (1%) of an insurer's admitted assets in
16 obligations that have been given a rating of 6 by the Securities
17 Valuation Office of the NAIC;

18 (5) No more than ten percent (10%) of an insurer's admitted assets, if the
19 investments are in issuers from any one industry; and

20 (6) No more than two percent (2%) of an insurer's admitted assets or ten
21 percent (10%) of an insurer's capital and surplus, whichever is greater,
22 if the investment is in any one issuer.

23 (e) For purposes of subsection (d), the following definitions apply:

24 (1) 'Medium to lower quality obligations' means obligations that have
25 been given a rating of 3, 4, 5, or 6 by the Securities Valuation Office
26 of the NAIC.

27 (2) 'Industry' means a distinct and recognized area of economic activity
28 that consists of the production, manufacture, or distribution of
29 common goods, products, commodities, or services.

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

33 (g) The provisions of subsections (d), (e), and (f) apply to any investment made
34 after December 31, 1991. If an insurer's investments in medium to lower quality
35 obligations equal or exceed the maximum amounts permitted by subsection (d) as of
36 December 31, 1991, the insurer shall not acquire any additional medium to lower
37 quality obligations without the prior written approval of the Commissioner. An insurer
38 that is not in compliance with subsection (d) as of December 31, 1991, may hold until
39 maturity or until December 31, 1995, whichever is sooner, only those medium to lower
40 quality obligations it owns on that date, if such obligations were obtained in compliance
41 with the law in effect at the time the investments were made. If the insurer sells,
42 transfers, or otherwise disposes of such securities prior to maturity, the insurer may not
43 acquire any medium to lower quality obligations as substitutions or replacements
44 without the prior approval of the Commissioner.

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

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

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

14 **"§ 58-7-172. Cash and deposits.**

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

18 **"§ 58-7-173. Permitted insurer investments.**

19 An insurer may invest in:

- 20 (1) Bonds, notes, warrants, and other evidences of indebtedness that are
21 direct obligations of the U.S. Government or for which the full faith
22 and credit of the U.S. Government is pledged for the payment of
23 principal and interest.
- 24 (2) Loans insured or guaranteed as to principal and interest by the U.S.
25 Government or by any agency or instrumentality of the U.S.
26 Government to the extent of such insurance or guaranty.
- 27 (3) Student loans insured or guaranteed as to principal by the U.S.
28 Government or by any agency or instrumentality of the U.S.
29 Government to the extent of such insurance or guaranty.
- 30 (4) Bonds, notes, warrants, and other securities not in default that are the
31 direct obligations of any state or of the Government of Canada or any
32 other province thereof, or for which the full faith and credit of such
33 state, government, or province has been pledged for the payment of
34 principal and interest.
- 35 (5) Bonds, notes, warrants, and other securities not in default of any
36 county, district, incorporated city, or school district in any state of the
37 United States, or the District of Columbia, or in any province of
38 Canada, that are the direct obligations of such county, district, city, or
39 school district and for payment of the principal and interest of which
40 the county, district, city, or school district has lawful authority to levy
41 taxes or make assessments.
- 42 (6) Bonds, notes, certificates of indebtedness, warranties, or other
43 evidences of indebtedness that are payable from revenues or earnings
44 specifically pledged therefor of any public toll bridge, structure, or

1 improvement owned by any state, incorporated city, or legally
2 constituted public corporation or commission, all within the United
3 States or Canada, for the payment of the principal and interest of
4 which a lawful sinking fund has been established and is being
5 maintained and if no default on the part of the insurer in payment of
6 principal or interest has occurred on any of its bonds, notes, warrants,
7 or other securities within five years prior to the date of investment
8 therein.

9 (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences
10 of indebtedness that are valid obligations issued, assumed, or
11 guaranteed by the United States, any state, any county, city, district,
12 political subdivision, civil division, or public instrumentality of any
13 such government or unit thereof, or in any province of Canada; if by
14 statute or other legal requirements such obligations are payable as to
15 both principal and interest from revenues or earnings from the whole
16 or any part of any utility supplying water, gas, a sewage disposal
17 facility, electricity, or any other public service, including but not
18 limited to a toll road or toll bridge.

19 (8) Bonds, debentures, or other securities of the following agencies,
20 whether or not such obligations are guaranteed by the U.S.
21 Government:

22 a. The Federal National Mortgage Association, and stock thereof
23 when acquired in connection with the sale of mortgage loans to
24 such Association.

25 b. Any federal land bank, when such securities are issued under
26 the Farm Loan Act;

27 c. Any federal home loan bank, when such securities are issued
28 under the Home Loan Bank Act;

29 d. The Home Owners' Loan Corporation, created by the Home
30 Owners' Loan Act of 1933;

31 e. Any federal intermediate credit bank, created by the
32 Agricultural Credits Act;

33 f. The Central Bank for Cooperatives and regional banks for
34 cooperatives organized under the Farm Credit Act of 1933, or
35 by any of such banks; and any notes, bonds, debentures, or
36 other similar obligations, consolidated or otherwise, issued by
37 farm credit institutions pursuant to the Farm Credit Act of 1971;

38 g. Any other similar agency of the U.S. Government that is of
39 similar financial quality.

40 (9) Bonds, debentures, or other securities of public housing authorities,
41 issued under the provisions of the Housing Act of 1949, the Municipal
42 Housing Commission Act or the Rural Housing Commission Act, or
43 issued by any public housing authority or agency in the United States,
44 if such bonds, debentures, or other securities are secured by a pledge

- 1 of annual contributions to be paid by the United States or any U.S.
2 agency; and the cost of investments made under this subsection shall
3 not exceed the lesser of three percent (3%) of the insurer's admitted
4 assets or ten percent (10%) of the insurer's capital and surplus.
- 5 (10) Obligations issued, assumed, or guaranteed by the International Bank
6 for Reconstruction and Development, the Inter-American
7 Development Bank, the Asian Development Bank, or the African
8 Development Bank; and the cost of investments made under this
9 subsection shall not exceed the lesser of three percent (3%) of the
10 insurer admitted assets or ten percent (10%) of the insurer's capital and
11 surplus.
- 12 (11) Bonds, notes, or other interest-bearing or interest-accruing obligations
13 of any solvent corporation organized under the laws of the United
14 States, Canada or any Canadian province, or the laws of any state.
- 15 (12) Secured obligations of duly constituted churches and of church holding
16 companies; and the cost of investments made under this subsection
17 shall not exceed the lesser of one percent (1%) of the insurer's
18 admitted assets or five percent (5%) of the insurer's capital and
19 surplus.
- 20 (13) Equipment trust obligations or certificates adequately secured and
21 evidencing an interest in transportation equipment, wholly or in part
22 within the United States, and the right to receive determined portions
23 of rental, purchase, or other fixed obligatory payments for the use or
24 purchase of such transportation equipment; and the cost of investments
25 made under this subsection shall not exceed the lesser of one percent
26 (1%) of the insurer's admitted assets or five percent (5%) of the
27 insurer's capital and surplus.
- 28 (14) Share or savings accounts of savings and loan associations or building
29 and loan associations; and the cost of investments made under this
30 subsection shall not exceed the lesser of three percent (3%) of the
31 insurer's admitted assets or five percent (5%) of the insurer's capital
32 and surplus.
- 33 (15) Loans with a maturity not in excess of 12 years from the date thereof
34 that are secured by the pledge of securities eligible for investment
35 under this Chapter or by the pledge or assignment of life insurance
36 policies issued by other insurers authorized to transact insurance in this
37 State. On the date made, no such loan shall exceed in amount
38 seventy-five percent (75%) of the market value of the collateral
39 pledged, except that loans upon the pledge of U.S. Government bonds
40 and loans upon the pledge or assignment of life insurance policies shall
41 not exceed ninety-five percent (95%) of the market value of the bonds
42 or the cash surrender value of the policies pledged. The market value
43 of the collateral pledge shall at all times during the continuance of
44 such loans meet or exceed the minimum percentages herein. Loans

1 made pursuant to this section shall not be renewable beyond a period
2 of 12 years from the date of the loan.

3 (16) Stocks, common or preferred, of any corporation created or existing
4 under the laws of the United States, Canada or any Canadian province,
5 or of any state. An insurer may invest in stocks, common or preferred,
6 of any corporation created or existing under the laws of any foreign
7 country other than Canada if such stocks are listed and traded on a
8 national securities exchange in the United States or, in the alternative,
9 if such investment in stocks of any corporation created or existing
10 under the laws of any foreign country are first approved by the
11 Commissioner. Nothing in this section applies to qualifying
12 investments made by an insurer in a foreign country under authority of
13 G.S. 58-7-178.

14 (17) Bonds, notes, warrants, and other evidences of indebtedness that are
15 direct obligations of the State of Israel or for which the full faith and
16 credit of the State of Israel is pledged for the payment of principal and
17 interest; and the cost of investments made under this subsection shall
18 not exceed the lesser of three percent (3%) of the insurer's admitted
19 assets or five percent (5%) of the insurer's capital and surplus.

20 **"§ 58-7-175. Policy loans.**

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

26 **"§ 58-7-177. Investments in subsidiaries and affiliated corporations.**

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

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

37 (c) For purposes of this section:

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

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

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

1 (e) For purposes of this section, an insurer's investment in a subsidiary or
2 affiliated corporation shall be deemed to include all sums loaned to such subsidiary or
3 affiliated corporation.

4 **"§ 58-7-178. Foreign investments.**

5 An insurer authorized to transact insurance in a foreign country may have funds
6 invested in such securities as may be required for such authority and for the transaction
7 of such business. Canadian securities eligible for investment under other provisions of
8 this Chapter are not subject to this section. Subject to the approval of the
9 Commissioner:

10 (1) An insurer may invest in Eurodollar certificates of deposit issued by
11 foreign branches of United States commercial banks.

12 (2) In addition to Canadian securities eligible for investment and to
13 investments in countries in which an insurer transacts insurance, an
14 insurer may invest in bonds, notes, or stocks of any foreign country or
15 alien corporation if such security meets the general requirements of
16 G.S. 58-7-167 and does not exceed, in total, five percent (5%) of
17 admitted assets.

18 **"§ 58-7-179. Mortgage loans.**

19 (a) An insurer may invest any of its funds in bonds, notes, or other evidences of
20 indebtedness that are secured by first mortgages or deeds of trust upon improved real
21 property located in the United States or Canada or that are secured by first mortgages or
22 deeds of trust upon leasehold estates having an unexpired term of not less than 40 years,
23 inclusive of the term or terms that may be provided by enforceable options of renewal,
24 in improved real property located in the United States or Canada. In all cases the
25 security for the loan must be a first lien upon such real property, and there must not be
26 any condition or right of reentry or forfeiture not insured against under which, in the
27 case of real property other than leaseholds, such lien can be cut off or subordinated or
28 otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to
29 continue the lease in force for the duration of the loan. Nothing herein prohibits any
30 investment by reason of the existence of any prior lien for ground rents, taxes,
31 assessments, or other similar charges not yet delinquent. This section does not prohibit
32 investment in mortgages or similar obligations when made under G.S. 58-7-180.

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

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

40 (1) Ninety-five percent (95%) of the value of the real property or
41 leasehold securing the same in the case of a mortgage on a dwelling
42 primarily intended for occupancy by not more than four families if
43 they insure down to seventy-five percent (75%) with a licensed

1 mortgage insurance company, or seventy-five percent (75%) of such
2 value in the case of other real estate mortgages;

3 (2) The amount of any insurance or guaranty of such loan by the United
4 States or by an agency or instrumentality thereof; or

5 (3) The percentage-of-value limit on the amount of the loan applicable
6 under subdivision (1) of this subsection, plus the amount by which the
7 excess of such loan over such percentage-of-value limit is insured or
8 guaranteed by the United States or by any agency or instrumentality
9 thereof.

10 (d) In the case of a purchase money mortgage given to secure the purchase price
11 of real estate sold by the insurer, the amount so loaned or invested shall not exceed the
12 unpaid portion of the purchase price and shall be valued in accordance with G.S. 58-7-
13 195.

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

18 **"§ 58-7-180. Chattel mortgages.**

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

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

31 (c) Prior to the acquisition of a chattel mortgage hereunder, items of property to
32 be included therein shall be separately appraised by a qualified appraiser and the fair
33 market value thereof determined. No such chattel mortgage loan shall exceed in amount
34 the same ratio of loan to the value of the property as is applicable to the companion loan
35 on the real property.

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

38 **"§ 58-7-182. Special investments by title insurers.**

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

1 **"§ 58-7-183. Special consent investments.**

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

- 5 (1) Without limitation in any investments otherwise authorized by this
6 Chapter; or
7 (2) In such other investments not specifically authorized by this Chapter
8 as long as any single interest investment does not exceed two percent
9 (2%) of admitted assets and the aggregate of such investments do not
10 exceed the lesser of five percent (5%) of the insurer's total admitted
11 assets or ten percent (10%) of the amount by which the insurer's
12 policyholders' surplus exceeds the minimum required to be
13 maintained.

14 The limitations in subdivision (1) of this subsection may be exceeded if approved in
15 writing by the Commissioner.

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

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

21 **"§ 58-7-185. Prohibited investments and investment underwriting.**

22 (a) In addition to investments excluded pursuant to other provisions of this
23 Chapter, an insurer shall not directly or indirectly invest in or lend its funds upon the
24 security of:

- 25 (1) Issued shares of its own capital stock, except for the purpose of
26 mutualization under G.S. 58-10-1, or in connection with a plan
27 approved by the Commissioner for purchase of such shares by the
28 insurer's officers, employees, or agents. No such stock shall, however,
29 constitute an asset of the insurer in any determination of its financial
30 condition.
31 (2) Except with the consent of the Commissioner, securities issued by any
32 corporation or enterprise, the controlling interest of which is or will
33 after such acquisition by the insurer be held directly or indirectly by
34 the insurer or any combination of the insurer and the insurer's
35 directors, officers, parent corporation, subsidiaries, or controlling
36 stockholders. Investments in subsidiaries under G.S. 58-7-177 are not
37 subject to this provision.
38 (3) Any note or other evidence of indebtedness of any director, officer, or
39 controlling stockholder of the insurer, except as to policy loans
40 authorized under G.S. 58-7-175.

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

43 **"§ 58-7-187. Real estate, in general.**

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

3 (b) An insurer may acquire and hold:

4 (1) Land and buildings thereon used or acquired for use as its principal
5 home office and branch offices for the convenient transaction of its
6 own business.

7 (2) Real property acquired in satisfaction in whole or in part of loans,
8 mortgages, liens, judgments, decrees, or debts previously owing to the
9 insurer, in the course of its business.

10 (3) Real property acquired in part payment of the consideration on the sale
11 of other real property owned by it, if such transaction effects a net
12 reduction in the insurer's investment in real estate.

13 (4) Real property acquired by gift or devise or through merger,
14 consolidation, or bulk reinsurance of another insurer under this
15 Chapter.

16 (5) Additional real property and equipment incident to real property, if
17 necessary or convenient for the enhancement of the marketability or
18 sale value of real property previously acquired or held by it under
19 subdivisions (2) through (4) of this subsection, but subject to the prior
20 written approval of the Commissioner.

21 (c) An insurer may acquire and hold real property for the purposes of investment
22 subject to the following conditions:

23 (1) The amount shall not exceed in the aggregate the lesser of five percent
24 (5%) of the insurer's admitted assets or fifteen percent (15%) of the
25 insurer's capital and surplus.

26 (2) The amount in any one property shall not exceed one percent (1%) of
27 the insurer's admitted assets.

28 (3) The amount in unimproved land shall not exceed one-half of one
29 percent (0.5%) of the insurer's admitted assets.

30 (4) There shall be no time limit for the disposal of investment real estate.

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

35 **§ 58-7-188. Time limit for disposal of ineligible property and securities; effect of**
36 **failure to dispose.**

37 (a) Any property or securities lawfully acquired by an insurer that it could not
38 otherwise have invested in or loaned its funds upon at the time of such acquisition shall
39 be disposed of within three years from the date of acquisition, unless within such period
40 the security has attained to the standard of eligibility; except that any security or
41 property acquired under any agreement of bulk reinsurance, merger, or consolidation
42 may be retained for a longer period if so provided in the plan for such reinsurance,
43 merger, or consolidation as approved by the Commissioner under this Chapter. Upon
44 application by the insurer and proof that forced sale of any such property or security

1 would materially injure the interests of the insurer, the Commissioner may extend the
2 disposal period for an additional reasonable time.

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

6 **"§ 58-7-190. Valuation of bonds and other evidences of indebtedness.**

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

16 (b) The Commissioner has full discretion in determining the method of
17 calculating values according to this section.

18 **"§ 58-7-192. Valuation of other securities and investments.**

19 (a) All securities, investments, and evidences of debt other than those in G.S. 58-
20 7-190 that are held by an insurer shall be valued at their market values, at their
21 appraised values, or at prices determined by the insurer as representing their fair market
22 values, subject to the approval of the Commissioner.

23 (b) Preferred or guaranteed stocks or shares while paying full dividends may be
24 carried at a fixed value in lieu of market value, in the discretion of the Commissioner
25 and in accordance with such method of valuation as the Commissioner approves.

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

30 (d) No valuations under this section shall be greater than any applicable valuation
31 or method contained in the latest edition of the NAIC publication entitled 'Valuations of
32 Securities'; unless the Commissioner determines that another valuation method is
33 appropriate when it results in a more conservative valuation.

34 **"§ 58-7-193. Valuation of property.**

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

41 (b) Other real property held by an insurer shall not be valued at an amount in
42 excess of fair value as determined by recent appraisal and as approved by the
43 Commissioner. If valuation is based on an appraisal more than three years old, the

1 Commissioner may, in his discretion, call for and require a new appraisal in order to
2 determine fair value.

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

7 (d) In the event that the Commissioner and an insurer do not agree on the value
8 of real or personal property of such insurer, in carrying out his responsibilities under
9 this section, the Commissioner may retain the services of a qualified real or personal
10 property appraiser. The insurer shall reimburse the Commissioner for the costs of the
11 services of any such appraiser incurred with respect to his responsibilities under this
12 section.

13 **"§ 58-7-195. Valuation of purchase money mortgages.**

14 Purchase money mortgages on real property referred to in G.S. 58-7-193(a) shall
15 be valued in an amount not exceeding the acquisition costs to the insurer of real
16 property covered thereby or seventy-five percent (75%) of the fair value of such real
17 property, whichever is less.

18 **"§ 58-7-197. Replacing certain assets; reporting certain liabilities.**

19 (a) The Commissioner, upon determining that an insurer's asset has not been
20 valued according to this Chapter or that it does not qualify as an asset, shall require the
21 insurer to properly revalue the asset or replace the asset with an asset suitable to the
22 Commissioner within 90 days after his determination, if the removal of such asset from
23 the insurer's admitted assets would place the insurer in financial impairment.

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

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

34 (d) When any admitted asset defaults as to principal or in the payment of interest
35 or dividends after it has been purchased by an insurer, such asset shall subsequently be
36 carried at its market value or at a valuation fixed by the Commissioner.

37 (e) Whenever it appears to the Commissioner that an insurer has acquired any
38 asset in violation of this Chapter, the Commissioner shall disallow, in whole or in part,
39 the amount of such asset that is prohibited by this Chapter. In any determination of the
40 financial position of any such insurer such amount shall be deducted as a nonadmitted
41 asset of the insurer.

42 **"§ 58-7-198. Assets of foreign or alien insurers.**

43 The Commissioner may refuse a new or renewal license to any foreign or alien
44 insurer if he finds that its assets do not comply in substance with the investment

1 requirements and limitations imposed by this Chapter upon like domestic insurers
2 wherever authorized to do the same kind or kinds of insurance business.

3 **"§ 58-7-200. Investment transactions.**

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

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

17 (c) No insurer shall make any direct or indirect loan to any director, officer, or
18 controlling stockholder of such insurer; nor shall such insurer make any loan to any
19 other person in which such officer, director, or stockholder is substantially interested;
20 nor shall any such director, officer, or stockholder directly or indirectly accept any such
21 loan.

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

33 (e) Nothing in this section prohibits a director or officer of any insurer from
34 receiving the usual salary, compensation, or emoluments for services rendered in the
35 ordinary course of his duties as a director or officer, if such salary, compensation, or
36 emolument is authorized by vote of the board of directors of such insurer; or prevents
37 any insurer in connection with the relocation of the place of employment of an officer,
38 including any relocation in connection with the initial employment of such officer, from
39 (i) making (or such officer from accepting therefrom) a mortgage loan to such officer on
40 real property owned by such officer that is to serve as such officer's residence or (ii)
41 acquiring (or such officer from selling thereto), at not more than the fair market value
42 thereof, the residence of such officer, or prohibits the payment to a director or officer of
43 any such insurer who is a licensed attorney-at-law of a fee or fees in connection with
44 loans made by any such insurer if and when such fees are paid by the borrower and do

1 not constitute a charge against any such insurer; or prevents an insurer from making a
2 loan upon a policy held therein by the borrower not in excess of the net value thereof."

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

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

5 **"§ 58-13-5. Purposes.**

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

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

13 **"§ 58-13-10. Scope.**

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

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

20 "(a) ~~Every insurer subject to this Article shall at all times have and maintain free~~
21 ~~and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall~~
22 ~~pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the~~
23 ~~amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise~~
24 ~~encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon~~
25 ~~application made to him, may issue a written order approving the pledging,~~
26 ~~hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a~~
27 ~~finding that the pledging, hypothecation, or encumbrance will not adversely affect the~~
28 ~~solvency of the insurer.~~ Every insurer subject to this Article shall at all times have and
29 maintain free and unencumbered reserve assets equal to an amount that is at least ten
30 percent (10%) more than the total of its reserve liabilities and its required minimum
31 capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber
32 such reserve assets. The Commissioner, upon application made to him, may issue a
33 written order approving the pledging, hypothecation, or encumbrance of any of the
34 assets of an insurer not otherwise prohibited upon a finding that the pledging,
35 hypothecation, or encumbrance will not adversely affect the solvency of the insurer.

36 (b) ~~Any insurer that pledges, hypothecates, or otherwise encumbers any of its~~
37 ~~assets shall within 10 days thereafter report in writing to the Commissioner the amount~~
38 ~~and identity of the assets so pledged, hypothecated, or encumbered and the terms and~~
39 ~~conditions of the transaction. In addition, the~~ Every insurer shall file, along with its
40 statement under G.S. 58-2-165, a statement sworn to by the chief executive officer of
41 the insurer that: (i) Title to assets in an amount equal to the reserve liability and
42 minimum required capital and minimum required surplus of the insurer that are not
43 pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only
44 assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as

1 identified and reported in the sworn statement and no other assets of the insurer are
2 pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of
3 the transaction of the pledge, hypothecation, or encumbrance are as reported in such
4 sworn statement."

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

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

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

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

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

37 "(a) Every insurer that is licensed to do business in this State and that is a member
38 of an insurance holding company system shall register with the Commissioner, except a
39 foreign insurer subject to registration requirements and standards adopted by statute or
40 regulation in the jurisdiction of its domicile that are substantially similar to those
41 contained in this section and G.S. 58-19-30(a). Such insurer shall also file a copy of its
42 registration statement and any amendments thereto in each state in which that insurer is
43 authorized to do business if requested by the insurance regulator of that state. Any
44 insurer that is subject to registration under this section shall register within 30 days after

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

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

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

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

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

22 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
23 or investments, provided such transactions equal or exceed: (i) with
24 respect to nonlife insurers, the lesser of three percent (3%) of the
25 insurer's admitted assets or twenty-five percent (25%) of surplus as
26 regards policyholders; (ii) with respect to life insurers, three percent
27 (3%) of the insurer's admitted assets; each as of the 31st day of
28 December next preceding.

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

41 (3) Reinsurance agreements or modifications thereto in which the
42 reinsurance premium or a change in the the insurer's liabilities equals
43 or exceeds five percent (5%) of the insurer's surplus as regards
44 policyholders, as of the 31st day of December next preceding,

1 including those agreements that may require as consideration the
 2 transfer of assets from an insurer to a nonaffiliate, if an agreement or
 3 understanding exists between the insurer and nonaffiliate that any
 4 portion of such assets will be transferred to one or more affiliates of
 5 the insurer.

6 (4) All management agreements ~~that would place control of the insurer~~
 7 ~~outside of the insurance holding company system~~, service contracts or
 8 cost-sharing arrangements wherein the annual aggregate cost to the
 9 insurer would equal or exceed the amounts specified in subdivision (1)
 10 of this subsection.

11 (5) ~~All service contracts or cost-sharing arrangements wherein the annual~~
 12 ~~aggregate cost to the insurer would equal or exceed the amounts~~
 13 ~~specified in subdivision (1) of this subsection.~~

14 (6)- (5) Any material transactions, specified by rule, that the Commissioner
 15 determines may adversely affect the interests of the insurer's
 16 policyholders.

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

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

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

38 For the purposes of this section, an 'extraordinary dividend' or 'extraordinary
 39 distribution' includes any dividend or distribution of cash or other property, whose fair
 40 market value together with that of other dividends or distributions made within the
 41 preceding 12 months exceeds the ~~greater-lesser~~ of (i) ten percent (10%) of such
 42 insurer's surplus as regards policyholders as of the 31st day of December next
 43 preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life
 44 insurer; ~~or the greater of (i) the net income or (ii) the net investment income, if such~~

1 insurer is not a life insurer, not including realized capital gains, for the 12-month period
2 ending the 31st day of December next preceding; but does not include pro rata
3 distributions of any class of the insurer's own securities. In determining whether a
4 dividend or distribution is extraordinary, an insurer other than a life insurer may carry
5 forward net income from the previous two calendar years that has not already been paid
6 out as dividends. This carry-forward shall be computed by taking the net income from
7 the second and third preceding calendar years, not including realized capital gains, less
8 dividends paid in the second and immediate preceding calendar years.

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

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

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

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

27 "**§ 58-19-17. Foreign or alien insurer's report of change of control.**

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

32 (b) In the event of a change in the controlling capital stock or a change of twenty-
33 five percent (25%) or more of the assets of a foreign or alien insurer, the insurer shall
34 report the change in writing to the Commissioner within 30 days after the effective date
35 of the change. The report shall be in a form prescribed by the Commissioner and shall
36 contain the name and address of the new owner or owners of the controlling stock or
37 assets, the nature and value of the new assets, and such other relevant information that
38 the Commissioner requires."

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

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

- 41 a. Has capital and surplus or its equivalent under the laws of its
42 domiciliary jurisdiction, which equals this State's minimum
43 capital and surplus requirements under G.S. 58-7-75-or

1 b. Fifteen million dollars (\$15,000,000), whichever is greater,
2 except that nonadmitted insurers already qualified under this
3 Article must have ten million dollars (\$10,000,000) by
4 December 31, 1991, twelve million five hundred thousand
5 dollars (\$12,500,000) by December 31, 1992, and fifteen
6 million dollars (\$15,000,000) by December 31, 1993. The
7 requirements of this sub-subdivision may be satisfied by an
8 insurer possessing less than the commitment capital and surplus
9 upon an affirmative finding of acceptability by the
10 Commissioner. The finding shall be based upon such factors as
11 quality of management, capital and surplus of any parent
12 company, company underwriting profit and investment income
13 trends, and the insurer's record and reputation within the
14 industry. In no event shall the Commissioner make an
15 affirmative finding of acceptability when the insurer's capital
16 and surplus is less than four million five hundred thousand
17 dollars (\$4,500,000).

18 In addition, an alien insurer qualifies under this subdivision
19 if it maintains in the United States an irrevocable trust fund in
20 either a national bank or a member of the Federal Reserve
21 System, in an amount not less than ~~one million five hundred~~
22 ~~thousand dollars (\$1,500,000)~~ two million five hundred thousand
23 dollars (\$2,500,000) for the protection of all of its policyholders
24 in the United States and such trust fund consists of cash,
25 securities, letters of credit, or of investment of substantially the
26 same character and quality as those which are eligible
27 investments for the capital and statutory reserves of admitted
28 insurers authorized to write like kinds of insurance in this State.
29 Such trust fund, which shall be included in any calculation of
30 capital and surplus or its equivalent, shall have an expiration
31 date which at no time shall be less than five years; or

32 b.c. In the case of any Lloyd's plans or other similar unincorporated group
33 of ~~alien~~ individual insurers, maintains a trust fund of not less than fifty
34 million dollars (\$50,000,000) as security to the full amount thereof for
35 all policyholders and creditors in the United States of each member of
36 the group, and such trust shall likewise comply with the terms and
37 conditions established in subdivision (2)a. of this section for alien
38 insurers; and

39 e.d. In the case of an 'insurance exchange' created by the laws of individual
40 states, maintain capital and surplus, or the substantial equivalent
41 thereof, of not less than ~~fifteen million dollars (\$15,000,000)~~ fifty million
42 dollars (\$50,000,000) in the aggregate. For insurance exchanges which
43 maintain funds for the protection of all insurance exchange
44 policyholders, each individual syndicate shall maintain minimum

1 capital and surplus, or the substantial equivalent thereof, of not less
2 than ~~one million five hundred thousand dollars (\$1,500,000)~~ three million
3 dollars (\$3,000,000). In the event the insurance exchange does not
4 maintain funds for the protection of all insurance exchange
5 policyholders, each individual syndicate shall meet the minimum
6 capital and surplus requirements of subdivision (2)a. of this section."

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

9 **"§ 58-30-12. Duty to report insurer impairment; violations; penalties.**

10 (a) As used in this section:

11 (1) 'Chief executive officer' means the person, irrespective of title,
12 designated by the board of directors or trustees of an insurer as the
13 person charged with the responsibility of administering and
14 implementing an insurer's policies and procedures.

15 (2) 'Impaired' means a financial condition in which the assets of an insurer
16 are less than the sum of the insurer's minimum required capital,
17 minimum required surplus, and all liabilities as determined in
18 accordance with the requirements for the preparation and filing of a
19 financial statement under G.S. 58-2-165 and pursuant to other
20 provisions of this Chapter.

21 (b) Whenever an insurer is impaired, its chief executive officer shall immediately
22 notify the Commissioner in writing of such impairment and shall also immediately
23 notify in writing all of the members of the board of directors or trustees of the insurer.
24 An officer, director, or trustee of an insurer shall notify the chief executive officer of the
25 impairment of such insurer in the event such officer, director, or trustee knows or has
26 reason to know that the insurer is impaired. Any person who knowingly violates this
27 subsection shall, upon conviction, be guilty of a misdemeanor and fined not more than
28 fifty thousand dollars (\$50,000) or imprisoned for not more than two years, or both.

29 (c) Any person who:

30 (1) Conceals any property belonging to an insurer; or

31 (2) Transfers or conceals in contemplation of a delinquency proceeding
32 his own property or property belonging to an insurer; or

33 (3) Conceals, destroys, mutilates, alters, or makes a false entry in any
34 document that affects or relates to the property of an insurer or
35 withholds any such document from a receiver, trustee, or other officer
36 of a court entitled to its possession; or

37 (4) Gives, obtains, or receives a thing of value for acting or forbearing to
38 act in any court proceedings;

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

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

42 "(c) In addition to other grounds for jurisdiction provided by the laws of this State,
43 the Court has jurisdiction over a person served pursuant to Chapter 1A of the General

1 Statutes or other applicable provisions of law in an action brought by the receiver of a
2 domestic insurer or an alien insurer domiciled in this State:

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

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

25 **"§ 58-30-22. Powers of Commissioner and receiver to examine or audit books or**
26 **records.**

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

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

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

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

39 "(b) Any or all of the following standards may be considered by the
40 Commissioner to determine whether the continued operation of any licensed insurer is
41 hazardous to its policyholders, creditors, or the general public:

- 42 (1) Adverse findings reported in financial condition and market conduct
43 examination reports;

- 1 (2) The NAIC Insurance Regulatory Information System and its related
2 reports;
- 3 (3) The ratios of commission expense, general insurance expense, policy
4 benefits, and reserve increases as to annual premium and net
5 investment income that could lead to an impairment of capital and
6 surplus;
- 7 (4) An insurer's asset portfolio when viewed in light of current economic
8 conditions is not of sufficient value, liquidity, or diversity to assure the
9 insurer's ability to meet its outstanding obligations as they mature;
- 10 (5) The ability of an assuming reinsurer to perform and whether the ceding
11 insurer's reinsurance program provides sufficient protection for the
12 insurer's remaining surplus after taking into account the insurer's cash
13 flow and the classes of business written as well as the financial
14 condition of the assuming reinsurer;
- 15 (6) An insurer's operating loss in the last 12-month period or any shorter
16 period of time, including net capital gain or loss, changes in
17 nonadmitted assets, and cash dividends paid to shareholders, is greater
18 than fifty percent (50%) of the insurer's remaining policyholders'
19 surplus in excess of the minimum required;
- 20 (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened
21 with insolvency, or delinquent in payment of its monetary or any other
22 obligation;
- 23 (8) Contingent liabilities, pledges, or guaranties that either individually or
24 collectively involve a total amount that in the opinion of the
25 Commissioner may affect the solvency of an insurer;
- 26 (9) Whether any controlling person of an insurer is delinquent in the
27 transmitting to or payment of net premiums to such insurer;
- 28 (10) The age and collectibility of receivables;
- 29 (11) Whether the management of an insurer, including officers, directors, or
30 any other person who directly or indirectly controls the operation of
31 the insurer, fails to possess or demonstrate the competence, fitness, or
32 reputation deemed by the Commissioner to be necessary to serve the
33 insurer in such position;
- 34 (12) Whether the management of an insurer has failed to respond to the
35 Commissioner's inquiries about the condition of the insurer or has
36 furnished false and misleading information in response to an inquiry
37 by the Commissioner;
- 38 (13) Whether the management of an insurer has filed any false or
39 misleading sworn financial statement, has released a false or
40 misleading financial statement to a lending institution or to the general
41 public, or has made a false or misleading entry or omitted an entry of
42 material amount in the books of the insurer;

- 1 (14) Whether the insurer has grown so rapidly and to such an extent that it
2 lacks adequate financial and administrative capacity to meet its
3 obligations in a timely manner; or
4 (15) Whether the insurer has experienced or will experience in the
5 foreseeable future cash flow or liquidity problems.

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

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

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

25 Such written list may include requirements that the insurer: reduce the total amount
26 of present and potential liability for policy benefits by reinsurance; reduce, suspend, or
27 limit the volume of insurance being accepted or renewed; reduce general insurance and
28 commission expenses by specified methods; increase its capital and surplus; suspend or
29 limit its declaration and payment of dividends to its stockholders or policyholders; file
30 reports in a form acceptable to the Commissioner concerning the market value of its
31 assets; limit or withdraw from certain investments or discontinue certain investment
32 practices to the extent the Commissioner deems to be necessary; document the adequacy
33 of premium rates in relation to the risks insured; or file, in addition to regular annual
34 financial statements, interim financial reports on the form adopted by the NAIC or on
35 such format prescribed by the Commissioner.

36 Notwithstanding any other provision of law limiting the frequency or amount of
37 premium rate adjustments, the Commissioner may include in his list of requirements
38 such rate adjustments for any kinds of insurance written by the insurer that the
39 Commissioner considers necessary to improve the financial condition of the insurer."

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

42 **"§ 58-30-62. Administrative supervision of insurers.**

43 (a) As used in this section, an insurer has 'exceeded its powers' when it: has
44 refused to permit examination of its books, papers, accounts, records or affairs by the

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

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

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

21 (d) If the Commissioner determines that the conditions set forth in subsection (c)
22 of this section exist, the Commissioner shall: notify the insurer of his determination;
23 furnish to the insurer a written list of the requirements to abate such conditions; and
24 notify the insurer that it is under the supervision of the Commissioner and that the
25 Commissioner is applying and effectuating the provisions of this section.

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

33 (f) Notwithstanding any other provision of law and except as set forth in this
34 section, all proceedings, hearings, notices, correspondence, reports, records, and other
35 information in the possession of the Commissioner or the Department relating to the
36 supervision of any insurer are confidential. The Department shall have access to such
37 proceedings, hearings, notices, correspondence, reports, records, or other information as
38 permitted by the Commissioner. The Commissioner may open the proceedings or
39 hearings or disclose the notices, correspondence, reports, records, or information to a
40 department, agency or instrumentality of this or another state of the United States if the
41 Commissioner determines that the disclosure is necessary or proper for the enforcement
42 of the laws of this or another state of the United States. The Commissioner may open
43 the proceedings or hearings or make public the notices, correspondence, reports,
44 records, or other information if the Commissioner deems that it is in the best interest of

1 the public or in the best interest of the insurer, its insureds or creditors, or the general
2 public. This section does not apply to hearings, notices, correspondence, reports,
3 records, or other information obtained upon the appointment of a receiver for the insurer
4 by a court of competent jurisdiction.

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

19 (h) During the period of supervision the insurer may contest an action taken or
20 proposed to be taken by the Commissioner specifying the manner wherein the action
21 being complained of would not result in improving the condition of the insurer.

22 (i) This section does not limit powers granted to the Commissioner by any other
23 provision of law. This section does not preclude the Commissioner from initiating
24 judicial proceedings to place an insurer in a delinquency proceeding under this Article,
25 regardless of whether the Commissioner has previously initiated administrative
26 supervision proceedings under this section or under G.S. 58-30-60 against the insurer.
27 The determination as to actions under this section is in the discretion of the
28 Commissioner.

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

35 (k) There is no liability on the part of, and no cause of action of any nature arises
36 against, the Commissioner for any acts or omissions by him in the performance of his
37 powers and duties under this section."

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

40 **"§ 58-30-127. Duties of agents.**

41 (a) Every person who receives notice in the form prescribed in G.S. 58-30-125
42 that an insurer he represents as an agent is the subject of a liquidation order shall, within
43 30 days after such notice, provide to the liquidator the information in the agent's records
44 related to any policy issued by the insurer through the agent; and if the agent is a

1 general agent, the information in the general agent's records related to any policy issued
2 by the insurer through a subagent under contract with the general agent, including the
3 name and address of the subagent.

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

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

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

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

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

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

18 "**§ 58-30-160. Setoffs and counterclaims.**

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

23 (b) No setoff or counterclaim shall be allowed in favor of any person where:

24 (1) The obligation of the insurer to the person would not at the date of the
25 filing of a petition for liquidation entitle the person to share as a
26 claimant in the assets of the insurer;

27 (2) The obligation of the insurer to the person was purchased by or
28 transferred to the person with a view to its being used as a setoff;

29 (3) The obligation of the person is to pay an assessment levied against the
30 members or subscribers of the insurer, or is to pay a balance upon a
31 subscription to the capital stock of the insurer, or is in any other way in
32 the nature of a capital contribution; or

33 (4) The obligation of the person is to pay earned premiums to the insurer;

34 (5) The obligation of the insurer is owed to an affiliate of such person, or
35 to any other entity or association other than the person;

36 (6) The obligation of the person is owed to an affiliate of the insurer, or to
37 any other entity or association other than the insurer; or

38 (7) The obligations between the person and the insurer arise from business
39 that is both ceded to and assumed from the insurer; except that the
40 rehabilitator may, with regard to such business, allow certain setoffs in
41 rehabilitation if he finds the allowance of said setoffs appropriate.

42 (c) A setoff shall be permitted to local agents against agents' balances otherwise
43 payable to the domiciliary or ancillary receiver for the amount expended by such agents
44 to replace insurance coverage of their insureds and the reasonable expenses incident

1 thereto as a result of any domestic, foreign or alien insurer being placed in delinquency
2 proceedings. Agents claiming such setoff shall within 60 days of replacing such
3 coverage provide a verified accounting of the replacement of such insurance to the
4 domiciliary receiver, the ancillary receiver, if any, and the North Carolina Insurance
5 Guaranty Association or similar organization in the state of residence of the
6 policyholder. The verified accounting shall include the name of the agent, the name of
7 the insured, the policy number, the replacement policy number, the cost of the
8 replacement policy, the amount of unearned premium under each policy as to which
9 setoff is claimed, any claimed expenses and a verification that the accounting has been
10 provided to each of the persons and entities described herein. Unearned premiums set
11 off as provided above in any amount shall be deemed paid in full by the insurer and no
12 person shall have a claim for such unearned premiums against the North Carolina
13 Insurance Guaranty Association or similar organization in the state of residence of the
14 policyholder.

15 (d) The liquidator shall provide persons that assumed business from the insurer
16 with accounting statements identifying debts that are currently due and payable. Such
17 persons may set off against such debts only mutual credits that are currently due and
18 payable by the insurer to such persons for the period covered by the accounting
19 statement.

20 (e) A person that ceded business to the insurer may set off debts due the insurer
21 against only those mutual credits that the person has paid or that have been allowed in
22 the insurer's delinquency proceeding.

23 (f) Notwithstanding any other provision of this section, a setoff of sums due on
24 obligations in the nature of those set forth in subdivision (b)(6) of this section shall be
25 allowed for those sums accruing from business written where the contracts were entered
26 into, renewed, or extended with the express written approval of the insurance regulator
27 of the state of domicile of the now insolvent insurer, when in the judgment of such
28 regulator it was necessary to provide reinsurance in order to prevent or mitigate a
29 threatened impairment or insolvency of such insurer in connection with the exercise of
30 such regulator's official responsibilities."

31 Sec. 48. Section 47 of this act becomes effective January 1, 1992, and applies
32 to all contracts entered into, renewed, extended, or amended on or after that date, and to
33 debts or credits arising from any business written or transactions occurring on or after
34 January 1, 1992, pursuant to any contract, including those in existence prior to January
35 1, 1992; and shall supersede any agreements or contractual provisions that might be
36 construed to enlarge the setoff rights of any person under any contract with the insurer.
37 For purposes of this section any change in the terms of, or consideration from, any such
38 contract shall be deemed to be an amendment.

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

41 ~~"Managing General Agents. Agency and Management Contracts."~~

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

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

1 **"§ 58-34-2. Managing general agents.**

2 (a) As used in this Article:

3 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under
4 common control', means the direct or indirect possession of the power
5 to direct or cause the direction of the management and policies of a
6 person, whether through the ownership of voting securities, by contract
7 other than a commercial contract for goods or nonmanagement
8 services, or otherwise, unless the power is the result of an official
9 position with or corporate office held by the person.

10 (2) 'Insurer' does not mean a reciprocal regulated under Article 15 of this
11 Chapter.

12 (3) 'Managing general agent' or 'MGA' means any person who negotiates
13 and binds ceding reinsurance contracts on behalf of an insurer or
14 manages all or part of the insurance business of an insurer (including
15 the management of a separate division, department or underwriting
16 office) and acts as an agent for such insurer, whether known as a
17 managing general agent, manager, or other similar term, who, with or
18 without the authority, either separately or together with persons under
19 common control, produces, directly or indirectly, and underwrites an
20 amount of gross direct written premium equal to or more than five
21 percent (5%) of the policyholder surplus as reported in the last annual
22 statement of the insurer in any one quarter or year. 'MGA' does not
23 mean an employee of the insurer; an underwriting manager who,
24 pursuant to contract, manages all the insurance operations of the
25 insurer, is under common control with the insurer, is subject to Article
26 19 of this Chapter, and whose compensation is not based on the
27 volume of premiums written; or a person who, pursuant to Article 15
28 of this Chapter, is designated and authorized by subscribers as the
29 attorney-in-fact for a reciprocal having authority to obligate them on
30 reciprocal and other insurance contracts.

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

36 (5) 'Underwrite' means the authority to accept or reject risk on behalf of
37 the insurer.

38 (b) Control is presumed to exist if any person directly or indirectly owns,
39 controls, holds with the power to vote, or holds proxies representing ten percent (10%)
40 or more of the voting securities of any other person. The Commissioner may determine,
41 after furnishing all persons in interest notice and opportunity to be heard and making
42 specific findings of fact to support such determination, that control exists in fact,
43 notwithstanding the absence of a presumption to that effect. The Commissioner may
44 determine upon application that any person does not or will not upon the taking of some

1 proposed action control another person. The Commissioner may prospectively revoke
2 or modify his determination, after the notice and opportunity to be heard; whenever, in
3 his judgment, revocation or modification is consistent with this Article.

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

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

16 (1) The insurer may terminate the contract for cause upon written notice to
17 the MGA. The insurer may suspend the underwriting authority of the
18 MGA during the pendency of any dispute regarding the cause for
19 termination.

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

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

28 (4) Separate records of business written by the MGA will be maintained.
29 The insurer shall have access and right to copy all accounts related to
30 its business in a form usable by the insurer and the Commissioner shall
31 have access to all books, bank accounts and records of the MGA in a
32 form usable to the Commissioner. Such records shall be retained
33 according to the provisions of 11 NCAC 11C.0105.

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

35 (6) Appropriate underwriting guidelines including: the maximum annual
36 premium volume; the basis of the rates to be charged; the types of risks
37 that may be written; maximum limits of liability; applicable
38 exclusions; territorial limitations; policy cancellation provisions; and
39 the maximum policy period. The insurer shall have the right to cancel
40 or nonrenew any policy of insurance subject to applicable laws and
41 rules.

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

44 a. All claims must be reported to the MGA in a timely manner.

- 1 b. A copy of the claim file will be sent to the insurer at its request
2 or as soon as it becomes known that the claim: has the potential
3 to exceed an amount determined by the insurer and approved by
4 the Commissioner; involves a coverage dispute; may exceed the
5 MGA's claims settlement authority; is open for more than six
6 months; or is closed by payment of an amount set by the insurer
7 and approved by the Commissioner.
- 8 c. All claim files will be the joint property of the insurer and
9 MGA. However, upon an order of liquidation of the insurer
10 such files shall become the sole property of the insurer or its
11 estate; the MGA shall have reasonable access to and the right to
12 copy the files on a timely basis.
- 13 d. Any settlement authority granted to the MGA may be
14 terminated for cause upon the insurer's written notice to the
15 MGA or upon the termination of the contract. The insurer may
16 suspend the settlement authority during the pendency of any
17 dispute regarding the cause for termination.
- 18 (8) Where electronic claims files are in existence, the contract must
19 address the timely transmission of the data.
- 20 (9) If the contract provides for a sharing of interim profits by the MGA,
21 and the MGA has the authority to determine the amount of the interim
22 profits by establishing loss reserves, controlling claim payments, or by
23 any other manner, interim profits will not be paid to the MGA until
24 one year after they are earned for property insurance business and five
25 years after they are earned on casualty business and not until the
26 profits have been verified pursuant to subsection (m) of this section.
- 27 (10) The MGA shall not:
- 28 a. Bind reinsurance or retrocessions on behalf of the insurer,
29 except that the MGA may bind facultative reinsurance contracts
30 pursuant to obligatory facultative agreements if the contract
31 with the insurer contains reinsurance underwriting guidelines
32 including, for both reinsurance assumed and ceded, a list of
33 reinsurers with which such automatic agreements are in effect,
34 the coverages and amounts or percentages that may be
35 reinsured, and commission schedules;
- 36 b. Commit the insurer to participate in insurance or reinsurance
37 syndicates;
- 38 c. Appoint any producer without assuring that the producer is
39 lawfully licensed to transact the type of insurance for which he
40 is appointed;
- 41 d. Without prior approval of the insurer, pay or commit the insurer
42 to pay a claim over a specified amount, net of reinsurance,
43 which shall not exceed one percent (1%) of the insurer's

1 policyholder's surplus as of December 31 of the last completed
2 calendar year;

3 e. Collect any payment from a reinsurer or commit the insurer to
4 any claim settlement with a reinsurer, without prior approval of
5 the insurer. If prior approval is given, a report must be
6 promptly forwarded to the insurer;

7 f. Permit its subproducer to serve on the insurer's board of
8 directors;

9 g. Jointly employ an individual who is employed with the insurer;
10 or

11 h. Appoint a sub-MGA.

12 (e) An insurer shall have on file by June 1 of each year an audited financial
13 report of each MGA with which it is doing business. The report shall include the
14 opinion of an independent certified public accountant, report the financial position of
15 the MGA as of the end of the most recent year-end and the results of its operations and
16 cash flows, and include appropriate notes to financial statements. A copy of such report
17 shall be provided to the Commissioner by the insurer within 15 days of receipt by the
18 insurer.

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

24 (g) The insurer shall periodically (at least semiannually) conduct an on-site
25 review of the underwriting and claims processing operations of the MGA. A written
26 report on such review must be prepared and maintained by the insurer, and be made
27 available to the Commissioner upon his request.

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

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

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

41 (1) Does not contain the required contract provisions specified in
42 subsection (d) of this section;

43 (2) Subjects the insurer to excessive charges for expenses or commission;

- 1 (3) Vests in the MGA any control over the management of the affairs of
2 the insurer to the exclusion of the board of directors of the insurer;
3 (4) Is entered into with any person if such person or its officers and
4 directors are of known bad character or have been affiliated directly or
5 indirectly through ownership, control, management, reinsurance
6 transactions, or other insurance or business relationships with any
7 person or persons known to have been involved in the improper
8 manipulation of assets, accounts, or reinsurance; or
9 (5) Is determined by the Commissioner to contain provisions that are not
10 fair and reasonable to the insurer.

11 Failure of the Commissioner to disapprove any such contract within 30 days after the
12 contract has been filed with him constitutes his approval of the contract. An insurer
13 may continue to accept business from such person until such contract is disapproved by
14 the Commissioner. Any disapproval shall be in writing. The Commissioner may, after
15 a hearing held pursuant to G.S. 58-2-50, withdraw his approval of any contract
16 previously approved by him if he finds that the basis of his original approval no longer
17 exists or that the contract has, in actual operation, shown itself to be subject to
18 disapproval on any of the grounds in this subsection.

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

23 (l) An insurer shall not appoint to its board of directors an officer, director,
24 employee, subagent, or controlling shareholder of its MGAs. This subsection does not
25 apply to relationships governed by Article 19 of this Chapter or, if applicable, G.S. 58-
26 7-155.

27 (m) The acts of an MGA are considered to be the acts of the insurer on whose
28 behalf it is acting. An MGA may be examined by the Commissioner pursuant to G.S.
29 58-2-131, 58-2-132, or 58-2-133 as if it were an insurer.

30 (n) If the Commissioner finds after a hearing conducted in accordance with G.S.
31 58-2-50 that any person has violated any provision of this Article, the Commissioner
32 may order:

- 33 (1) For each separate violation, a penalty in an amount of one thousand
34 dollars (\$1,000);
35 (2) Revocation or suspension of the agent's license; or
36 (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of
37 the insurer for any losses incurred by the insurer caused by a violation
38 of this Article committed by the MGA.

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

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

43 "(c) The standards for approval shall be as set forth under ~~G.S. 58-34-1~~ G.S. 58-34-
44 2(d)(5)."

1 obligations, under life and health insurance policies and annuity contracts specified in
2 G.S. 58-62-21(b), because of the delinquency of the member insurer that issued the
3 policies.

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

7 **"§ 58-62-11. Construction.**

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

10 **"§ 58-62-16. Definitions.**

11 As used in this Article:

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

- 1 (11) 'Moody's Corporate Bond Yield Average' means the Monthly Average
2 Corporates as published by Moody's Investors Service, Inc., or any
3 successor thereto.
- 4 (12) 'Plan' means the plan of operation established under G.S. 58-62-46.
- 5 (13) 'Policy' includes a contract of insurance and an annuity contract.
- 6 (14) 'Premiums' means amounts received on covered policies less
7 premiums, considerations, and deposits returned thereon, and less
8 dividends and experience credits thereon. 'Premiums' does not include
9 any amounts received for any policies or for the portions of any
10 policies for which coverage is not provided under G.S. 58-62-21(b);
11 except that assessible premium shall not be reduced on account of G.S.
12 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-21(d)(2)
13 relating to limitations with respect to any one individual, any one
14 participant, and any one contract holder; provided that 'premiums' does
15 not include any premiums in excess of five million dollars
16 (\$5,000,000) on any unallocated annuity contract not issued under a
17 governmental retirement plan established under section 401, 403(b), or
18 457 of the United States Internal Revenue Code.
- 19 (15) 'Resident' means any person who resides in this State at the time a
20 member insurer is determined to be a delinquent insurer and to whom
21 a contractual obligation is owed. A person may be a resident of only
22 one state, which in the case of a person other than a natural person
23 shall be its principal place of business.
- 24 (16) 'Supplemental contract' means any agreement entered into for the
25 distribution of policy proceeds.
- 26 (17) 'Unallocated annuity contract' means any annuity contract or group
27 annuity certificate that is not issued to and owned by an individual,
28 except to the extent of any annuity benefits guaranteed to an individual
29 by an insurer under such contract or certificate.

30 **"§ 58-62-21. Coverage and limitations.**

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

- 33 (1) To persons who, regardless of where they reside (except for
34 nonresident certificate holders under group policies), are the
35 beneficiaries, assignees or payees of the persons covered under
36 subdivision (2) of this subsection, and
- 37 (2) To persons who are owners or certificate holders under such policies,
38 or in the case of unallocated annuity contracts to the persons who are
39 the contract holders, and who are residents of this State or who are
40 aliens, or who are not residents of this State, but only under all of the
41 following conditions: (i) the insurers that issued such policies are
42 domiciled in this State; (ii) such insurers never held a license in the
43 states in which such persons reside; (iii) such states have associations

1 similar to the association created by this Article; and (iv) such persons
2 are not eligible for coverage by such associations.

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

11 (c) This Article does not provide coverage for:

12 (1) Any portion of a policy not guaranteed by the insurer, or under which
13 the risk is borne by the policyholder;

14 (2) Any policy or contract of reinsurance, unless assumption certificates
15 have been issued;

16 (3) Any portion of a policy to the extent that the rate of interest on which
17 it is based:

18 a. Averaged over the period of four years before the date on which
19 the Association becomes obligated with respect to such policy,
20 exceeds a rate of interest determined by subtracting two
21 percentage points from Moody's Corporate Bond Yield Average
22 averaged for that same four-year period or for such lesser
23 period if the policy was issued less than four years before the
24 Association became obligated; and

25 b. On and after the date on which the Association becomes
26 obligated with respect to such policy, exceeds the rate of
27 interest determined by subtracting three percentage points from
28 Moody's Corporate Bond Yield Average as most recently
29 available;

30 (4) Any plan or program of an employer, association, or similar entity to
31 provide life, health, or annuity benefits to its employees or members to
32 the extent that such plan or program is self-funded or uninsured,
33 including benefits payable by an employer, association, or similar
34 entity under;

35 a. A multiple employer welfare arrangement as defined in section
36 514 of the Employee Retirement Income Security Act of 1974,
37 as amended.

38 b. A minimum premium group insurance plan;

39 c. A stop-loss group insurance plan; or

40 d. An administrative services only contract;

41 (5) Any portion of a policy to the extent that it provides dividends or
42 experience-rating credits, or provides that any fees or allowances be
43 paid to any person, including the policyholder, in connection with the
44 service to or administration of such policy;

- 1 (6) Any policy issued in this State by a member insurer at a time when it
2 was not licensed to issue such policy in this State;
3 (7) Any unallocated annuity contract issued to an employee benefit plan
4 protected under the federal Pension Benefit Guaranty Corporation; and
5 (8) Any portion of any unallocated annuity contract that is not issued to or
6 in connection with a specific employee, union, or association of
7 natural persons benefit plan or a government lottery.
8 (d) The benefits for which the Association is liable in no event exceed the lesser
9 of:
10 (1) The contractual obligations for which the insurer is liable or would
11 have been liable if it were not a delinquent insurer; or
12 (2) With respect to any one individual, regardless of the number of
13 policies, three hundred thousand dollars (\$300,000) for all benefits; but
14 not more than one hundred thousand dollars (\$100,000) in net cash
15 surrender and net cash withdrawal values for life insurance; and not
16 more than one hundred thousand dollars (\$100,000) in the present
17 value of annuity benefits, including net cash surrender and net cash
18 withdrawal values;
19 (3) With respect to each individual participating in a governmental
20 retirement plan established under section 401, 403(b), or 457 of the
21 Internal Revenue Code covered by an unallocated annuity contract, or
22 the beneficiaries of each such individual if deceased, in the aggregate,
23 one hundred thousand dollars (\$100,000) in present value annuity
24 benefits, including net cash surrender and net cash withdrawal values;
25 (4) With respect to any one contract holder covered by any unallocated
26 annuity contract not included in subdivision (3) of this subsection, five
27 million dollars (\$5,000,000) in benefits, irrespective of the number of
28 such contracts held by that contract holder.

29 **§ 58-62-26. Creation of the Association.**

30 (a) There is created a nonprofit legal entity to be known as the North Carolina
31 Life and Health Insurance Guaranty Association. All member insurers shall be and
32 remain members of the Association as a condition of their authority to transact
33 insurance in this State. The Association shall perform its functions under the Plan
34 established and approved under G.S. 58-62-46 and shall exercise its powers through the
35 Board established under G.S. 58-62-31. For purposes of administration and assessment
36 the Association shall maintain two accounts:

- 37 (1) The life insurance and annuity account, which includes the following
38 subaccounts:
39 a. Life insurance account;
40 b. Annuity account; and
41 c. Unallocated annuity account, which includes contracts qualified
42 under section 403(b) of the Internal Revenue Code.
43 (2) The health insurance account.

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

4 **"§ 58-62-31. Board of directors.**

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

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

19 (c) Members of the Board may be reimbursed from the assets of the Association
20 for expenses incurred by them as members of the Board; but shall not otherwise be
21 compensated by the Association for their services.

22 **"§ 58-62-36. Powers and duties of the association.**

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

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

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

34 (3) Loan money to the impaired insurer.

35 (b) If a member insurer is an impaired insurer, whether domestic, foreign, or
36 alien, and the insurer is not paying claims in a timely manner, then subject to the
37 preconditions specified in subsection (c) of this section, the Association shall, in its
38 discretion, either:

39 (1) Take any of the actions specified in subsection (a) of this section,
40 subject to the conditions therein; or

41 (2) Provide substitute benefits in lieu of the contractual obligations of the
42 impaired insurer solely for health claims, periodic annuity benefit
43 payments, death benefits, supplemental benefits, and cash withdrawals
44 for policyowners who petition therefor under claims of emergency or

1 hardship in accordance with standards proposed by the Association
2 and approved by the Commissioner.

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

5 (1) The laws of the impaired insurer's state of domicile provide that until
6 all payments of or on account of the impaired insurer's contractual
7 obligations by all guaranty associations, along with all expenses
8 thereof and interest on all such payments and expenses, have been
9 repaid to the guaranty associations or a plan of repayment by the
10 impaired insurer has been approved by the guaranty associations, the
11 delinquency proceeding may not be dismissed; neither the impaired
12 insurer nor its assets may be returned to the control of its shareholders
13 or private management; and the impaired insurer may not solicit or
14 accept new business or have any suspended or revoked license
15 restored; and

16 (2) The impaired insurer is a domestic insurer that has been placed under
17 an order of rehabilitation by a court of competent jurisdiction in this
18 State; or the impaired insurer is a foreign or alien insurer that has been
19 prohibited from soliciting or accepting new business in this State, its
20 license has been suspended or revoked in this State, and a petition for
21 rehabilitation or liquidation has been filed in a court of competent
22 jurisdiction in its state of domicile by the insurance regulator of that
23 state.

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

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

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

36 (1) Assure payment of benefits for premiums identical to the premiums
37 and benefits (except for terms of conversion and renewability) that
38 would have been payable under the policies of the insolvent insurer,
39 for claims incurred:

- 40 a. With respect to group policies, not later than the earlier of the
41 next renewal date under such policies or 45 days, but in no
42 event less than 30 days, after the date on which the Association
43 becomes obligated with respect to such policies;

1 b. With respect to individual policies, not later than the earlier of
2 the next renewal date (if any) under such policies or one year,
3 but in no event less than 30 days, from the date on which the
4 Association becomes obligated with respect to such policies;

5 (2) Make diligent efforts to provide all known insureds or group
6 policyholders with respect to group policies 30 days' notice of the
7 termination of the benefits provided; and

8 (3) With respect to individual policies, make available to each known
9 insured, or owner if other than the insured, and with respect to an
10 individual formerly insured under a group policy who is not eligible
11 for replacement group coverage, make available substitute coverage on
12 an individual basis in accordance with the provisions of subsection (f)
13 of this section, if the insured had a right under law or the terminated
14 policy to convert coverage to individual coverage or to continue an
15 individual policy in force until a specified age or for a specified time,
16 during which the insurer had no right unilaterally to make changes in
17 any provision of the policy or had a right only to make changes in
18 premium by class.

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

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

37 (h) If the Association elects to reissue terminated coverage at a premium rate
38 different from that charged under the terminated life or health insurance policy, the
39 premium shall be set by the Association in accordance with the amount of insurance
40 provided and the age and class of risk, subject to approval of the Commissioner or by a
41 court of competent jurisdiction.

42 (i) The Association's obligations with respect to coverage under any life or
43 health insurance policy of the delinquent insurer or under any reissued or alternative

1 policy ceases on the date such coverage or policy is replaced by another similar policy
2 by the policyholder, the insured, or the Association.

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

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

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

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

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

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

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

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

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

40 (q) The Association has standing to appear before any court in this State with
41 jurisdiction over a delinquent insurer for which the Association is or may become
42 obligated under this Article. Such standing extends to all matters germane to the
43 powers and duties of the Association, including, but not limited to, proposals for
44 reinsuring, modifying, or guaranteeing the policies of the delinquent insurer and the

1 determination of the policies and contractual obligations. The Association also has the
2 right to appear or intervene before a court in another state with jurisdiction over a
3 delinquent insurer for which the Association is or may become obligated or with
4 jurisdiction over a third party against whom the Association may have rights through
5 subrogation of the insurer's policyholders.

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

20 (s) The Association may:

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

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

43 **"§ 58-62-41. Assessments.**

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

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

8 (1) Class A assessments shall be made for the purpose of meeting
9 administrative and legal costs and other expenses and examinations
10 conducted under the authority of G.S. 58-62-56(e). Class A
11 assessments may be made whether or not related to a particular
12 delinquent insurer.

13 (2) Class B assessments shall be made to the extent necessary to carry out
14 the powers and duties of the Association under G.S. 58-62-36 with
15 regard to a delinquent insurer.

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

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

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

36 (f) The Association may abate or defer, in whole or in part, the assessment of a
37 member insurer if, in the opinion of the Board, payment of the assessment would
38 endanger the ability of the member insurer to fulfill its contractual obligations. In the
39 event an assessment against a member insurer is abated, or deferred in whole or in part,
40 the amount by which such assessment is abated or deferred may be assessed against the
41 other member insurers in a manner consistent with the basis for assessments set forth in
42 this section.

43 (g) The total of all assessments upon a member insurer for the life and annuity
44 account and for each subaccount thereunder shall not in any one calendar year exceed

1 two percent (2%) and for the health account shall not in any one calendar year exceed
2 two percent (2%) of such insurer's average premiums received in this State on the
3 policies and contracts covered by the account during the three calendar years preceding
4 the year in which an insurer became a delinquent insurer. If the maximum assessment,
5 together with the other assets of the Association in any account, does not provide in any
6 one year in either account an amount sufficient to carry out the responsibilities of the
7 Association, the necessary additional funds shall be assessed as soon thereafter as
8 permitted by this Article.

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

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

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

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

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

36 **"§ 58-62-46. Plan of operation.**

37 (a) The Association shall submit to the Commissioner a Plan and any
38 amendments necessary or suitable to assure the fair, reasonable, and equitable
39 administration of the Association. The Plan and any amendments shall become
40 effective upon the Commissioner's written approval or unless he has not disapproved it
41 within 30 days.

42 (b) If the Association fails to submit a suitable Plan within 120 days after the
43 effective date of this Article or if at any time thereafter the Association fails to submit
44 suitable amendments to the Plan, the Commissioner shall, after notice and hearing,

1 adopt such rules as are necessary or advisable to effectuate the provisions of this
2 Article. Such rules shall continue in force until modified by the Commissioner or
3 superseded by a Plan submitted by the Association and approved by the Commissioner.

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

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

7 (1) Procedures for handling the assets of the Association;

8 (2) The amount and method of reimbursing members of the Board under
9 G.S. 58-62-31;

10 (3) Regular places and times for meetings, including telephone conference
11 calls, of the Board;

12 (4) Procedures for records to be kept of all financial transactions of the
13 Association, its agents, and the Board;

14 (5) The procedures whereby selections for the Board will be made and
15 submitted to the commissioner;

16 (6) Any additional procedures for assessments under G.S. 58-62-41;

17 (7) Additional provisions necessary or proper for the execution of the
18 powers and duties of the Association.

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

29 **"§ 58-62-51. Duties and powers of the Commissioner.**

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

32 (1) Upon request of the Board, provide the Association with a statement of
33 the premiums in this State and any other appropriate states for each
34 member insurer; and

35 (2) When an impairment is declared and the amount of the impairment is
36 determined, serve a demand upon the impaired insurer to make good
37 the impairment within a reasonable time; notice to the impaired insurer
38 shall constitute notice to its shareholders, if any; the failure of the
39 insurer to promptly comply with such demand does not excuse the
40 Association from the performance of its powers and duties under this
41 Article.

42 (b) The Commissioner may suspend or revoke, after notice and hearing, the
43 license to transact insurance in this State of any member insurer that fails to pay an
44 assessment when due or fails to comply with the Plan. As an alternative the

1 Commissioner may levy a forfeiture on any member insurer that fails to pay an
2 assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid
3 assessment per month, but no forfeiture shall be less than one hundred dollars (\$100.00)
4 per month.

5 (c) Any action of the Board or the Association may be appealed to the
6 Commissioner by any member insurer if such appeal is taken within 60 days of the final
7 action being appealed. If a member company is appealing an assessment, the amount
8 assessed shall be paid to the Association and available to meet Association obligations
9 during the pendency of an appeal. If the appeal on the assessment is upheld, the amount
10 paid in error or excess shall be returned to the member company. No later than 20 days
11 before each hearing, the appellant shall file with the Commissioner or his designated
12 hearing officer and shall serve on the appellee a written statement of his case and any
13 evidence he intends to offer at the hearing. No later than five days before such hearing,
14 the appellee shall file with the Commissioner or his designated hearing officer and shall
15 serve on the appellant a written statement of his case and any evidence he intends to
16 offer at the hearing. Each such hearing shall be recorded and transcribed. The cost of
17 such recording and transcribing shall be borne equally by the appellant and appellee;
18 provided that upon any final adjudication the prevailing party shall be reimbursed for
19 his share of such costs by the other party. Each party shall, on a date determined by the
20 Commissioner or his designated hearing officer, but not sooner than 15 days after
21 delivery of the completed transcript to the party, submit to the Commissioner or his
22 designated hearing officer and serve on the other party, a proposed order. The
23 Commissioner or his designated hearing officer shall then issue an order.

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

26 **"§ 58-62-56. Prevention of delinquencies.**

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

29 (1) Notify the members of the NAIC when he revokes or suspends the
30 license of a member insurer; or makes any formal order that such
31 insurer restrict its premium writing, obtain additional contributions to
32 surplus, withdraw from this State, reinsure all or any part of its
33 business, or increase capital, surplus, or any other account for the
34 security of policyholders or creditors. Such notice shall be transmitted
35 electronically through the NAIC headquarters or mailed to all NAIC
36 members within 30 days following the action taken or the date on
37 which such action occurs.

38 (2) Report to the Board when he has taken any of the actions set forth in
39 subdivision (1) of this subsection or has received a report from another
40 member of the NAIC indicating that any such action has been taken in
41 another state. Such report to the Board shall contain all significant
42 details of the action taken or the report received from another member
43 of the NAIC.

1 (3) Report to the Board when he has reasonable cause to believe from any
2 examination, whether completed or in process, of any member insurer
3 that such insurer may be delinquent.

4 (4) Furnish the Board with the NAIC IRIS financial test ratios and a
5 listing of companies that are not included in the ratios developed by
6 the NAIC; and the Board may use such data in carrying out its duties
7 and responsibilities under this section. Such data shall be kept
8 confidential by the Board until it is made public by the Commissioner
9 or another lawful authority.

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

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

19 (d) It is the duty of the Board, upon majority vote, to notify the Commissioner of
20 any information indicating that any member insurer may be delinquent.

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

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

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

42 **"§ 58-62-61. Miscellaneous provisions.**

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

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

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

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

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

32 (f) If an order for liquidation or rehabilitation of an insurer domiciled in this
33 State has been entered, the receiver appointed under such order has a right to recover on
34 behalf of the insurer, from any affiliate that controlled it, the amount of distributions,
35 other than stock dividends paid by the insurer on its capital stock, made at any time
36 during the five years preceding the petition for liquidation or rehabilitation subject to
37 the limitations of subsections (g) through (i) of this section.

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

42 (h) Any person who was an affiliate that controlled the insurer at the time the
43 distributions were paid is liable up to the amount of distributions he received. Any
44 person who was an affiliate that controlled the insurer at the time the distributions were

1 declared is liable up to the amount of distributions he would have received if they had
2 been paid immediately. If two or more persons are liable with respect to the same
3 distributions, they are jointly and severally liable.

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

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

10 **"§ 58-62-66. Examination of the Association; annual report.**

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

15 **"§ 58-62-76. Immunity.**

16 There is no liability on the part of and no cause of action of any nature arises against
17 any member insurer or its agents or employees, the Association or its agents or
18 employees, members of the Board, the Commissioner or his representatives, or
19 members of the NAIC or their representatives, for any act or omission by them in the
20 performance of their powers and duties under this Article. This immunity extends to the
21 participation in any organization of one or more other state associations of similar
22 purposes and to any such organization and its agents or employees.

23 **"§ 58-62-81. Stay of proceedings; reopening default judgments.**

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

31 **"§ 58-62-86. Prohibited advertisement of Article in insurance sales; notice to**
32 **policyholders.**

33 (a) No person shall make, publish, disseminate, circulate, or place before the
34 public, or cause directly or indirectly, to be made, published, disseminated, circulated,
35 or placed before the public, in any newspaper, magazine, or other publication, or in the
36 form of a notice, circular, pamphlet, letter, or poster, or over any radio station or
37 television station, or in any other way, any oral or written advertisement, announcement,
38 or statement that uses the existence of the Association or this Article for the purpose of
39 sale or solicitation of or inducement to purchase any kind of insurance covered by this
40 Article: Provided, however, that this subsection does not apply to the Association or
41 any other person who does not sell or solicit insurance.

42 (b) Within 180 days after the effective date of this Article, the Association shall
43 prepare a summary document that describes the general purposes and current limitations
44 of this Article and that complies with subsection (c) of this section. This document shall

1 be submitted to the Commissioner for his approval. Sixty days after receiving such
2 approval, no insurer may deliver a policy described in G.S. 58-62-21(b) to any person
3 unless the document is delivered to that person before or at the time of delivery of the
4 policy, unless subsection (d) of this section applies. The document shall also be
5 available upon request by a policyholder or applicant for insurance. The distribution,
6 delivery, contents, or interpretation of this document does not mean that either the
7 policy or the policyholder would be covered in the event of the delinquency of a
8 member insurer. The description document shall be revised by the Association as
9 amendments to this Article require. Failure to receive this document does not give any
10 person greater rights than those stated in this Article.

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

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

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

30 Sec. 57. G.S. 58-62-1, 58-62-5, 58-62-10, 58-62-15, 58-62-20, 58-62-25, 58-
31 62-30, 58-62-35, 58-62-40, 58-62-45, 58-62-50, 58-62-55, 58-62-60, 58-62-65, 58-62-
32 70, 58-62-80, 58-62-85, and 58-62-90 are repealed.

33 Sec. 58. The Commissioner and his staff shall maintain close relations with
34 the insurance regulators of other states and shall actively participate in the activities and
35 affairs of the National Association of Insurance Commissioners, the National
36 Conference of Insurance Legislators, and other organizations or successor organizations
37 insofar as it will, in his judgment, enhance the purposes of the regulation of insurance.
38 The actual and necessary travel and related expenses incurred by the Commissioner and
39 members of his staff in attending meetings of such organizations, their committees,
40 subcommittees, hearings, and other official activities, as well as the general expenses of
41 participation in such organizations shall be a charge on available funds and the
42 appropriation of the Department.

1 Sec. 59. Sections 56 and 57 of this act do not apply to any insurer that is
2 insolvent or unable to fulfill its contractual obligations on the effective date of Sections
3 56 and 57 of this act.

4 Sec. 60. Sections 9, 28, and 49 through 54 of this act become effective
5 September 1, 1991. Section 40 of this act becomes effective October 1, 1991. Sections
6 29 and 30 of this act become effective January 1, 1992. The remainder of this act is
7 effective upon ratification.