

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 588*

Senate Commerce, Small Business and Entrepreneurship Committee Substitute
Adopted 7/10/07

Short Title: Update the Unauthorized Insurers Laws.-AB

(Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND IMPROVE LAWS COVERING UNAUTHORIZED
INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-28-45 reads as rewritten:

"§ 58-28-45. ~~Uniform Unauthorized Insurers Act.~~ **Insurers; prohibited acts.**

(a) No ~~person, corporation, association or partnership~~ person shall in this State act as agent for any insurer not authorized to transact business in this State, or negotiate for or place or aid in placing insurance coverage in this State for another with any such insurer.

(b) No ~~person, corporation, association or partnership~~ person shall in this State aid any unauthorized insurer in effecting insurance or in transacting insurance business in this State, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service for process, or otherwise, except as provided in ~~subsection (e) hereof.~~ this section or in G.S. 58-16-35.

(c) No ~~person, corporation, association or partnership~~ person shall make, negotiate for or place, or aid in negotiating or placing any insurance contract in this State for another who is an applicant for insurance covering any property or risk in another state, territory or district of the United States with any insurer not authorized to transact insurance business in the state, territory or district wherein such property or risk or any part thereof is located.

(d) ~~The provisions of the three foregoing subsections~~ Subsections (a), (b), and (c) of this section do not apply to contracts of reinsurance, or to contracts of insurance made through surplus lines licensees as provided in Article 21 of this Chapter, nor do they apply to any insurer not authorized in this State, or its representatives, in investigating, adjusting losses or otherwise complying in this State with the terms of its insurance contracts made in a state wherein the insurer was authorized; provided, the property or risk insured under such contracts at the time such contract was issued was

1 located in such other state. A motor vehicle used and kept garaged principally in another
2 state shall be deemed to be located in such state.

3 (e) (1) Repealed by Session Laws 1985, c. 666, s. 40.

4 (2) Such service of process shall be made by delivering and leaving with
5 the Commissioner or to some person in apparent charge of his office
6 two copies thereof and the payment to him of such fees as may be
7 prescribed by law. The Commissioner shall forthwith mail by
8 registered mail one of the copies of such process to the defendant at its
9 last known principal place of business, and shall keep a record of all
10 such process so served upon him. Such service of process is sufficient
11 provided notice of such service and a copy of the process are sent
12 within 10 days thereafter by registered mail by plaintiff's attorney to
13 the defendant at its last known principal place of business, and the
14 defendant's receipt, or receipt issued by the post office with which the
15 letter is registered, showing the name of the sender of the letter and the
16 name and address of the person to whom the letter is addressed, and
17 the affidavit of plaintiff's attorney showing a compliance herewith are
18 filed with the clerk of the court in which such action is pending on or
19 before the date the defendant is required to appear, or within such
20 further time as the court may allow. However, no plaintiff or
21 complainant shall be entitled to a judgment by default under this
22 subdivision (2) until the expiration of 30 days from the date of the
23 filing of the affidavit of compliance.

24 (3) Service of process in any such action, suit or proceeding shall be in
25 addition to the manner provided in the preceding subdivision (2) be
26 valid if served upon any person within this State who, in this State on
27 behalf of such insurer, is
28 a. Soliciting insurance, or
29 b. Making any contract of insurance or issuing or delivering any
30 policies or written contracts of insurance, or
31 c. Collecting or receiving any premium for insurance; and a copy
32 of such process is sent within 10 days thereafter by registered
33 mail by plaintiff's attorney to the defendant at the last known
34 principal place of business of the defendant, and the defendant's
35 receipt, or the receipt issued by the post office with which the
36 letter is registered, showing the name of the sender of the letter
37 and the name and address of the person to whom the letter is
38 addressed, and the affidavit of plaintiff's attorney showing a
39 compliance herewith are filed with the clerk of the court in
40 which such action is pending on or before the date the
41 defendant is required to appear, or within such further time as
42 the court may allow.

- 1 d. Nothing in this subsection (e) shall limit or abridge the right to
2 serve process, notice or demand upon any insurer in any other
3 manner now or hereafter permitted by law.
- 4 (f) No unauthorized insurer shall institute or file, or cause to be instituted or
5 filed, any suit, action or proceeding in this State to enforce any right, claim or demand
6 arising out of the transaction of business in this State until such insurer shall have
7 obtained a license to transact insurance business in this State. Nothing in this subsection
8 shall be construed to require an unauthorized insurance company to obtain a license
9 before instituting or filing, or causing to be instituted or filed, any suit, action or
10 proceeding either in connection with any of its investments in this State or in connection
11 with any contract issued by it at a time when it was authorized to do business in the state
12 where such contract was issued.
- 13 (g) (1) Before any unauthorized insurer shall file or cause to be filed any
14 pleading in any action, suit or proceeding instituted against it, such
15 unauthorized insurer shall either
- 16 a. File with the clerk of the court in which such action, suit or
17 proceeding is pending a bond with good and sufficient sureties,
18 to be approved by the court, in an amount to be fixed by the
19 court sufficient to secure the payment of any final judgment
20 which may be rendered in such action or
- 21 b. Procure a license to transact the business of insurance in this
22 State.
- 23 (2) The court in any action, suit or proceeding in which service is made in
24 the manner prescribed in subdivisions (2) and (3) of subsection (e)
25 may order such postponement as may be necessary to afford the
26 defendant reasonable opportunity to comply with the provisions of
27 subdivision (1) of this subsection (g) and to defend such action.
- 28 (3) Nothing in subdivision (1) of this subsection (g) shall be construed to
29 prevent an unauthorized insurer from filing a motion to quash a writ or
30 to set aside service thereof made in the manner provided in
31 subdivisions (2) and (3) of subsection (e) on the ground either
- 32 a. That no policy or contract of insurance has been issued or
33 delivered to a citizen or resident of this State or to a corporation
34 authorized to do business therein, or
- 35 b. That such insurer has not been transacting business in this State,
36 or
- 37 c. That the person on whom service was made pursuant to
38 subdivision (3) of subsection (e) was not doing any of the acts
39 enumerated therein.
- 40 (h) Except as provided in G.S. 58-33-95, any ~~person, corporation, association or~~
41 ~~partnership~~ person violating ~~any of the provisions~~ subsection (a), (b), (c), or (k) of this
42 section shall be guilty of a ~~Class 3 misdemeanor~~ Class H felony and shall ~~only~~ be fined
43 not less than one thousand dollars (\$1,000) nor more than five thousand dollars
44 (\$5,000). Any person violating subsections (e), (f), and (g) of this section shall be guilty

1 of a Class 1 misdemeanor and shall only be fined not less than one thousand dollars
2 (\$1,000) nor more than five thousand dollars (\$5,000). For the purposes of the fine
3 imposed by this subsection, each day during which a violation occurs constitutes a
4 separate violation.

5 ~~(i) This section shall be so interpreted and construed as to effectuate its general~~
6 ~~purpose to make uniform the law of those states which enact it.~~

7 ~~(j) This section may be cited as the Uniform Unauthorized Insurers Act.~~

8 (k) No person shall act as an officer, director, or controlling person for a person
9 who is engaged in a violation of subsection (a), (b), or (c) of this section. As used in this
10 subsection, "controlling" has the same meaning as in G.S. 58-19-5(2).

11 (l) In addition to any other penalties or remedies provided by law, any person
12 who violates this section shall be strictly liable for any losses or unpaid claims if an
13 unauthorized insurer fails to pay in full or in part any claim or loss within the provisions
14 of any insurance contract issued by or on behalf of the unauthorized insurer in violation
15 of this Article. The liability imposed by this subsection shall be joint and several if more
16 than one person violates this section.

17 (m) A civil action may be filed under this section regardless of whether a criminal
18 action is brought or a criminal conviction is obtained for the act alleged in the civil
19 action."

20 **SECTION 2.** G.S. 58-28-20(a) reads as rewritten:

21 "(a) Whenever the Commissioner has reasonable grounds to believe that any
22 person is violating or is about to violate ~~G.S. 58-28-5,~~ G.S. 58-28-5, 58-28-45, or
23 58-33-95, the Commissioner may, after notice and opportunity for hearing, make
24 written findings and issue and cause to be served upon the person an order to cease and
25 desist violating ~~G.S. 58-28-5, G.S. 58-28-5, 58-28-45, or 58-33-95."~~

26 **SECTION 3.** G.S. 58-28-20(d) reads as rewritten:

27 "(d) Whenever the Commissioner has evidence that any person has or is violating
28 ~~G.S. 58-28-5,~~ G.S. 58-28-5 or G.S. 58-28-45, or has or is violating any order or
29 requirement of the Commissioner issued by the Commissioner under this Article, and
30 that the interests of policyholders, creditors, or the public may be irreparably harmed by
31 delay, the Commissioner may issue an emergency cease and desist order that shall
32 become effective on the date specified in the order or upon service of a certified copy of
33 the order upon the person ordered to cease and desist, whichever is later. The
34 emergency cease and desist order shall also include a notice of hearing, which shall be
35 conducted as provided under Article 3A of Chapter 150B of the General Statutes.
36 However, the person ordered to cease and desist under this subsection may request and
37 shall be granted an expedited review of the order. The emergency order shall remain in
38 effect prior to and during the proceedings, unless modified by the Commissioner as
39 provided under subsection (b) of this section."

40 **SECTION 4.** G.S. 58-28-5(a) reads as rewritten:

41 "(a) Except as otherwise provided in this section, it is unlawful for any company
42 to enter into a contract of insurance as an insurer or to transact insurance business in this
43 State as set forth in G.S. 58-28-10, without a license issued by the Commissioner. This
44 section does not apply to the following acts or transactions:

- 1 (1) The procuring of a policy of insurance upon a risk within this State
2 where the applicant is unable to procure coverage in the open market
3 with admitted companies and is otherwise in compliance with Article
4 21 of this Chapter.
- 5 (2) Contracts of reinsurance; but not including assumption reinsurance
6 transactions, whereby the reinsuring company succeeds to all of the
7 liabilities of and supplants the ceding company on the insurance
8 contracts that are the subject of the transaction, unless prior approval
9 has been obtained from the Commissioner.
- 10 (3) Transactions in this State involving a policy lawfully solicited, written
11 and delivered outside of this State covering only subjects of insurance
12 not resident, located or expressly to be performed in this State at the
13 time of issuance, and which transactions are subsequent to the issuance
14 of such policy.
- 15 (4) Transactions in this State involving group life insurance, group
16 annuities, or group, blanket, or franchise accident and health insurance
17 where the master policy for the insurance was lawfully issued and
18 delivered in a state in which the company was authorized to transact
19 business.
- 20 (5) Transactions in this State involving all policies of insurance issued
21 before July 1, 1967.
- 22 (6) The procuring of contracts of insurance issued to a nuclear insured. As
23 used in this subdivision, "nuclear insured" means a public utility
24 procuring insurance against radioactive contamination and other risks
25 of direct physical loss at a nuclear electric generating plant.
- 26 (7) Insurance independently procured, as specified in subsection (b) of this
27 section.
- 28 (8) Insurance on vessels or craft, their cargoes, marine builders' risks,
29 marine protection and indemnity, or other risks commonly insured
30 under marine insurance policies, as distinguished from inland marine
31 insurance policies.
- 32 (9) Transactions in this State involving commercial aircraft insurance,
33 meaning insurance against (i) loss of or damage resulting from any
34 cause to commercial aircraft and its equipment, (ii) legal liability of
35 the insured for loss or damage to another person's property resulting
36 from the ownership, maintenance, or use of commercial aircraft, and
37 (iii) loss, damage, or expense incident to a liability claim.
- 38 (10) An activity in this State by or on the sole behalf of a captive insurer
39 that insures solely the risks of the company's parent and affiliated
40 companies."

41 **SECTION 5.** G.S. 58-33-95(a)(1) reads as rewritten:

- 42 "(1) Is the representative of that insurer and shall be strictly liable for any
43 losses or unpaid claims if an unauthorized insurer fails to pay in full or
44 in part any claim or loss within the provisions of any insurance

1 contract sold, directly or indirectly, by or through that person or entity
2 on behalf of the unauthorized insurer. The liability imposed by this
3 subsection shall be joint and several if more than one person violates
4 this section."

5 **SECTION 6.** If any section or provision of this act is declared
6 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
7 validity of the act as a whole or any part other than the part so declared to be
8 unconstitutional, preempted, or otherwise invalid.

9 **SECTION 7.** Section 4 of this act is effective when it becomes law. The
10 remainder of this act becomes effective December 1, 2007, and applies to offenses or
11 acts committed on or after that date.