

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE BILL 738\*  
Senate Commerce, Small Business and Entrepreneurship Committee Substitute  
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Short Title: Insurance Changes-AB.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST  
COVERAGE; MAKE TECHNICAL CHANGES TO INSURANCE FINANCIAL  
PROVISIONS; AMEND THE UNAUTHORIZED INSURER LAWS; MAKE  
TECHNICAL CHANGES TO THE RATE EVASION LAW TO CLARIFY THAT  
IT APPLIES ONLY TO PRIVATE PASSENGER VEHICLES AND TO ADD A  
TERMINATION RESTRICTION CONSISTENT WITH G.S. 58-37-50 TO  
CLARIFY THAT THE RATE EVASION LAW APPLIES TO CEDED AND  
UNCEDED POLICIES; REVISE MANAGED CARE AND HMO RECORD  
RETENTION LAWS; MAKE CHANGES TO THE HEALTH INSURANCE RISK  
POOL LAWS; STRENGTHEN PROFESSIONAL EMPLOYER ORGANIZATION  
PROTECTIONS; MAKE CHANGES TO THE LAW GOVERNING THE CODE  
OFFICIALS QUALIFICATION BOARD; PROHIBIT FREE INSURANCE; AND  
TO MAKE OTHER MISCELLANEOUS CHANGES.

The General Assembly of North Carolina enacts:

**PART I. UNINSURED AND UNDERINSURED MOTORIST COVERAGE.**

**SECTION 1.1.** G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:

"(b) Such owner's policy of liability insurance:

...

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor

1 vehicles and hit-and-run motor vehicles because of bodily injury,  
2 sickness or disease, including death, resulting therefrom, ~~in an amount~~  
3 ~~not to be less than the financial responsibility amounts for bodily~~  
4 ~~injury liability as set forth in G.S. 20-279.5 nor greater than one~~  
5 ~~million dollars (\$1,000,000), as selected by the policy owner. with~~  
6 ~~limits equal to the highest limits of bodily injury liability coverage for~~  
7 ~~any one vehicle insured under the policy. The named insured may~~  
8 ~~purchase uninsured motorist bodily injury coverage with greater limits,~~  
9 ~~subject to the limitation that in no event shall uninsured motorist~~  
10 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000)~~  
11 ~~per person and one million dollars (\$1,000,000) per accident. The~~  
12 ~~insurer shall notify the named insured of his or her right to purchase~~  
13 ~~uninsured motorist bodily injury coverage with greater limits, when~~  
14 ~~the policy is issued and renewed, as provided in subsection (m) of this~~  
15 ~~section.~~ The provisions shall include coverage for the protection of  
16 persons insured thereunder who are legally entitled to recover damages  
17 from owners or operators of uninsured motor vehicles because of  
18 injury to or destruction of the property of such insured, with a limit in  
19 the aggregate for all insureds in any one accident ~~of up equal~~ to the  
20 ~~highest~~ limits of property damage liability coverage for any one  
21 ~~vehicle insured~~ in the owner's policy of liability insurance, and subject,  
22 for each insured, to an exclusion of the first one hundred dollars  
23 (\$100.00) of such damages. The provision shall further provide that a  
24 written statement by the liability insurer, whose name appears on the  
25 certification of financial responsibility made by the owner of any  
26 vehicle involved in an accident with the insured, that the other motor  
27 vehicle was not covered by insurance at the time of the accident with  
28 the insured shall operate as a prima facie presumption that the operator  
29 of the other motor vehicle was uninsured at the time of the accident  
30 with the insured for the purposes of recovery under this provision of  
31 the insured's liability insurance policy. ~~The coverage required under~~  
32 ~~this subdivision is not applicable where any insured named in the~~  
33 ~~policy rejects the coverage. An insured named in the policy may select~~  
34 ~~different coverage limits as provided in this subdivision. If the named~~  
35 ~~insured in the policy does not reject uninsured motorist coverage and~~  
36 ~~does not select different coverage limits, the amount of uninsured~~  
37 ~~motorist coverage shall be equal to the highest limit of bodily injury~~  
38 ~~and property damage liability coverage for any one vehicle in the~~  
39 ~~policy. Once the option to reject the uninsured motorist coverage or to~~  
40 ~~select different coverage limits is offered by the insurer, the insurer is~~  
41 ~~not required to offer the option in any renewal, reinstatement,~~  
42 ~~substitute, amended, altered, modified, transfer, or replacement policy~~  
43 ~~unless the named insured makes a written request to exercise a~~  
44 ~~different option. The selection or rejection of uninsured motorist~~

1 ~~coverage or the failure to select or reject by a named insured is valid~~  
2 ~~and binding on all insureds and vehicles under the policy. Rejection of~~  
3 ~~or selection of different coverage limits for uninsured motorist~~  
4 ~~coverage for policies under the jurisdiction of the North Carolina Rate~~  
5 ~~Bureau shall be made in writing by a named insured on a form~~  
6 ~~promulgated by the Bureau and approved by the Commissioner of~~  
7 ~~Insurance.~~

8 If a person who is legally entitled to recover damages from the  
9 owner or operator of an uninsured motor vehicle is an insured under  
10 the uninsured motorist coverage of a policy that insures more than one  
11 motor vehicle, that person shall not be permitted to combine the  
12 uninsured motorist limit applicable to any one motor vehicle with the  
13 uninsured motorist limit applicable to any other motor vehicle to  
14 determine the total amount of uninsured motorist coverage available to  
15 that person. If a person who is legally entitled to recover damages from  
16 the owner or operator of an uninsured motor vehicle is an insured  
17 under the uninsured motorist coverage of more than one policy, that  
18 person may combine the highest applicable uninsured motorist limit  
19 available under each policy to determine the total amount of uninsured  
20 motorist coverage available to that person. The previous sentence shall  
21 apply only to insurance on nonfleet private passenger motor vehicles  
22 as described in G.S. 58-40-10(1) and (2).

23 In addition to the above requirements relating to uninsured motorist  
24 insurance, every policy of bodily injury liability insurance covering  
25 liability arising out of the ownership, maintenance or use of any motor  
26 vehicle, which policy is delivered or issued for delivery in this State,  
27 shall be subject to the following provisions which need not be  
28 contained therein.

29 a. A provision that the insurer shall be bound by a final judgment  
30 taken by the insured against an uninsured motorist if the insurer  
31 has been served with copy of summons, complaint or other  
32 process in the action against the uninsured motorist by  
33 registered or certified mail, return receipt requested, or in any  
34 manner provided by law; provided however, that the  
35 determination of whether a motorist is uninsured may be  
36 decided only by an action against the insurer alone. The insurer,  
37 upon being served as herein provided, shall be a party to the  
38 action between the insured and the uninsured motorist though  
39 not named in the caption of the pleadings and may defend the  
40 suit in the name of the uninsured motorist or in its own name.  
41 The insurer, upon being served with copy of summons,  
42 complaint or other pleading, shall have the time allowed by  
43 statute in which to answer, demur or otherwise plead (whether  
44 the pleading is verified or not) to the summons, complaint or

1 other process served upon it. The consent of the insurer shall  
2 not be required for the initiation of suit by the insured against  
3 the uninsured motorist: Provided, however, no action shall be  
4 initiated by the insured until 60 days following the posting of  
5 notice to the insurer at the address shown on the policy or after  
6 personal delivery of the notice to the insurer or its agent setting  
7 forth the belief of the insured that the prospective defendant or  
8 defendants are uninsured motorists. No default judgment shall  
9 be entered when the insurer has timely filed an answer or other  
10 pleading as required by law. The failure to post notice to the  
11 insurer 60 days in advance of the initiation of suit shall not be  
12 grounds for dismissal of the action, but shall automatically  
13 extend the time for the filing of an answer or other pleadings to  
14 60 days after the time of service of the summons, complaint, or  
15 other process on the insurer.

- 16 b. Where the insured, under the uninsured motorist coverage,  
17 claims that he has sustained bodily injury as the result of  
18 collision between motor vehicles and asserts that the identity of  
19 the operator or owner of a vehicle (other than a vehicle in which  
20 the insured is a passenger) cannot be ascertained, the insured  
21 may institute an action directly against the insurer: Provided, in  
22 that event, the insured, or someone in his behalf, shall report the  
23 accident within 24 hours or as soon thereafter as may be  
24 practicable, to a police officer, peace officer, other judicial  
25 officer, or to the Commissioner of Motor Vehicles. The insured  
26 shall also within a reasonable time give notice to the insurer of  
27 his injury, the extent thereof, and shall set forth in the notice the  
28 time, date and place of the injury. Thereafter, on forms to be  
29 mailed by the insurer within 15 days following receipt of the  
30 notice of the accident to the insurer, the insured shall furnish to  
31 insurer any further reasonable information concerning the  
32 accident and the injury that the insurer requests. If the forms are  
33 not furnished within 15 days, the insured is deemed to have  
34 complied with the requirements for furnishing information to  
35 the insurer. Suit may not be instituted against the insurer in less  
36 than 60 days from the posting of the first notice of the injury or  
37 accident to the insurer at the address shown on the policy or  
38 after personal delivery of the notice to the insurer or its agent.  
39 The failure to post notice to the insurer 60 days before the  
40 initiation of the suit shall not be grounds for dismissal of the  
41 action, but shall automatically extend the time for filing of an  
42 answer or other pleadings to 60 days after the time of service of  
43 the summons, complaint, or other process on the insurer.

1            Provided under this section the term "uninsured motor vehicle"  
2 shall include, but not be limited to, an insured motor vehicle where the  
3 liability insurer thereof is unable to make payment with respect to the  
4 legal liability within the limits specified therein because of insolvency.

5            An insurer's insolvency protection shall be applicable only to  
6 accidents occurring during a policy period in which its insured's  
7 uninsured motorist coverage is in effect where the liability insurer of  
8 the tort-feasor becomes insolvent within three years after such an  
9 accident. Nothing herein shall be construed to prevent any insurer from  
10 affording insolvency protection under terms and conditions more  
11 favorable to the insured than is provided herein.

12           In the event of payment to any person under the coverage required  
13 by this section and subject to the terms and conditions of coverage, the  
14 insurer making payment shall, to the extent thereof, be entitled to the  
15 proceeds of any settlement for judgment resulting from the exercise of  
16 any limits of recovery of that person against any person or  
17 organization legally responsible for the bodily injury for which the  
18 payment is made, including the proceeds recoverable from the assets  
19 of the insolvent insurer.

20           For the purpose of this section, an "uninsured motor vehicle" shall  
21 be a motor vehicle as to which there is no bodily injury liability  
22 insurance and property damage liability insurance in at least the  
23 amounts specified in subsection (c) of G.S. 20-279.5, or there is that  
24 insurance but the insurance company writing the insurance denies  
25 coverage thereunder, or has become bankrupt, or there is no bond or  
26 deposit of money or securities as provided in G.S. 20-279.24 or  
27 20-279.25 in lieu of the bodily injury and property damage liability  
28 insurance, or the owner of the motor vehicle has not qualified as a  
29 self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is  
30 not subject to the provisions of the Motor Vehicle Safety and Financial  
31 Responsibility Act; but the term "uninsured motor vehicle" shall not  
32 include:

- 33           a.     A motor vehicle owned by the named insured;  
34           b.     A motor vehicle that is owned or operated by a self-insurer  
35                within the meaning of any motor vehicle financial responsibility  
36                law, motor carrier law or any similar law;  
37           c.     A motor vehicle that is owned by the United States of America,  
38                Canada, a state, or any agency of any of the foregoing  
39                (excluding, however, political subdivisions thereof);  
40           d.     A land motor vehicle or trailer, if operated on rails or  
41                crawler-treads or while located for use as a residence or  
42                premises and not as a vehicle; or  
43           e.     A farm-type tractor or equipment designed for use principally  
44                off public roads, except while actually upon public roads.

1 For purposes of this section "persons insured" means the named  
2 insured and, while resident of the same household, the spouse of any  
3 named insured and relatives of either, while in a motor vehicle or  
4 otherwise, and any person who uses with the consent, expressed or  
5 implied, of the named insured, the motor vehicle to which the policy  
6 applies and a guest in the motor vehicle to which the policy applies or  
7 the personal representative of any of the above or any other person or  
8 persons in lawful possession of the motor vehicle.

9 Notwithstanding the provisions of this subsection, no policy of  
10 motor vehicle liability insurance applicable solely to commercial  
11 motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to  
12 fleet vehicles shall be required to provide uninsured motorist coverage.  
13 Any motor vehicle liability policy that insures both commercial motor  
14 vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor  
15 vehicles shall provide uninsured motorist coverage in accordance with  
16 the provisions of this subsection in amounts equal to the highest limits  
17 of bodily injury and property damage liability coverage for any one  
18 noncommercial motor vehicle insured under the policy, subject to the  
19 right of the insured to purchase higher uninsured motorist bodily injury  
20 liability coverage limits as set forth in this subsection. For the purpose  
21 of the immediately preceding sentence, noncommercial motor vehicle  
22 shall mean any motor vehicle that is not a commercial motor vehicle as  
23 defined in G.S. 20-4.01(3d), but that is otherwise subject to the  
24 requirements of this subsection.

- 25 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)  
26 of this subsection, provide underinsured motorist coverage, to be used  
27 only with a policy that is written at limits that exceed those prescribed  
28 by subdivision (2) of this section ~~and that afford uninsured motorist~~  
29 ~~coverage as provided by subdivision (3) of this subsection, in an~~  
30 ~~amount not to be less than the financial responsibility amounts for~~  
31 ~~bodily injury liability as set forth in G.S. 20-279.5 nor greater than one~~  
32 ~~million dollars (\$1,000,000) as selected by the policy owner. section,~~  
33 with limits equal to the highest limits of bodily injury liability  
34 coverage for any one vehicle insured under the policy. The named  
35 insured may purchase underinsured motorist coverage with greater  
36 limits, subject to the limitation that in no event shall the underinsured  
37 motorist coverage limits exceed one million dollars (\$1,000,000) per  
38 person and one million dollars (\$1,000,000) per accident. The insurer  
39 shall notify the named insured of his or her right to purchase  
40 underinsured motorist coverage with greater limits, when the policy is  
41 issued and renewed, as provided in subsection (m) of this section. An  
42 "uninsured motor vehicle," as described in subdivision (3) of this  
43 subsection, includes an "underinsured highway vehicle," which means  
44 a highway vehicle with respect to the ownership, maintenance, or use

1 of which, the sum of the limits of liability under all bodily injury  
2 liability bonds and insurance policies applicable at the time of the  
3 accident is less than the applicable limits of underinsured motorist  
4 coverage for the vehicle involved in the accident and insured under the  
5 owner's policy. For purposes of an underinsured motorist claim  
6 asserted by a person injured in an accident where more than one  
7 person is injured, a highway vehicle will also be an "underinsured  
8 highway vehicle" if the total amount actually paid to that person under  
9 all bodily injury liability bonds and insurance policies applicable at the  
10 time of the accident is less than the applicable limits of underinsured  
11 motorist coverage for the vehicle involved in the accident and insured  
12 under the owner's policy. Notwithstanding the immediately preceding  
13 sentence, a highway vehicle shall not be an "underinsured motor  
14 vehicle" for purposes of an underinsured motorist claim under an  
15 owner's policy insuring that vehicle ~~if~~ unless the owner's policy  
16 insuring that vehicle provides underinsured motorist coverage with  
17 limits that are ~~less than or equal to~~ greater than that policy's bodily  
18 injury liability limits. For the purposes of this subdivision, the term  
19 "highway vehicle" means a land motor vehicle or trailer other than (i)  
20 a farm-type tractor or other vehicle designed for use principally off  
21 public roads and while not upon public roads, (ii) a vehicle operated on  
22 rails or crawler-treads, or (iii) a vehicle while located for use as a  
23 residence or premises. The provisions of subdivision (3) of this  
24 subsection shall apply to the coverage required by this subdivision.  
25 Underinsured motorist coverage is deemed to apply when, by reason of  
26 payment of judgment or settlement, all liability bonds or insurance  
27 policies providing coverage for bodily injury caused by the ownership,  
28 maintenance, or use of the underinsured highway vehicle have been  
29 exhausted. Exhaustion of that liability coverage for the purpose of any  
30 single liability claim presented for underinsured motorist coverage is  
31 deemed to occur when either (a) the limits of liability per claim have  
32 been paid upon the claim, or (b) by reason of multiple claims, the  
33 aggregate per occurrence limit of liability has been paid. Underinsured  
34 motorist coverage is deemed to apply to the first dollar of an  
35 underinsured motorist coverage claim beyond amounts paid to the  
36 claimant under the exhausted liability policy.

37 In any event, the limit of underinsured motorist coverage  
38 applicable to any claim is determined to be the difference between the  
39 amount paid to the claimant under the exhausted liability policy or  
40 policies and the limit of underinsured motorist coverage applicable to  
41 the motor vehicle involved in the accident. Furthermore, if a claimant  
42 is an insured under the underinsured motorist coverage on separate or  
43 additional policies, the limit of underinsured motorist coverage  
44 applicable to the claimant is the difference between the amount paid to

1 the claimant under the exhausted liability policy or policies and the  
2 total limits of the claimant's underinsured motorist coverages as  
3 determined by combining the highest limit available under each policy;  
4 provided that this sentence shall apply only to insurance on nonfleet  
5 private passenger motor vehicles as described in G.S. 58-40-15(9) and  
6 (10). The underinsured motorist limits applicable to any one motor  
7 vehicle under a policy shall not be combined with or added to the  
8 limits applicable to any other motor vehicle under that policy.

9 An underinsured motorist insurer may at its option, upon a claim  
10 pursuant to underinsured motorist coverage, pay moneys without there  
11 having first been an exhaustion of the liability insurance policy  
12 covering the ownership, use, and maintenance of the underinsured  
13 highway vehicle. In the event of payment, the underinsured motorist  
14 insurer shall be either: (a) entitled to receive by assignment from the  
15 claimant any right or (b) subrogated to the claimant's right regarding  
16 any claim the claimant has or had against the owner, operator, or  
17 maintainer of the underinsured highway vehicle, provided that the  
18 amount of the insurer's right by subrogation or assignment shall not  
19 exceed payments made to the claimant by the insurer. No insurer shall  
20 exercise any right of subrogation or any right to approve settlement  
21 with the original owner, operator, or maintainer of the underinsured  
22 highway vehicle under a policy providing coverage against an  
23 underinsured motorist where the insurer has been provided with  
24 written notice before a settlement between its insured and the  
25 underinsured motorist and the insurer fails to advance a payment to the  
26 insured in an amount equal to the tentative settlement within 30 days  
27 following receipt of that notice. Further, the insurer shall have the  
28 right, at its election, to pursue its claim by assignment or subrogation  
29 in the name of the claimant, and the insurer shall not be denominated  
30 as a party in its own name except upon its own election. Assignment or  
31 subrogation as provided in this subdivision shall not, absent contrary  
32 agreement, operate to defeat the claimant's right to pursue recovery  
33 against the owner, operator, or maintainer of the underinsured highway  
34 vehicle for damages beyond those paid by the underinsured motorist  
35 insurer. The claimant and the underinsured motorist insurer may join  
36 their claims in a single suit without requiring that the insurer be named  
37 as a party. Any claimant who intends to pursue recovery against the  
38 owner, operator, or maintainer of the underinsured highway vehicle for  
39 moneys beyond those paid by the underinsured motorist insurer shall  
40 before doing so give notice to the insurer and give the insurer, at its  
41 expense, the opportunity to participate in the prosecution of the claim.  
42 Upon the entry of judgment in a suit upon any such claim in which the  
43 underinsured motorist insurer and claimant are joined, payment upon  
44 the judgment, unless otherwise agreed to, shall be applied pro rata to



1 the claimant's claim beyond payment by the insurer of the owner,  
2 operator or maintainer of the underinsured highway vehicle and the  
3 claim of the underinsured motorist insurer.

4 A party injured by the operation of an underinsured highway  
5 vehicle who institutes a suit for the recovery of moneys for those  
6 injuries and in such an amount that, if recovered, would support a  
7 claim under underinsured motorist coverage shall give notice of the  
8 initiation of the suit to the underinsured motorist insurer as well as to  
9 the insurer providing primary liability coverage upon the underinsured  
10 highway vehicle. Upon receipt of notice, the underinsured motorist  
11 insurer shall have the right to appear in defense of the claim without  
12 being named as a party therein, and without being named as a party  
13 may participate in the suit as fully as if it were a party. The  
14 underinsured motorist insurer may elect, but may not be compelled, to  
15 appear in the action in its own name and present therein a claim  
16 against other parties; provided that application is made to and  
17 approved by a presiding superior court judge, in any such suit, any  
18 insurer providing primary liability insurance on the underinsured  
19 highway vehicle may upon payment of all of its applicable limits of  
20 liability be released from further liability or obligation to participate in  
21 the defense of such proceeding. However, before approving any such  
22 application, the court shall be persuaded that the owner, operator, or  
23 maintainer of the underinsured highway vehicle against whom a claim  
24 has been made has been apprised of the nature of the proceeding and  
25 given his right to select counsel of his own choice to appear in the  
26 action on his separate behalf. If an underinsured motorist insurer,  
27 following the approval of the application, pays in settlement or partial  
28 or total satisfaction of judgment moneys to the claimant, the insurer  
29 shall be subrogated to or entitled to an assignment of the claimant's  
30 rights against the owner, operator, or maintainer of the underinsured  
31 highway vehicle and, provided that adequate notice of right of  
32 independent representation was given to the owner, operator, or  
33 maintainer, a finding of liability or the award of damages shall be res  
34 judicata between the underinsured motorist insurer and the owner,  
35 operator, or maintainer of underinsured highway vehicle.

36 As consideration for payment of policy limits by a liability insurer  
37 on behalf of the owner, operator, or maintainer of an underinsured  
38 motor vehicle, a party injured by an underinsured motor vehicle may  
39 execute a contractual covenant not to enforce against the owner,  
40 operator, or maintainer of the vehicle any judgment that exceeds the  
41 policy limits. A covenant not to enforce judgment shall not preclude  
42 the injured party from pursuing available underinsured motorist  
43 benefits, unless the terms of the covenant expressly provide otherwise,

1 and shall not preclude an insurer providing underinsured motorist  
2 coverage from pursuing any right of subrogation.

3 ~~The coverage required under this subdivision shall not be~~  
4 ~~applicable where any insured named in the policy rejects the coverage.~~  
5 ~~An insured named in the policy may select different coverage limits as~~  
6 ~~provided in this subdivision. If the named insured does not reject~~  
7 ~~underinsured motorist coverage and does not select different coverage~~  
8 ~~limits, the amount of underinsured motorist coverage shall be equal to~~  
9 ~~the highest limit of bodily injury liability coverage for any one vehicle~~  
10 ~~in the policy. Once the option to reject underinsured motorist coverage~~  
11 ~~or to select different coverage limits is offered by the insurer, the~~  
12 ~~insurer is not required to offer the option in any renewal,~~  
13 ~~reinstatement, substitute, amended, altered, modified, transfer, or~~  
14 ~~replacement policy unless a named insured makes a written request to~~  
15 ~~exercise a different option. The selection or rejection of underinsured~~  
16 ~~motorist coverage by a named insured or the failure to select or reject~~  
17 ~~is valid and binding on all insureds and vehicles under the policy.~~

18 ~~Rejection of or selection of different coverage limits for~~  
19 ~~underinsured motorist coverage for policies under the jurisdiction of~~  
20 ~~the North Carolina Rate Bureau shall be made in writing by the named~~  
21 ~~insured on a form promulgated by the Bureau and approved by the~~  
22 ~~Commissioner of Insurance.~~

23 Notwithstanding the provisions of this subsection, no policy of  
24 motor vehicle liability insurance applicable solely to commercial  
25 motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to  
26 fleet vehicles shall be required to provide underinsured motorist  
27 coverage. Any motor vehicle liability policy that insures both  
28 commercial motor vehicles as defined in G.S. 20-4.01(3d) and  
29 noncommercial motor vehicles shall provide underinsured motorist  
30 coverage in accordance with the provisions of this subsection in an  
31 amount equal to the highest limits of bodily injury liability coverage  
32 for any one noncommercial motor vehicle insured under the policy,  
33 subject to the right of the insured to purchase higher underinsured  
34 motorist bodily injury liability coverage limits as set forth in this  
35 subsection. For the purpose of the immediately preceding sentence,  
36 noncommercial motor vehicle shall mean any motor vehicle that is not  
37 a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is  
38 otherwise subject to the requirements of this subsection."

39 **SECTION 1.2.** G.S. 20-279.21 is amended by adding the following new  
40 subsections to read:

41 "(m) Every insurer that sells motor vehicle liability policies subject to the  
42 requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable  
43 notice to the named insured, when the policy is issued and renewed, that the named  
44 insured may purchase uninsured motorist bodily injury coverage and, if applicable,

1 underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per  
2 person and one million dollars (\$1,000,000) per accident. An insurer shall be deemed to  
3 have given reasonable notice if it includes the following or substantially similar  
4 language on the policy's original and renewal declarations pages or in a separate notice  
5 accompanying the original and renewal declarations pages in at least 10 point type:

6 "NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY  
7 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE  
8 WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND  
9 ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE  
10 PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE  
11 NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY  
12 MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD  
13 CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR  
14 OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD  
15 ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED  
16 UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

17 (n) Nothing in this section shall be construed to provide greater amounts of  
18 uninsured or underinsured motorist coverage in a liability policy than the insured has  
19 purchased from the insurer under this section.

20 (o) An insurer that fails to comply with subsection (m) of this section is subject  
21 to a civil penalty under G.S. 58-2-70."

## 22 **PART II. INSURANCE COMPANY FINANCIAL SOLVENCY PROVISIONS.**

23 **SECTION 2.1.** G.S. 58-5-50 reads as rewritten:

24 **"§ 58-5-50. Deposits of foreign life insurance companies.**

25 In addition to other requirements of ~~Articles 1 through 64~~ of this Chapter, all foreign  
26 life insurance companies shall deposit securities, as specified in G.S. 58-5-20, ~~having~~  
27 that have a market value of four hundred thousand dollars (\$400,000) as a prerequisite  
28 of doing business in this State. All foreign life insurance companies shall deposit an  
29 additional two hundred thousand dollars (\$200,000) where such companies cannot show  
30 three years of net ~~operational gains prior to admission.~~ income before being licensed in  
31 this State."

32 **SECTION 2.2.** The catch line of G.S. 58-10-145 reads as rewritten:

33 **"§ 58-10-145. ~~Mono-line~~ Monoline requirement for mortgage guaranty insurers."**

34 **SECTION 2.3.** G.S. 58-7-15(17) reads as rewritten:

35 "(17) "Credit insurance," meaning indemnifying merchants or other persons  
36 extending credit against loss or damage resulting from the nonpayment  
37 of debts owed to them; and including the incidental power to acquire  
38 and dispose of debts so insured, and to collect any debts owed to the  
39 insurer or to any person so insured by the insurer; and also including  
40 insurance where the debt is secured by either (a) a junior lien on real  
41 estate or (b) where the debt is secured by a first lien on real estate as  
42 long as (i) the purpose of the debt being insured is not for the purchase  
43 of the real estate and the insurance is limited to twenty-five percent  
44 (25%) of the insurer's aggregate insured risk outstanding, before

1 reinsurance ceded or assumed or (ii) the insurance is not included  
2 within the definition of mortgage guaranty insurance."

3 **SECTION 2.4.** G.S. 58-5-71 reads as rewritten:

4 **"§ 58-5-71. Liens of policyholders; subordination.**

5 Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be  
6 subordinated to the reasonable and necessary expenses of the Commissioner in  
7 liquidating the deposit and paying the special deposit claims. 'Special deposit claims'  
8 has the same meaning set forth in G.S. 58-30-10(19)."

9 **SECTION 2.5.** G.S. 58-5-55 reads as rewritten:

10 **"§ 58-5-55. Deposits of capital and surplus by domestic insurance companies.**

11 (a) In addition to other requirements of Articles 1 through 64 of this Chapter, all  
12 domestic stock insurance companies shall deposit their required statutory capital with  
13 ~~the Department, Commissioner.~~ Such deposits shall be under the exclusive control of the  
14 ~~Department, Commissioner~~ for the protection of policyholders.

15 (b) In addition to other requirements of Articles 1 through 64 of this Chapter, all  
16 domestic mutual insurance companies shall deposit at least fifty percent (50%) of their  
17 minimum required surplus with the ~~Department, Commissioner,~~ with the amount of the  
18 deposit to be determined by the Commissioner. Such deposits shall be under the  
19 exclusive control of the ~~Department, Commissioner~~ for the protection of policyholders.

20 (c) Deposits fulfilling the requirements of this section shall comprise:

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

26 **SECTION 2.6.** G.S. 58-7-75 is amended by adding two new subdivisions to  
27 read:

28 **"§ 58-7-75. Amount of capital and/or surplus required; impairment of capital or**  
29 **surplus.**

30 ...

- 31 (1a) Non-Stock Life Insurance Companies. – A nonstock corporation, not  
32 inclusive of a corporation organized pursuant to subdivision (6) of this  
33 section, may be organized in the manner prescribed in this Chapter and  
34 licensed to do the business of life insurance, only when it has a paid in  
35 initial surplus of at least one million five hundred thousand dollars  
36 (\$1,500,000) and it may in addition do the kind of business specified  
37 in G.S. 58-7-15(2), without having additional surplus. Every such  
38 corporation shall at all times thereafter maintain a minimum surplus of  
39 at least seven hundred fifty thousand dollars (\$750,000). Provided that,  
40 any such corporation may conduct the kind of insurance authorized for  
41 stock accident and health insurance companies, as set out in  
42 G.S. 58-7-15(3)a. and b., where its charter so permits, and only as long  
43 as it maintains a minimum surplus equal to the sum of the minimum

surplus requirements of this subdivision and the minimum surplus requirements of subdivision (2a) of this section.

...

(2a) Non-Stock Accident and Health Insurance Companies.

a. A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in G.S. 58-7-15(3)a. when it has a paid in initial surplus of at least one million dollars (\$1,000,000). Every such corporation shall at all times thereafter maintain a minimum surplus of at least five hundred thousand dollars (\$500,000).

b. Any non-stock corporation organized under the provisions of sub-subdivision a. of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in G.S. 58-7-15(3)b., if it has a paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000). Every such corporation shall at all times maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000)."

**PART III. UNAUTHORIZED INSURER AMENDMENTS.**

**SECTION 3.1.** The catch line for G.S. 58-28-5 reads as rewritten:

**"§ 58-28-5. Transacting business without certificate of authority a license prohibited; exceptions."**

**SECTION 3.2.** G.S. 58-28-5(a) reads as rewritten:

"(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in ~~G.S. 58-28-10, G.S. 58-28-13~~ without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.

- 1 (4) Transactions in this State involving group life insurance, group  
2 annuities, or group, blanket, or franchise accident and health insurance  
3 where the master policy for the insurance was lawfully issued and  
4 delivered in a state in which the company was authorized to transact  
5 business.
- 6 (5) Transactions in this State involving all policies of insurance issued  
7 before July 1, 1967.
- 8 (6) The procuring of contracts of insurance issued to a nuclear insured. As  
9 used in this subdivision, "nuclear insured" means a public utility  
10 procuring insurance against radioactive contamination and other risks  
11 of direct physical loss at a nuclear electric generating plant.
- 12 (7) Insurance independently procured, as specified in subsection (b) of this  
13 section.
- 14 (8) Insurance on vessels or craft, their cargoes, marine builders' risks,  
15 marine protection and indemnity, or other risks commonly insured  
16 under marine insurance policies, as distinguished from inland marine  
17 insurance policies.
- 18 (9) Transactions in this State involving commercial aircraft insurance,  
19 meaning insurance against (i) loss of or damage resulting from any  
20 cause to commercial aircraft and its equipment, (ii) legal liability of  
21 the insured for loss or damage to another person's property resulting  
22 from the ownership, maintenance, or use of commercial aircraft, and  
23 (iii) loss, damage, or expense incident to a liability claim.
- 24 (10) An activity in this State by or on the sole behalf of a captive insurer  
25 that insures solely the risks of the company's parent and affiliated  
26 companies."

27 **SECTION 3.3.** G.S. 58-28-40(a) reads as rewritten:

28 "(a) Any act of entering into a contract of insurance as an insurer or transacting  
29 insurance business in this State, as set forth in ~~G.S. 58-28-10~~ G.S. 58-28-12 by an  
30 unauthorized, foreign or alien company, shall be equivalent to and shall constitute an  
31 appointment by such company of the Secretary of State to be its true and lawful attorney  
32 upon whom may be served all lawful process in any action or proceeding against it  
33 arising out of a violation of G.S. 58-28-5, and any of said acts shall be a signification of  
34 its agreement that any such process against it, which is so served, shall be of the same  
35 legal force and validity as if in fact served upon the company."

36 **SECTION 3.4.** Article 28 of Chapter 58 of the General Statutes is amended  
37 by adding three new sections to read:

38 **"§ 58-28-12. Transacting insurance business in this State.**

39 Definitions. – As used in this section, G.S. 58-28-13, and G.S. 58-28-14:

- 40 (1) "Admitted insurer" means an insurer that is licensed to write insurance  
41 in this State.
- 42 (2) "Kind of insurance" means one of the types of insurance specified in  
43 G.S. 58-7-15.

- 1           (3)    "Nonadmitted insurer" means an insurer that is not licensed to write  
2           insurance in this State.
- 3           (4)    "Transacting insurance business" or "transact insurance business"  
4           means:
- 5           a.     The making of or proposing to make, as an insurer, an insurance  
6           contract.
- 7           b.     The making of or proposing to make, as guarantor or surety,  
8           any contract of guaranty or suretyship as a vocation and not  
9           merely incidental to any other legitimate business or activity of  
10           the guarantor or surety.
- 11           c.     The solicitation, taking, or receiving of an application for  
12           insurance.
- 13           d.     The receiving or collection of any premium, commission,  
14           membership fees, assessments, dues, or other consideration for  
15           a contract of insurance or any part of the contract of insurance.
- 16           e.     The issuance or delivery in this State of a contract of insurance  
17           to a resident of this State or to a person authorized to do  
18           business in this State.
- 19           f.     The solicitation, negotiation, procurement, effectuation, or  
20           renewal of a contract of insurance.
- 21           g.     The dissemination of information as to coverage or rates;  
22           forwarding of an application; delivery of a contract of  
23           insurance; inspection of a risk; the fixing of rates; the  
24           investigation or adjustment of a claim or loss; the transaction of  
25           matters after effectuation of a contract of insurance and arising  
26           out of the contract; or any other manner of representing or  
27           assisting a person or insurer in transacting insurance business  
28           with respect to properties, risks, or exposures located or to be  
29           performed in this State.
- 30           h.     The transaction of any kind of insurance business specifically  
31           recognized as transacting an insurance business within the  
32           meaning of this Chapter.
- 33           i.     The offering of insurance or the transacting of insurance  
34           business.
- 35           j.     The offering of an agreement or contract which purports to  
36           alter, amend, or void coverage of an insurance contract.
- 37           k.     The transaction of any matters before or after the execution of  
38           contracts of insurance in contemplation of or arising out of the  
39           execution.
- 40           l.     The maintaining of any agency or office in this State where any  
41           acts in furtherance of an insurance business are transacted,  
42           including the execution of contracts of insurance with citizens  
43           of this State or any other state.

1           m. The maintaining of files or records of contracts of insurance in  
2           this State.

3 **"§ 58-28-13. Placement of insurance business.**

4       (a) An insurer shall not transact insurance business in this State unless it is an  
5       admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

6       (b) A person shall not transact insurance business or in this State directly or  
7       indirectly act as agent for, or otherwise represent or aid on behalf of another, a  
8       nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of  
9       insurance, or renewals of insurance; forwarding of applications; delivery of policies or  
10       contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or  
11       losses; collection or forwarding of premiums; or in any other manner represent or assist  
12       the insurer in transacting insurance business.

13       (c) A person who represents or aids a nonadmitted insurer in violation of this  
14       section is subject to penalties or restitution, or both, as set forth in this section.

15       (d) This section does not prohibit employees, officers, directors, or partners of a  
16       commercial insured from acting in the capacity of an insurance manager or buyer in  
17       placing insurance on behalf of the employer, provided that the person's compensation is  
18       not based on buying insurance.

19       (e) The venue of an act committed by mail or any other medium is at the point  
20       where the matter transmitted by mail or other medium is delivered or issued for delivery  
21       or takes effect.

22       (f) The remedies prescribed in this section are not exclusive. Penalties may also  
23       be assessed under Article 63 of this Chapter or G.S. 58-2-161, or both.

24       (g) If the Commissioner finds a violation of this section, the Commissioner may  
25       order the payment of a monetary penalty after considering the factors in G.S. 58-28-14;  
26       or petition the Superior Court of Wake County for an order directing payment of  
27       restitution as provided in subsection (i) of this section; or both. The monetary penalty  
28       shall not exceed five thousand dollars (\$5,000) for the first offense and shall not exceed  
29       ten thousand dollars (\$10,000) for each succeeding offense. Each day during which a  
30       violation occurs constitutes a separate violation. The clear proceeds of the penalty shall  
31       be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
32       G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to  
33       payment of any other penalty for a violation of the criminal laws of this State.

34       (h) Upon petition of the Commissioner, the Superior Court of Wake County may  
35       order the person who committed a violation specified in this section to make restitution  
36       in an amount that would make whole any person harmed by the violation. The petition  
37       may be made at any time and also in any appeal of any order issued by the  
38       Commissioner.

39       (i) Restitution to the Department for extraordinary administrative expenses  
40       incurred in the investigation and hearing of the violation may also be ordered by the  
41       court in such amount that would reimburse the Department for the expenses.

42       (j) Nothing in this section prevents the Commissioner from negotiating a  
43       mutually acceptable agreement with any person as to any civil penalty or restitution.



1       (k) The Attorney General of the State of North Carolina at the request of and  
2 upon information from the Commissioner shall initiate a civil action in behalf of the  
3 Commissioner in any county of the State in which a violation under this section occurs  
4 to recover the penalty provided. Service of process upon the nonadmitted insurer shall  
5 be made under G.S. 58-28-40.

6 **"§ 58-28-14. Monetary penalty; factors to be considered.**

7       In determining the amount of the penalty under G.S. 58-28-13, the Commissioner  
8 shall consider:

- 9       (1) The amount of money that inured to the benefit of the violator as a  
10 result of the violation.
- 11       (2) Whether the violation was committed willfully.
- 12       (3) The prior record of the violator in complying or failing to comply with  
13 laws, rules, or orders applicable to the violator.
- 14       (4) The failure of the violator to provide timely and complete responses to  
15 the Department's inquiries about the violator's insurance activities in  
16 North Carolina.
- 17       (5) The extent and degree to which the violator marketed its insurance  
18 product in this State.
- 19       (6) The extent to which the violator's marketing materials, including fax  
20 solicitations, Internet Web sites, circulars, or other forms of  
21 advertisement or solicitations through any medium, were deceptive or  
22 misleading to residents of this State.
- 23       (7) The number of residents of this State who enrolled in the violator's  
24 insurance plan.
- 25       (8) The number of policies and amount of insurance coverage issued by  
26 the violator to residents of this State.
- 27       (9) The failure of the violator to promptly refund premiums and other  
28 consideration paid by residents of this State for insurance coverage  
29 issued by the violator upon requests by the residents of this State or the  
30 Department.
- 31       (10) The extent and degree of harm to residents of this State. In assessing  
32 the extent and degree of harm, the Commissioner shall consider,  
33 among other things, the amount of premiums and other consideration  
34 paid by residents of this State for coverage issued by the violator, the  
35 failure of the violator to pay claims made by residents of this State,  
36 and number and dollar amount of claims made by residents of this  
37 State that the violator has failed to pay.
- 38       (11) Whether the violator has a prior record of violating this Article or the  
39 unauthorized insurance laws of any other state. "Prior record" includes  
40 final administrative orders issued by the Commissioner or insurance  
41 regulator of any other state; federal or state criminal convictions,  
42 including pleas of guilty or nolo contendere; civil judgments; and  
43 written settlement agreements of state administrative proceedings,  
44 state or federal criminal proceedings, or civil lawsuits against the

1 violator or any entity of which the violator was either a principal or  
2 owner."

3 **SECTION 3.5.** G.S. 58-28-10 is repealed.

4 **PART IV. RATE EVASION TECHNICAL AMENDMENTS.**

5 **SECTION 4.1.** G.S. 20-52(a)(4) reads as rewritten:

6 (4) A statement that the owner is an eligible risk for insurance coverage as  
7 defined in ~~G.S. 58-37-1~~G.S. 58-37-1(4a)."

8 **SECTION 4.2.** G.S. 58-36-85(b) reads as rewritten:

9 "(b) Termination Restrictions. – An insurer shall not terminate a policy for a  
10 reason that is not specified in ~~G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g).~~  
11 G.S. 58-2-164(g), 58-36-65(g), or 58-37-50. A termination of a policy is not effective  
12 unless the insurer either has notified a named insured of the termination by sending a  
13 written termination notice by first class mail to the insured's last known address or is not  
14 required by this subsection to send a written termination notice. Proof of mailing of a  
15 written termination notice is proof that the notice was sent.

16 An insurer is not required to send a written termination notice if any of the following  
17 applies:

- 18 (1) The insurer has manifested its willingness to renew the policy by  
19 issuing or offering to issue a renewal policy, a certificate, or other  
20 evidence of renewal.
- 21 (2) The insurer has manifested its willingness to renew the policy by any  
22 means not described in subdivision (1) of this subsection, including  
23 mailing a premium notice or expiration notice by first class mail to the  
24 named insured and the failure of the insured to pay the required  
25 premium on or before the premium due date.
- 26 (3) A named insured has given written notification to the insurer or its  
27 agent that the named insured wants the policy to be terminated."

28 **PART V. MANAGED CARE RECORD RETENTION AMENDMENTS AND**  
29 **HMO TECHNICAL AMENDMENT.**

30 **SECTION 5.1.** G.S. 58-50-61(n) reads as rewritten:

31 "(n) Maintenance of Records. – Every insurer and URO shall maintain records of  
32 each review performed and each appeal received or reviewed, as well as documentation  
33 sufficient to demonstrate compliance with this section. The maintenance of these  
34 records, including electronic reproduction and storage, shall be governed by rules  
35 adopted by the Commissioner that apply to insurers. These records shall be retained by  
36 the insurer and URO for a period of ~~three-five years or or, for domestic companies,~~ until  
37 the Commissioner has adopted a final report of a general examination that contains a  
38 review of these records for that calendar year, whichever is later."

39 **SECTION 5.2.** G.S. 58-50-62(d) reads as rewritten:

40 "(d) Maintenance of Records. – Every insurer shall maintain records of each  
41 grievance received and the insurer's review of each grievance, as well as documentation  
42 sufficient to demonstrate compliance with this section. The maintenance of these  
43 records, including electronic reproduction and storage, shall be governed by rules  
44 adopted by the Commissioner that apply to insurers. The insurer shall retain these

1 records for ~~three~~ five years ~~or~~, for domestic companies, until the Commissioner has  
2 adopted a final report of a general examination that contains a review of these records  
3 for that calendar year, whichever is later."

4 **SECTION 5.3.** G.S. 58-67-50(e) reads as rewritten:

5 "(e) Effective January 1, 1989, every health maintenance organization shall  
6 provide at least minimum cost and utilization information for group contracts of 100 or  
7 more subscribers on an annual basis when requested by the group. Such information  
8 shall be compiled in accordance with the Data Collection Form developed by the  
9 Standardized HMO Date Form Task Force as endorsed by the Washington Business  
10 Group on Health and the Group Health Association of America on November 19, 1986,  
11 and any subsequent amendments. In addition, beginning with data for the calendar year  
12 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost,  
13 use of service, prevention, outcomes, and other group-specific data as collected in  
14 accordance with the latest edition of the ~~Health Plan Employer Data and Information~~  
15 ~~Set (HEDIS)~~ Healthcare Effectiveness Data and Information Set guidelines, as  
16 published by the National Committee for Quality Assurance. Beginning with data for  
17 the calendar year 1998, every HMO shall file with the Commissioner and make  
18 available to all employer groups, not later than July 1 of the following calendar year, a  
19 report of health benefit plan-wide experience on its costs, use of services, and other  
20 aspects of performance, in the ~~HEDIS~~ Healthcare Effectiveness and Information Set  
21 format."

22 **PART VI. HEALTH INSURANCE RISK POOL AMENDMENTS.**

23 **SECTION 6.1.** G.S. 58-50-180(c) reads as rewritten:

24 "(c) The initial appointments by the Governor and the General Assembly upon the  
25 recommendation of the Speaker of the House of Representatives and the President Pro  
26 Tempore of the Senate shall serve a term of three years. The initial appointments by the  
27 Commissioner under sub-subdivisions a., b., and d. of subdivision (b)(3) of this section  
28 shall be for a term of two years. The initial appointments by the Commissioner under  
29 sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term  
30 of one year. All succeeding appointments shall be for terms of three years. Members  
31 shall not serve for more than two successive terms.

32 A Board member's term shall continue until the member's successor is appointed by  
33 the original appointing authority. Vacancies shall be filled by the appointing authority  
34 for the unexpired portion of the term in which they occur. A Board member may be  
35 removed by the appointing authority for cause.

36 The Board shall meet at least quarterly upon the call of the chair. A majority of the  
37 total membership of the Commission shall constitute a quorum.

38 The Commissioner shall appoint a chair to serve for the initial two years of the  
39 Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board  
40 members and shall serve for two-year terms. Board members shall receive travel  
41 allowances under ~~G.S. 138-6~~ G.S. 138-5 when traveling to and from meetings of the  
42 ~~Board,~~ Board or for official business of the Pool, but shall not receive any ~~subsistence~~  
43 ~~allowance or per diem~~ under ~~G.S. 138-5~~ subdivision (a)(1) of that section."

44 **SECTION 6.2.** G.S. 58-50-180(e)(1) reads as rewritten:

1       "(e) The Pool shall have the general powers and authority granted under the laws  
2 of this State to health insurers and the specific authority to do all of the following:

- 3           (1) Enter into contracts as are necessary or proper to carry out the  
4 provisions and purposes of this Part, including the authority, with the  
5 approval of the Executive Director ~~in collaboration with~~ acting upon  
6 the approval or authorization of the Board, to enter into contracts with  
7 similar plans of other states for the joint performance of common  
8 administrative functions or with persons or other organizations for the  
9 performance of administrative functions."

10       **SECTION 6.3.** G.S. 58-50-185(a) reads as rewritten:

11       "(a) The Executive Director, ~~in collaboration with~~ the approval or authorization of  
12 the Board, shall select through a competitive bidding process one or more insurers to  
13 administer the Pool. The Executive Director shall evaluate bids submitted based on  
14 criteria established by the Board. The criteria shall allow for the comparison of  
15 information about each bidding administrator and selection of a Pool Administrator  
16 based on at least the following:

- 17           (1) Proven ability to handle health insurance coverage to individuals.  
18           (2) Efficiency and timeliness of the claim processing procedures.  
19           (3) Estimated total charges for administering the Pool.  
20           (4) Ability to apply effective cost containment programs and procedures  
21 and to administer the Pool in a cost-efficient manner.  
22           (5) Financial condition and stability.  
23           (6) Evidence of authority to provide third-party administrative services in  
24 North Carolina."

25       **SECTION 6.4.** G.S. 58-50-195(d) reads as rewritten:

26       "(d) Coverage under the Pool shall cease:

- 27           (1) On the date an individual is no longer a resident of this State.  
28           (2) On the date an individual requests coverage to end.  
29           (3) Upon the death of the covered individual.  
30           (4) On the date State law requires cancellation of the Pool policy.  
31           (5) At the option of the Pool, 30 days after the Pool makes any inquiry  
32 concerning the individual's eligibility or residence to which the  
33 individual does not reply.  
34           (6) Because the individual has failed to make the payments required under  
35 this Part.  
36           (7) Because the individual has performed an act or practice that constitutes  
37 fraud or made an intentional misrepresentation of material fact under  
38 the terms of the coverage."

39       **SECTION 6.5.** G.S. 58-50-210 reads as rewritten:

40       "**§ 58-50-210. Preexisting conditions.**

41       (a) Except as otherwise provided by law, Pool coverage shall exclude charges or  
42 expenses incurred during the first 12 months following the effective date of coverage as  
43 to any condition for which medical advice, care, or treatment was recommended or  
44 received as to such conditions during the 12-month period immediately preceding the

1 effective date of coverage, except that no preexisting condition exclusion shall be  
2 applied to a federally defined eligible ~~individual~~ individual or an individual who is  
3 eligible for the Pool because of his or her eligibility for the credit for health insurance  
4 costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the  
5 Internal Revenue Code of 1986, pursuant to G.S. 58-50-195(a)(6).

6 (b) ~~Subject to subsection (a) of this section, the preexisting condition exclusions~~  
7 ~~shall be waived to the extent that similar exclusions, if any, have been satisfied under~~  
8 ~~any prior health insurance coverage that was involuntarily terminated, provided that:~~

9 (1) ~~Application for Pool coverage is made not later than 63 days following~~  
10 ~~the involuntary termination, and in such case coverage in the Pool~~  
11 ~~shall be effective from the date on which the prior coverage was~~  
12 ~~terminated; and~~

13 (2) ~~The applicant is not eligible for continuation or conversion rights that~~  
14 ~~would provide coverage substantially similar to Pool coverage.~~

15 (c) The period of any preexisting condition exclusion shall be reduced by the  
16 aggregate of the periods of creditable coverage, if any, applicable as of the enrollment  
17 date. Credit for having satisfied some or all of the preexisting condition waiting period  
18 under previous creditable coverage, as defined in G.S. 58-51-17(a)(1), shall be provided  
19 in accordance with G.S. 58-51-17."

## 20 PART VII. PEO AMENDMENTS.

21 SECTION 7.1. The catch line of G.S. 58-89A-50 reads as rewritten:

22 "**§ 58-89A-50. Surety bond; letter of ~~credit~~ credit; other deposits.**"

23 SECTION 7.2. G.S. 58-89A-50(a) reads as rewritten:

24 "(a) An applicant for licensure shall file with the Commissioner a surety bond for  
25 the benefit of the Commissioner in the an amount of one hundred thousand dollars  
26 (\$100,000) in favor of the State of North Carolina equal to five percent (5%) of the  
27 applicant's prior year's total North Carolina wages, benefits, workers compensation  
28 premiums, and unemployment compensation contributions, but not greater than five  
29 hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may  
30 require."

31 SECTION 7.3. G.S. 58-89A-10 is repealed.

32 SECTION 7.4. G.S. 58-89A-105 reads as rewritten:

33 "**§ 58-89A-105. Employee benefit plans; required disclosure; other reports.**

34 (a) A licensee may sponsor and maintain employee benefit plans for the benefit  
35 of assigned employees. Any health insurance plan sponsored and maintained by a  
36 licensee shall only be fully insured by one of the following:

37 (1) A licensed insurance company that is authorized to write accident and  
38 health insurance, as defined in G.S. 58-7-15(3).

39 (2) A service corporation organized and licensed under Article 65 of this  
40 Chapter.

41 (3) A health maintenance organization organized and licensed under  
42 Article 67 of this Chapter.

43 (b) ~~A client company may sponsor and maintain employee benefit plans for the~~  
44 ~~benefit of assigned employees.~~

1 (e) ~~If a licensee offers to its assigned employees any health benefit plan that is~~  
2 ~~not fully insured by an authorized insurer, the plan shall:~~

- 3 (1) ~~Utilize a third party administrator licensed or registered to do business~~  
4 ~~in this State;~~  
5 (2) ~~Hold all plan assets, including participant contributions, in a trust~~  
6 ~~account; and~~  
7 (3) ~~Provide sound reserves for the plan as determined using generally~~  
8 ~~accepted actuarial standards.~~

9 (d) ~~For purposes of this section, a "health benefit plan that is not fully insured by~~  
10 ~~an authorized insurer" includes any arrangement except an arrangement under which an~~  
11 ~~insurance company licensed to write insurance in this State has issued an insurance~~  
12 ~~policy that covers all of the obligations of the health benefit plan.~~For the purposes of  
13 this section, a health insurance plan is fully insured only if all of the benefits provided  
14 under the plan are covered by an approved policy issued by one or more of the entities  
15 specified in subsection (a) of this section. A health insurance plan is not fully insured if  
16 the plan is any form of stop-loss insurance or any other form of reinsurance.

17 (e) Existing licensees shall comply with subsection (a) of this section by October  
18 1, 2009. Before October 1, 2009, if an existing licensee sponsors and maintains any  
19 health insurance plan that is not fully insured by one or more of the entities specified in  
20 subsection (a) of this section, the licensee shall do all of the following:

- 21 (1) Use a third-party administrator licensed or registered under Article 56  
22 of this Chapter.  
23 (2) Hold all plan assets, including participant contributions, in a trust  
24 account.  
25 (3) Provide sound reserves for the plan as determined by generally  
26 accepted actuarial standards."

## 27 **PART VIII. CODE OFFICIALS QUALIFICATION BOARD AMENDMENTS.**

28 **SECTION 8.1.** G.S. 143-151.13(a) reads as rewritten:

29 "(a) No person ~~may~~shall engage in Code enforcement ~~pursuant to~~under this  
30 Article unless ~~he~~that person possesses one of the following types of certificates,  
31 currently valid, issued by the Board attesting to ~~his~~that person's qualifications to ~~hold~~  
32 ~~such position:~~ engage in Code enforcement: (i) a standard certificate; (ii) a limited  
33 certificate provided for in subsection ~~(e);(c)~~ of this section; or (iii) a probationary  
34 certificate provided for in subsection ~~(d);(d)~~ of this section. To obtain a standard  
35 certificate, a person must pass an examination, as prescribed by the ~~Board, which Board~~  
36 or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina  
37 State Building Code and administrative procedures required to enforce the Code. for  
38 Code enforcement. The Board ~~shall~~may issue a standard certificate of qualification to  
39 each person who successfully completes the ~~examination authorizing the person named~~  
40 ~~therein~~ examination. The certificate authorizes that person to engage in Code  
41 enforcement and to practice as a qualified Code-enforcement official in North Carolina.  
42 The certificate of qualification shall bear the signatures of the chairman and secretary of  
43 the Board."

44 **SECTION 8.2.** G.S. 143-151.16(d) reads as rewritten:

1       "(d) ~~The Board may establish and collect a fee to be paid by each applicant for~~  
 2 ~~examination in an amount not to exceed one hundred twenty five dollars (\$125.00). In~~  
 3 ~~addition, the Board may establish and collect a fee to be paid by each applicant applying~~  
 4 ~~for a review of the applicant's examination. The amount of the examination review fee~~  
 5 ~~shall not exceed fifty dollars (\$50.00). Examination and examination review fees may~~  
 6 ~~be paid directly to approved testing services that maintain regional facilities for the~~  
 7 ~~purpose of administering the Board's examinations. The Board may contract with~~  
 8 ~~persons for the development and administration of the examinations required by~~  
 9 ~~G.S. 143-151.13(a), for course development related to the examinations, for review of a~~  
 10 ~~particular applicant's examination, and for other related services. The person with whom~~  
 11 ~~the Board contracts may charge applicants a reasonable fee for the costs associated with~~  
 12 ~~the development and administration of the examinations, for course development related~~  
 13 ~~to the examinations, for review of the applicant's examinations, and for other related~~  
 14 ~~services. The fee shall be agreed to by the Board and the other contracting party. The~~  
 15 ~~amount of the fee under this subsection shall not exceed one hundred seventy-five~~  
 16 ~~dollars (\$175.00). Contracts for the development and administration of the~~  
 17 ~~examinations, for course development related to the examinations, and for review of~~  
 18 ~~examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General~~  
 19 ~~Statutes or to Article 3D of Chapter 147 of the General Statutes."~~

20 **PART IX. PROHIBITION AGAINST FREE INSURANCE.**

21       **SECTION 9.1.** Chapter 66 of the General Statutes is amended by adding a  
 22 new Article to read:

23   "Article 44.

24   "Free Insurance.

25 **"§ 66-380. Definitions.**

26       As used in this Article:

27               (1) "Consumer goods" means goods that are used primarily for personal,  
 28 family, or household purposes. For the purposes of this Article,  
 29 consumer goods do not include automobiles or residences.

30               (2) "Free insurance" means any of the following:

31               a. Insurance for which no identifiable or additional charge is made  
 32 to the purchaser or lessee of consumer goods or services  
 33 directly or indirectly connected with the purchase of consumer  
 34 goods.

35               b. Insurance for which an identifiable or additional charge is made  
 36 in an amount less than the cost of such insurance as to the  
 37 seller, lessor, or other person other than the insurer providing  
 38 the insurance.

39 **"§ 66-381. Free insurance.**

40       No person shall advertise, offer, or provide free insurance for damage, loss, or theft  
 41 as an inducement to the purchase, sale, or rental of consumer goods or services directly  
 42 or indirectly connected with the purchase of consumer goods.

43 **"§ 66-382. Unfair trade practice.**

44       A violation of G.S. 66-381 constitutes an unfair trade practice under G.S. 75-1.1."

**PART X. MISCELLANEOUS CHANGES.****SECTION 10.1.** G.S. 58-3-191(a) reads as rewritten:

"(a) Each health benefit plan shall annually, on or before the first day of ~~March~~ May of each year, file in the office of the Commissioner the following information for the previous calendar year:

(1) The number of and reasons for grievances received from plan participants regarding medical treatment. The report shall include the number of covered lives, total number of grievances categorized by reason for the grievance, the number of grievances referred to the second level grievance review, the number of grievances resolved at each level and their resolution, and a description of the actions that are being taken to correct the problems that have been identified through grievances received. Every health benefit plan shall file with the Commissioner, as part of its annual grievance report, a certificate of compliance stating that the carrier has established and follows, for each of its lines of business, grievance procedures that comply with G.S. 58-50-62.

(2) The number of participants and groups who terminated coverage under the plan for any reason. The report shall include the number of participants who terminated coverage because the group contract under which they were covered was terminated, the number of participants who terminated coverage for reasons other than the termination of the group under which they were enrolled, and the number of group contracts terminated.

(3) The number of provider contracts that were terminated and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers. The report shall show voluntary and involuntary terminations separately.

(4) Data relating to the utilization, quality, availability, and accessibility of services. The report shall include the following:

a. Information on the health benefit plan's program to determine the level of network availability, as measured by the numbers and types of network providers, required to provide covered services to covered persons. This information shall include the plan's methodology for:

1. Establishing performance targets for the numbers and types of providers by specialty, area of practice, or facility type, for each of the following categories: primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities.

2. Determining when changes in plan membership will necessitate changes in the provider network.



1 The report shall also include: the availability performance targets for  
2 the previous and current years; the numbers and types of providers  
3 currently participating in the health benefit plan's provider network;  
4 and an evaluation of actual plan performance against performance  
5 targets.

6 b. The health benefit plan's method for arranging or providing  
7 health care services from nonnetwork providers, both within  
8 and outside of its service area, when network providers are not  
9 available to provide covered services.

10 c. Information on the health benefit plan's program to determine  
11 the level of provider network accessibility necessary to serve its  
12 membership. This information shall include the health benefit  
13 plan's methodology for establishing performance targets for  
14 member access to covered services from primary care  
15 physicians, specialty care physicians, nonphysician health care  
16 providers, hospitals, and nonhospital health care facilities. The  
17 methodology shall establish targets for:

18 1. The proximity of network providers to members, as  
19 measured by member driving distance, to access primary  
20 care, specialty care, hospital-based services, and services  
21 of nonhospital facilities.

22 2. Expected waiting time for appointments for urgent care,  
23 acute care, specialty care, and routine services for  
24 prevention and wellness.

25 The report shall also include: the accessibility performance  
26 targets for the previous and current years; data on actual overall  
27 accessibility as measured by driving distance and average  
28 appointment waiting time; and an evaluation of actual plan  
29 performance against performance targets. Measures of actual  
30 accessibility may be developed using scientifically valid  
31 random sample techniques.

32 d. A statement of the health benefit plan's methods and standards  
33 for determining whether in-network services are reasonably  
34 available and accessible to a covered person, for the purpose of  
35 determining whether a covered person should receive the  
36 in-network level of coverage for services received from a  
37 nonnetwork provider.

38 e. A description of the health benefit plan's program to monitor  
39 the adequacy of its network availability and accessibility  
40 methodologies and performance targets, plan performance, and  
41 network provider performance.

42 f. A summary of the health benefit plan's utilization review  
43 program activities for the previous calendar year. The report  
44 shall include the number of: each type of utilization review

1 performed, noncertifications for each type of review, each type  
2 of review appealed, and appeals settled in favor of covered  
3 persons. The report shall be accompanied by a certification  
4 from the carrier that it has established and follows procedures  
5 that comply with G.S. 58-50-61.

- 6 (5) Aggregate financial compensation data, including the percentage of  
7 providers paid under a capitation arrangement, discounted  
8 fee-for-service or salary, the services included in the capitation  
9 payment, and the range of compensation paid by withhold or incentive  
10 payments. This information shall be submitted on a form prescribed by  
11 the Commissioner.

12 The name, or group or institutional name, of an individual provider may not be  
13 disclosed pursuant to this subsection. No civil liability shall arise from compliance with  
14 the provisions of this subsection, provided that the acts or omissions are made in good  
15 faith and do not constitute gross negligence, willful or wanton misconduct, or  
16 intentional wrongdoing."

17 **SECTION 10.2.** G.S. 58-21-65(b) reads as rewritten:

18 "(b) The Commissioner shall issue a surplus lines license to any qualified holder  
19 of a current ~~fire and casualty property~~ broker's or agent's license, but only when the  
20 broker or agent has:

- 21 (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;  
22 (2) Submitted a completed license application on a form supplied by the  
23 Commissioner, and the application has been approved by the  
24 Commissioner;  
25 (3) Passed a qualifying examination approved by the Commissioner;  
26 except that all holders of a license prior to July 11, 1985 shall be  
27 deemed to have passed such an examination; and  
28 (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17,  
29 2004."

30 **SECTION 10.3.** G.S. 75-104(b) reads as rewritten:

31 "(b) Notwithstanding subsection (a) of this section, a person may use an automatic  
32 dialing and recorded message player to make an unsolicited telephone call only under  
33 one or more of the following circumstances:

- 34 (1) All of the following are satisfied:  
35 a. The person making the call is any of the following:  
36 1. A tax-exempt charitable or civic organization.  
37 2. A political party or political candidate.  
38 3. A governmental official.  
39 4. An opinion polling organization, radio station, television  
40 station, cable television company, or broadcast rating  
41 service conducting a public opinion poll.  
42 b. No part of the call is used to make a telephone solicitation.

1 c. The person making the call clearly identifies the person's name  
2 and contact information and the nature of the unsolicited  
3 telephone call.

4 (2) Prior to the playing of the recorded message, a live operator complies  
5 with G.S. 75-102(c), states the nature and length in minutes of the  
6 recorded message, and asks for and receives prior approval to play the  
7 recorded message from the person receiving the call.

8 (3) The unsolicited telephone call is in connection with an existing debt or  
9 contract for which payment or performance has not been completed at  
10 the time of the unsolicited telephone call.

11 (4) The unsolicited telephone call is placed by a person with whom the  
12 telephone subscriber has made an appointment, provided that the call  
13 is conveying information only about the appointment, or by a utility,  
14 telephone company, cable television company, satellite television  
15 company, or similar entity for the sole purpose of conveying  
16 information or news about network outages, repairs or service  
17 interruptions, and confirmation calls related to restoration of service.

18 (5) The person plays the recorded message in order to comply with section  
19 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

20 (6) The unsolicited telephone call is placed by, or on behalf of, a health  
21 insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone  
22 subscriber or other covered family member of the health insurer  
23 receives health care coverage or the administration of such coverage,  
24 provided that the call is conveying information related to the telephone  
25 subscriber or family member's health care, preventive services,  
26 medication or other covered benefits."

## 27 PART XI. SEVERABILITY.

28 **SECTION 11.1.** If any section or provision of this act is declared  
29 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the  
30 validity of the act as a whole or any part other than the part so declared to be  
31 unconstitutional, preempted, or otherwise invalid.

## 32 PART XII. EFFECTIVE DATES.

33 **SECTION 12.1.** Part I of this act becomes effective January 1, 2009, and  
34 applies to policies issued or renewed on or after that date. Part III of this act is effective  
35 when it becomes law and applies to violations that occur on or after that date. Parts VI  
36 and VII of this act become effective October 1, 2008. Part IX of this act becomes  
37 effective October 1, 2008, and applies to violations that occur on or after that date. The  
38 remainder of this act is effective when it becomes law.