

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 615
House Committee Substitute Favorable 6/27/06

Short Title: Insurance Technical Corrections.

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CORRECTIONS AND CLARIFICATIONS TO THE INSURANCE LAW AND TO AMEND THE INSURANCE HOLDING COMPANY ACT AND A RELATED STATUTE TO STRENGTHEN THE SOLVENCY OF NORTH CAROLINA INCORPORATED INSURERS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS AND CLARIFICATIONS.

SECTION 1.1. G.S. 58-2-150 reads as rewritten:

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

Before issuing a license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with the Commissioner the affidavit of its president or other chief officer that it accepts the terms and obligations of ~~Articles 1 through 67~~ of this Chapter as a part of the consideration of the license."

SECTION 1.2. G.S. 58-7-1 reads as rewritten:

"§ 58-7-1. Application of ~~Articles 1 through 64~~ of this Chapter and general laws.

The general provisions of law relative to the powers, duties, and liabilities of corporations apply to all incorporated domestic insurance companies where pertinent and not in conflict with other provisions of law relative to such companies or with their charters. All insurance companies of this State shall be governed by ~~Articles 1 through 64~~ of this Chapter, notwithstanding anything in their special charters to the contrary, provided notice of the acceptance of ~~Articles 1 through 64~~ of this Chapter is filed with the Commissioner."

SECTION 1.3. G.S. 58-7-26(a) reads as rewritten:

"(a) An asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The

1 reduction shall be in the amount of funds held by or on behalf of the ceding insurer,
2 including funds held in trust for the ceding insurer, under a reinsurance contract with the
3 assuming insurer as security for the payment of obligations thereunder, if the security is
4 held in the United States subject to withdrawal solely by, and under the exclusive
5 control of, the ceding insurer; or, in the case of a trust, held in a qualified United States
6 financial institution as defined in subsection (c) of this section. This security may be in
7 the form of:

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

23 **SECTION 1.4.** G.S. 58-30-125 reads as rewritten:

24 "**§ 58-30-125. Notice to creditors and others.**

25 (a) Unless the Court otherwise directs, the liquidator shall give or cause to be
26 given notice of the liquidation order as soon as possible:

- 27 (1) By first-class mail and either by ~~teletypewriter, telegram, facsimile,~~
28 electronic mail, or telephone to the insurance regulator of each
29 jurisdiction in which the insurer is doing business;
- 30 (2) By first-class mail to any domestic or foreign guaranty association that
31 is or may become obligated as a result of the liquidation;
- 32 (3) By first-class mail to all insurance agents of the insurer;
- 33 (4) By first-class mail to all persons known or reasonably expected to have
34 claims against the insurer, including all policyholders, at their last
35 known addresses indicated by the records of the insurer; and
- 36 (5) By publication in a newspaper of general circulation in the county in
37 which the insurer has its principal place of business and in such other
38 locations as the liquidator deems to be appropriate.

39 (b) Notice to potential claimants under subsection (a) of this section shall require
40 claimants to file with the liquidator their claims, together with proper proofs thereof
41 under G.S. 58-30-190, on or before a date the liquidator specifies in the notice. ~~The~~
42 ~~liquidator need not require persons claiming cash surrender values or other investment~~
43 ~~values in life insurance and annuities to file claims.~~ All claimants have a duty to keep

1 the liquidator informed of any changes of address. The liquidator need not require the
2 following to file claims under this section:

3 (1) Persons claiming cash surrender values or other investment values in
4 life insurance and annuities.

5 (2) Persons claiming unearned premiums on property or casualty
6 insurance.

7 (c) If notice is given in accordance with this section, the distribution of assets of
8 the insurer under this Article shall be conclusive with respect to all claimants, whether
9 or not they receive notice."

10 **SECTION 1.5.** G.S. 58-30-180(a) reads as rewritten:

11 "(a) ~~Within 120 days of~~ one year after a final determination of insolvency of an
12 insurer by the Court, the liquidator shall make application to the Court for approval of a
13 proposal to disburse assets out of marshalled assets, from time to time as such assets
14 become available, to a domestic or foreign guaranty association having obligations
15 because of such insolvency. If the liquidator determines that there are insufficient assets
16 to disburse, the application required by this section shall be considered satisfied by a
17 filing by the liquidator stating the reasons for this determination."

18 **SECTION 1.6.** G.S. 58-36-95(c) reads as rewritten:

19 "(c) It is a violation of G.S. ~~58-2-180~~ 58-3-180 for an automobile repair facility or
20 parts person to place a nonoriginal crash repair part, nonoriginal windshield, or
21 nonoriginal auto glass on a motor vehicle and to submit an invoice for an original repair
22 part."

23 **SECTION 1.7.** G.S. 58-37-35(b)(1) reads as rewritten:

24 "(1) For the following coverages of motor vehicle insurance and in at least
25 the following amounts of insurance:

- 26 a. Bodily injury liability: thirty thousand dollars (\$30,000) each
27 person, sixty thousand dollars (\$60,000) each accident;
- 28 b. Property damage liability: twenty-five thousand dollars
29 (\$25,000) each ~~person;~~ accident;
- 30 c. Medical payments: one thousand dollars (\$1,000) each person;
31 except that this coverage shall not be available for motorcycles;
- 32 d. Uninsured motorist: thirty thousand dollars (\$30,000) each
33 person; sixty thousand dollars (\$60,000) each accident for
34 bodily injury; twenty-five thousand dollars (\$25,000) each
35 accident property damage (one hundred dollars (\$100.00)
36 deductible);
- 37 e. Any other motor vehicle insurance or financial responsibility
38 limits in the amounts required by any federal law or federal
39 agency regulation; by any law of this State; or by any rule duly
40 adopted under Chapter 150B of the General Statutes or by the
41 North Carolina Utilities Commission."

42 **SECTION 1.8.** G.S. 58-50-40(i) reads as rewritten:

43 "(i) Upon the termination of a group health insurance contract by the insurer, the
44 insurer shall notify every subscriber and certificate holder under the contract of the

1 termination of the contract along with the certification required to be provided under
2 G.S. 58-68-30(e). Upon the termination of a group health insurance contract by the
3 insurance fiduciary, the insurance fiduciary shall notify every subscriber and certificate
4 holder under the contract of the termination of the contract along with the certification
5 required to be provided under G.S. 58-68-30(e)."

6 **SECTION 1.9.** G.S. 58-50-100 reads as rewritten:

7 "**§ 58-50-100. Title and reference.**

8 This section and G.S. 58-50-105 through G.S. ~~58-50-150~~ 58-50-156 are known and
9 may be cited as the North Carolina Small Employer Group Health Coverage Reform
10 Act, referred to in those sections as "this Act".

11 **SECTION 1.10.** G.S. 97-7 reads as rewritten:

12 "**§ 97-7. State or subdivision and employees thereof.**

13 Neither the State nor any municipal corporation within the State, nor any political
14 subdivision thereof, nor any employee of the State or of any such corporation or
15 subdivision, shall have the right to reject the provisions of this Article relative to
16 payment and acceptance of compensation, and ~~the provisions of G.S. 97-100(j) shall~~
17 G.S. 97-100(c) does not apply to them: Provided, that all such corporations or
18 subdivisions are hereby authorized to self-insure or purchase insurance to secure its
19 liability under this Article and to include thereunder the liability of such subordinate
20 governmental agencies as the county board of health, the school board, and other
21 political and quasi-political subdivisions supported in whole or in part by the municipal
22 corporation or political subdivision of the State. Each municipality is authorized to
23 make appropriations for these purposes and to fund them by levy of property taxes
24 pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues
25 whose use is not otherwise restricted by law."

26 **PART II. SUBSTANTIVE CORRECTIONS AND CLARIFICATIONS.**

27 **SECTION 2.1.** G.S. 20-45(c) reads as rewritten:

28 "(c) Any sworn law enforcement officer with jurisdiction is authorized to seize the
29 certificate of title, registration card, permit, license, or registration plate, if the officer
30 has electronic or other notification from the Division that the item has been revoked or
31 cancelled, or otherwise has probable cause to believe that the item has been revoked or
32 cancelled under any law or statute, including G.S. 20-309(e). If a criminal proceeding
33 relating to ~~the item~~ a certificate of title, registration card, permit, or license is pending,
34 the law enforcement officer in possession of that item shall retain the item pending the
35 entry of a final judgment by a court with jurisdiction. If there is no criminal proceeding
36 pending, the law enforcement officer shall deliver the item to the Division."

37 **SECTION 2.2.** G.S. 20-45(d) reads as rewritten:

38 "(d) Any law enforcement officer who seizes a registration plate pursuant to this
39 section shall report the seizure to the Division within 48 hours of the ~~seizure~~-seizure and
40 shall return the registration plate, but not a fictitious registration plate, to the Division
41 within 10 business days of the seizure."

42 **SECTION 2.3.** G.S. 20-288 reads as rewritten:

43 "**§ 20-288. Application for license; license requirements; expiration of license;**
44 **bond.**

1 (a) A new motor vehicle dealer, motor vehicle sales representative, manufacturer,
2 factory branch, factory representative, distributor, distributor branch, distributor
3 representative, or wholesaler may obtain a license by filing an application with the
4 Division. An application must be on a form provided by the Division and contain the
5 information required by the Division. An application for a license must be accompanied
6 by the required fee and by an application for a dealer license plate.

7 (a1) A used motor vehicle dealer may obtain a license by filing an application, as
8 prescribed in subsection (a) of this section, and providing the following:

9 (1) The required fee.

10 (2) Proof that the applicant, within the last 12 months, has completed a
11 12-hour licensing course approved by the Division if the applicant is
12 seeking an initial license and a six-hour course approved by the
13 Division if the applicant is seeking a renewal license. The
14 requirements of this subdivision do not apply to a used motor vehicle
15 dealer the primary business of which is the sale of salvage vehicles on
16 behalf of insurers or to a manufactured home dealer licensed under
17 G.S. 143-143.11 who complies with the continuing education
18 requirements of G.S. 143-143.11B. The requirement of this
19 subdivision does not apply to persons age 62 or older as of July 1,
20 2002, who are seeking a renewal license.

21 (3) If the applicant is an individual, proof that the applicant is at least 18
22 years of age and proof that all salespersons employed by the dealer are
23 at least 18 years of age.

24 (4) The application for a dealer license plate.

25 (b) The Division shall require in such application, or otherwise, information
26 relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to
27 other pertinent matters commensurate with the safeguarding of the public interest, all of
28 which shall be considered by the Division in determining the fitness of the applicant to
29 engage in the business for which he seeks a license.

30 (c) All licenses that are granted shall be for a period of one year unless sooner
31 revoked or suspended. The Division shall vary the expiration dates of all licenses that
32 are granted so that an equal number of licenses expire at the end of each month, quarter,
33 or other period consisting of one or more months to coincide with G.S. 20-79(c).

34 (d) To obtain a license as a wholesaler, an applicant who intends to sell or
35 distribute self-propelled vehicles must have an established office in this State, and an
36 applicant who intends to sell or distribute only trailers or semitrailers of more than
37 2,500 pounds unloaded weight must have a place of business in this State where the
38 records required under this Article are kept.

39 To obtain a license as a motor vehicle dealer, an applicant who intends to deal in
40 self-propelled vehicles must have an established salesroom in this State, and an
41 applicant who intends to deal in only trailers or semitrailers of more than 2,500 pounds
42 unloaded weight must have a place of business in this State where the records required
43 under this Article are kept.

1 An applicant for a license as a manufacturer, a factory branch, a distributor, a
2 distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license
3 for each established office, established salesroom, or other place of business in this
4 State. An application for any of these licenses shall include a list of the applicant's
5 places of business in this State.

6 (e) Each applicant approved by the Division for license as a motor vehicle dealer,
7 manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish
8 a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount
9 of the bond for an applicant for a motor vehicle dealer's license is fifty thousand dollars
10 (\$50,000) for one established salesroom of the applicant and twenty-five thousand
11 dollars (\$25,000) for each of the applicant's additional established salesrooms. The
12 amount of the bond for other applicants required to furnish a bond is fifty thousand
13 dollars (\$50,000) for one place of business of the applicant and twenty-five thousand
14 dollars (\$25,000) for each of the applicant's additional places of business.

15 A corporate surety bond shall be approved by the Commissioner as to form and shall
16 be conditioned that the obligor will faithfully conform to and abide by the provisions of
17 this Article and Article 15. A cash bond or fixed value equivalent thereof shall be
18 approved by the Commissioner as to form and terms of deposits as will secure the
19 ultimate beneficiaries of the bond; and such bond shall not be available for delivery to
20 any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle,
21 including a motor vehicle dealer, who shall have suffered any loss or damage by the
22 failure of any license holder subject to this subsection to deliver free and clear title to
23 any vehicle purchased from a license holder or any other act of a license holder subject
24 to this subsection that constitutes a violation of this Article or Article 15 of this Chapter
25 shall have the right to institute an action to recover against the license holder and the
26 surety. Every license holder against whom an action is instituted shall notify the
27 Commissioner of the action within 10 days after served with process. A Except as
28 provided by G.S. 20-288(f) and (g), a corporate surety bond shall remain in force and
29 effect and may not be canceled by the surety unless the bonded person stops engaging in
30 business or the person's license is denied, suspended, or revoked under G.S. 20-294.
31 That cancellation may be had only upon 30 days' written notice to the Commissioner
32 and shall not affect any liability incurred or accrued prior to the termination of such
33 30-day period. This subsection does not apply to a license holder who deals only in
34 trailers having an empty weight of 4,000 pounds or less. This subsection does not apply
35 to manufacturers of, or dealers in, mobile or manufactured homes who furnish a
36 corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to
37 G.S. 143-143.12.

38 (f) A corporate surety bond furnished pursuant to this section or renewal thereof
39 may also be canceled by the surety prior to the next premium anniversary date without
40 the prior written consent of the license holder for the following reasons:

- 41 (1) Nonpayment of premium in accordance with the terms for issuance of
42 the surety bond; or

1 (2) An act or omission by the license holder or his representative that
2 constitutes substantial and material misrepresentation or nondisclosure
3 of a material fact in obtaining the surety bond or renewing the bond.

4 Any cancellation permitted by this subsection is not effective unless written notice of
5 cancellation has been delivered or mailed to the license holder and to the Commissioner
6 not less than 30 days before the proposed effective date of cancellation. The notice must
7 be given or mailed by certified mail to the license holder at its last known address. The
8 notice must state the reason for cancellation. Cancellation for nonpayment of premium
9 is not effective if the amount due is paid before the effective date set forth in the notice
10 of cancellation. Cancellation of the surety shall not affect any liability incurred or
11 accrued prior to the termination of the 30-day notice period.

12 (g) A corporate surety may refuse to renew a surety bond furnished pursuant to
13 this section by giving or mailing written notice of nonrenewal to the license holder and
14 to the Commissioner not less than 30 days prior to the premium anniversary date of the
15 surety bond. The notice must be given or mailed by certified mail to the license holder
16 at its last known address. Cancellation of the surety bond shall not affect any liability
17 incurred or accrued prior to the premium anniversary date of the surety bond."

18 **SECTION 2.4.** G.S. 58-2-240 reads as rewritten:

19 **"§ 58-2-240. Market conduct analysis, financial analysis, and related information**
20 **not public record.**

21 (a) Notwithstanding Chapter 132 of the General Statutes, all market analysis,
22 documents arising from market conduct action, and financial statement analysis
23 ~~documents, ratios, programs, findings, and other information in the custody of the~~
24 ~~Department~~ work papers are confidential, are not open for public inspection, and are
25 not discoverable or admissible in evidence in a civil action brought by a party other than
26 the Department against a person regulated by the Department, its directors, officers, or
27 employees, unless the court finds that the interests of justice require that the documents
28 be discoverable or admissible in evidence or except as provided in G.S. 58-2-128 and
29 G.S. 58-2-132(g) through (j). The Commissioner, however, may use ~~these documents,~~
30 ~~materials, findings, or other information~~ market analysis, documents arising from
31 market conduct action, and financial statement analysis work papers in the furtherance
32 of any regulatory or legal action brought as part of the Commissioner's official duties.

33 (b) As used in this Article:

34 (1) "Market analysis" means work product arising from a process whereby
35 ~~individuals~~ persons employed or contracted by the Commissioner
36 collect and analyze information from filed schedules, surveys, required
37 reports other than periodic reports specifically required by statute, and
38 other sources in order to develop a baseline understanding of the
39 marketplace and to identify patterns or practices of insurers that
40 deviate significantly from the norm or that may pose a potential risk to
41 the insurance consumer.

42 (2) "Market conduct action" means any of the full range of activities, other
43 than an examination that the Commissioner may initiate to assess and
44 address the market practices of insurers, beginning with market

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

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

13 (4) "Financial statement analysis work papers" means:

14 a. Documents, programs, findings, and other information
15 produced by persons employed or contracted by the
16 Commissioner during and as part of the financial statement
17 analysis of an insurer.

18 b. Documents, programs, findings, and other information
19 disclosed by an entity to persons employed or contracted by the
20 Commissioner in response to an inquiry from the Commissioner
21 during and as part of the financial statement analysis of the
22 insurer.

23 c. Documents, programs, findings, and other information
24 obtained, during and as part of the financial statement analysis
25 of an insurer, by persons employed or contracted by the
26 Commissioner from or through any regulatory or law
27 enforcement agency or the NAIC when the receipt of that
28 information is conditioned upon the Commissioner maintaining
29 the confidentiality of the information shared with the
30 Commissioner.

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

1 (c) For purposes of subdivisions (b)(3) and (b)(4) of this section only, the term
2 "insurer" has the same meaning as in G.S. 58-30-10(14) and includes a:

- 3 (1) Reciprocal that is or should be licensed under Article 15 of this
4 Chapter.
- 5 (2) Local government risk pool that chooses to operate under Article 23 of
6 this Chapter.
- 7 (3) Fraternal benefit society that is or should be licensed under Article 24
8 of this Chapter.
- 9 (4) Professional employer organization that is or should be licensed under
10 Article 89A of this Chapter.

11 (d) Nothing in this section limits public access to financial or actuarial
12 information or calculations filed by an insurer or other entity for rating purposes,
13 including rate filings, deviation filings, and loss cost filings."

14 **SECTION 2.5.** Article 2 of Chapter 58 of the General Statutes is amended
15 by adding the following new section to read:

16 **"§ 58-2-245. Access to employer taxpayer identification numbers contained in**
17 **public documents.**

18 Notwithstanding G.S. 132-1.10(b)(5), the Department is not required to redact an
19 employer taxpayer identification number on documents that may be made available to
20 the general public."

21 **SECTION 2.6.** G.S. 58-21-35 reads as rewritten:

22 **"§ 58-21-35. Duty to file reports and retain affidavits. reports.**

23 (a) Within 30 days after the placing of any surplus lines insurance, the surplus lines
24 licensee shall file with the Commissioner a report in a format prescribed by the
25 Commissioner regarding the insurance and including the following information:

- 26 (1) The name of the insured.
- 27 (2) The identity of the insurer or insurers.
- 28 (3) A description of the subject and location of the risk.
- 29 (4) The amount of premium charged for the insurance.
- 30 (5) The amount of premium tax for the insurance.
- 31 (6) The policy period.
- 32 (7) The policy number.

33 (7a) An acknowledged statement that the surplus lines licensee has
34 complied with G.S. 58-21-15.

35 (8) The name, address, telephone number, facsimile telephone number,
36 and electronic mail address of the licensee, as applicable.

37 (9) Any other relevant information the Commissioner may reasonably
38 require.

39 (b) The licensee shall complete and retain ~~an affidavit as to the efforts to place~~
40 ~~the coverage with admitted insurers and the results of the efforts, in accordance with~~
41 ~~G.S. 58-21-15.~~ a copy of the report in paper or electronic form as required by the
42 Commissioner. The report ~~and affidavit~~ required by this section and the quarterly report
43 required by G.S. 58-21-80 shall be completed on a standardized form or forms

1 prescribed by the Commissioner and are not public records under G.S. 132-1 or
2 G.S. 58-2-100."

3 **SECTION 2.7.** G.S. 58-21-45(f) reads as rewritten:

4 "(f) Every evidence of insurance negotiated, placed, or procured under the
5 provisions of this Article issued by the surplus lines licensee shall bear the name of the
6 licensee and the following legend in ~~40~~ 12 point type and in contrasting ~~color~~ color or
7 in 12 point type and underlined and in bold print: 'The insurance company with which
8 this coverage has been placed is not licensed by the State of North Carolina and is not
9 subject to its supervision. In the event of the insolvency of the insurance company,
10 losses under this policy will not be paid by any State insurance guaranty or solvency
11 fund.' "

12 **SECTION 2.8.** G.S. 58-33-95 reads as rewritten:

13 **"§ 58-33-95. Agents personally liable; representing unlicensed company**
14 **prohibited; penalty.**

15 (a) Any person or entity who solicits, negotiates, or sells insurance or acts as a
16 third-party administrator in this State for an unauthorized insurer:

17 (1) Is the representative of that insurer and shall be strictly liable for any
18 losses or unpaid claims if an unauthorized insurer fails to pay in full or
19 in part any claim or loss within the provisions of any insurance
20 contract sold, directly or indirectly, by or through that person or entity
21 on behalf of the unauthorized insurer.

22 (2) Shall be guilty of a Class 1 misdemeanor if the person or entity does
23 not know that the insurer is an unauthorized insurer. Each solicitation,
24 negotiation, or sale shall constitute a separate offense.

25 (3) Shall be guilty of a Class H felony if the person or entity knew or
26 should have known that the insurer is an unauthorized insurer. Each
27 solicitation, negotiation, or sale shall constitute a separate offense.

28 (b) A civil action may be filed or a license revocation proceeding may be
29 initiated under this section regardless of whether a criminal action is brought or a
30 criminal conviction is obtained for the act alleged in the civil action or revocation
31 proceeding.

32 (c) ~~As used in this section, the terms "negotiate", "sell", and "solicit" shall have~~
33 ~~the meanings set forth in G.S. 58-33-10. As used in~~ For the purposes of this section, the
34 status of an entity or person as an "unauthorized insurer" shall be determined in
35 accordance with Article 28 of this Chapter and, if applicable, Article 49 of this Chapter.

36 (d) As used in this section, "third-party administrator" means a person who
37 performs administrative functions, including claims administration and payment,
38 marketing, premium accounting, premium billing, coverage verification, underwriting
39 authority, or certificate issuance in regard to any kind of insurance; but does not include
40 the persons specified in G.S. 58-56-2(5)a. through (5)l."

41 **SECTION 2.9.** G.S. 58-58-145 reads as rewritten:

42 **"§ 58-58-145. Group annuity contracts defined; requirements; issuance of**
43 **individual certificates.**

1 (a) Any policy or contract, except a joint, reversionary or survivorship annuity
2 contract, whereby annuities are payable to more than one person, is a group annuity
3 contract. The person, firm or corporation to whom or to which the contract is issued, is
4 the holder of the contract. The term "annuitant" means any person to whom or which
5 payments are made under the group annuity contract. No authorized insurer shall deliver
6 or issue for delivery in this State any group annuity contract except upon a group of
7 annuitants that conforms to the following: under a contract issued to an employer, or to
8 the trustee of a fund established by an employer or two or more employers in the same
9 industry or kind of business, the stipulated payments on which shall be paid by the
10 holder of the contract either wholly from the employer's funds or funds contributed by
11 the employer, or partly from the funds and partly from funds contributed by the
12 employees covered by such contract, and providing a plan of retirement annuities under
13 a plan which permits all of the employees of such employer or of any specified class or
14 classes thereof to become annuitants. Any such group of employees may include retired
15 employees, and may include officers and managers as employees, and may include the
16 employees of subsidiary or affiliated corporations of a corporation employer, and may
17 include the individual proprietors, partners and employees of affiliated individuals and
18 firms controlled by the holders through stock ownership, contract or otherwise.

19 (b) The insurer of a group annuity contract shall issue to the policyholder or to
20 the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity
21 contract, an individual certificate for each annuitant which:

- 22 (1) Identifies the annuity to which the annuitant is entitled.
- 23 (2) States the name of the person to whom the annuity is payable.
- 24 (3) Discloses all of the rights and obligations of the insurer, the
25 policyholder, the annuitant, and the persons to whom the annuity is
26 payable with respect to the group annuity contract.

27 G.S. 58-3-150 applies to the form of the individual certificate required by this
28 subsection.

29 (c) Each group annuity contract shall include a provision that the insurer will
30 issue to the policyholder within 30 days of the effective date of the contract, for delivery
31 to each annuitant, an individual certificate setting forth the information described in
32 subsection (b) of this section.

33 (d) This section does not apply to annuities used to fund:

- 34 (1) An employee pension plan that is covered by the Employee Retirement
35 Income Security Act of 1974 (ERISA);
- 36 (2) A plan described in sections 401(a), 401(k), 403(b), or 457 of the
37 Internal Revenue Code, where the plan, as defined in ERISA, is
38 established or maintained by an employer;
- 39 (3) A governmental or church plan defined in section 414 of the Internal
40 Revenue Code or a deferred compensation plan of a state or local
41 government or a tax-exempt organization under section 457 of the
42 Internal Revenue Code; or
- 43 (4) A nonqualified deferred compensation arrangement established or
44 maintained by an employer or plan sponsor."

PART III. HOLDING COMPANY ACT AND RELATED AMENDMENTS.**SECTION 3.1.** G.S. 58-7-130(b) reads as rewritten:

"(b) ~~No domestic stock insurance company shall declare or pay dividends to its stockholders except from the unassigned surplus of the company as reflected in the company's most recent financial statement filed with the Commissioner under G.S. 58-2-165.~~ A domestic stock insurance company shall not declare or pay dividends or other distributions to its stockholders from any source other than unassigned surplus without the Commissioner's prior written approval. For purposes of this section, "unassigned surplus" means an amount equal to the unassigned funds of a company as reflected in the company's most recent financial statement filed with the Commissioner under G.S. 58-2-165, including all or part of the surplus arising from unrealized capital gains or revaluation of assets."

SECTION 3.2. G.S. 58-19-25(d) reads as rewritten:

"(d) Subject to G.S. 58-7-130(b) and G.S. 58-19-30(c), each domestic insurer shall report to the Commissioner all dividends and other distributions to shareholders within ~~15~~ five business days following the declaration thereof. ~~thereof and at least 30 days before the payment thereof.~~ The Commissioner may ~~prescribe the form to be used to report that information.~~ adopt rules to further the requirements of this section."

SECTION 3.3. G.S. 58-19-30(c) reads as rewritten:

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

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

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

SECTION 3.4. G.S. 58-19-30(d) reads as rewritten:

1 "(d) For the purposes of this Article, in determining whether an insurer's surplus
2 as regards policyholders is reasonable in relation to the insurer's outstanding liabilities
3 and adequate to its financial needs, all of the following factors, among others, shall be
4 considered:

- 5 (1) The size of the insurer as measured by its assets, capital and surplus,
6 reserves, premium writings, insurance in force, and other appropriate
7 criteria.
- 8 (2) The extent to which the insurer's business is diversified among the
9 several kinds of insurance.
- 10 (3) The number and size of risks insured in each kind of insurance.
- 11 (4) The extent of the geographic dispersion of the insurer's insured risks.
- 12 (5) The nature and extent of the insurer's reinsurance program.
- 13 (6) The quality, diversification, and liquidity of the insurer's investment
14 portfolio.
- 15 (7) The recent past and projected future trend in the size of the insurer's
16 surplus as regards policyholders.
- 17 (8) The surplus as regards policyholders maintained by other comparable
18 insurers.
- 19 (9) The adequacy of the insurer's reserves.
- 20 (10) The quality and liquidity of investments in affiliates. The
21 Commissioner may treat any such investment as a disallowed asset for
22 purposes of determining the adequacy of surplus as regards
23 policyholders whenever in his judgment such investment so warrants.
- 24 (11) The quality of the insurer's earnings and the extent to which the
25 reported earnings of the insurer include extraordinary items."

26 **PART IV. SEVERABILITY.**

27 **SECTION 4.** If any section or provision of this act is declared
28 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
29 validity of the act as a whole or any part other than the part so declared to be
30 unconstitutional, preempted, or otherwise invalid.

31 **PART V. EFFECT OF HEADINGS.**

32 **SECTION 5.** The headings to the parts of this act are a convenience to the
33 reader and are for reference only. The headings do not expand, limit, or define the text
34 of this act.

35 **PART VI. EFFECTIVE DATES.**

36 **SECTION 6.** Section 2.3 becomes effective October 1, 2006. Sections 3.1,
37 3.2, 3.3, and 3.4 become effective December 31, 2006. The remainder of this act is
38 effective when it becomes law.