

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SENATE BILL 615
RATIFIED BILL**

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

- (1) Cash;
- (2) Securities that are listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subsection (b) of this section, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of

issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first; or

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

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

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

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

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

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

- (1) Persons claiming cash surrender values or other investment values in life insurance and annuities.
- (2) Persons claiming unearned premiums on property or casualty insurance.

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

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

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

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

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

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

- (1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:
 - a. Bodily injury liability: thirty thousand dollars (\$30,000) each person, sixty thousand dollars (\$60,000) each accident;

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

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

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

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

"§ 58-50-100. Title and reference.

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

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

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

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

PART II. SUBSTANTIVE CORRECTIONS AND CLARIFICATIONS.

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

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

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

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

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

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

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

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

(1) The required fee.

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

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

(4) The application for a dealer license plate.

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

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

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

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

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

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

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

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

- (1) Nonpayment of premium in accordance with the terms for issuance of the surety bond; or
- (2) An act or omission by the license holder or his representative that constitutes substantial and material misrepresentation or nondisclosure of a material fact in obtaining the surety bond or renewing the bond.

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

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

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

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

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

(b) As used in this Article:

- (1) "Market analysis" means work product arising from a process whereby individuals—persons employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
- (2) "Market conduct action" means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or indications from market analysis include: correspondence with an insurer; insurer interviews, interviews; information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this section.
- (3) "Financial statement analysis" means a set of systems and procedures designed to provide relevant information derived from basic sources of data for the purpose of evaluating the risk of an insurer's insolvency.
- (4) "Financial statement analysis work papers" means:
 - a. Documents, programs, findings, and other information produced by persons employed or contracted by the Commissioner during and as part of the financial statement analysis of an insurer.
 - b. Documents, programs, findings, and other information disclosed by an entity to persons employed or contracted by the Commissioner in response to an inquiry from the Commissioner during and as part of the financial statement analysis of the insurer.
 - c. Documents, programs, findings, and other information obtained, during and as part of the financial statement analysis of an insurer, by persons employed or contracted by the Commissioner from or through any regulatory or law enforcement agency or the NAIC when the receipt of that information is conditioned upon the Commissioner maintaining

the confidentiality of the information shared with the Commissioner.

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

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

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

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

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

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

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

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

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

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

- (1) The name of the insured.
- (2) The identity of the insurer or insurers.
- (3) A description of the subject and location of the risk.
- (4) The amount of premium charged for the insurance.
- (5) The amount of premium tax for the insurance.
- (6) The policy period.
- (7) The policy number.
- (7a) An acknowledged statement that the surplus lines licensee has complied with G.S. 58-21-15.
- (8) The name, address, telephone number, facsimile telephone number, and electronic mail address of the licensee, as applicable.
- (9) Any other relevant information the Commissioner may reasonably require.

(b) ~~The licensee shall complete and retain an affidavit as to the efforts to place the coverage with admitted insurers and the results of the efforts, in accordance with~~

~~G.S. 58-21-15. a copy of the report in paper or electronic form as required by the Commissioner. The report and affidavit required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."~~

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

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

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

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

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

- (1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract sold, directly or indirectly, by or through that person or entity on behalf of the unauthorized insurer.
- (2) Shall be guilty of a Class 1 misdemeanor if the person or entity does not know that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.
- (3) Shall be guilty of a Class H felony if the person or entity knew or should have known that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.

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

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

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

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

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

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which the contract is issued, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the

holder of the contract either wholly from the employer's funds or funds contributed by the employer, or partly from the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

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

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

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

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

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

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

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

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

PART IV. SEVERABILITY.

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

PART V. EFFECT OF HEADINGS.

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

PART VI. EFFECTIVE DATES.

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

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2006