

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 666  
SENATE BILL 738

AN ACT TO IMPROVE THE REGULATION OF INSURANCE BY MAKING  
TECHNICAL IMPROVEMENTS AND OTHER NEEDED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-124.23(a), as found in the 1983 Supplement, is amended by substituting for the fourth and fifth sentences the following sentences:

"If approved, the deviation may thereafter be amended, subject to the provisions of this subsection. The deviation may be terminated only if the deviation will have been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination."

Sec. 2. G.S. 58-124.21(a) and 58-124.21(b) are each amended by substituting the number "50" for "30" in the first line; G.S. 58-124.21(a) is amended by rewriting the last sentence to read:

"Any order of disapproval under this section must be entered within 105 days of the date the filing is received by the Commissioner: Provided that any order of disapproval under this section with respect to workers' compensation insurance and employers' liability insurance written in connection therewith shall be entered within 120 days of the date the filing is received by the Commissioner."; and G.S. 58-124.21 is further amended by adding a new subsection to read:

"(c) For workers' compensation insurance and employers' liability insurance written in connection therewith, the period between the date of any filing and the date the Commissioner may give written notice as described in subsection (a) of this section and the period between the date of any filing and the deadline for giving notice of hearing as described in subsection (b) of this section shall be 60 days."

Sec. 3. G.S. 58-124.20(a) is amended by rewriting the second sentence to read:

"Each rate filing shall become effective on the date specified in the filing, but not earlier than 105 days from the date the filing is received by the Commissioner: Provided that (1) rate filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the Commissioner; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau."

Sec. 4. G.S. 58-124.27 is amended in the second sentence by inserting immediately after "Article" the following:

"except workers' compensation insurance and employers' liability insurance written in connection therewith".

Sec. 5. G.S. 58-52.1(c), 58-153, 58-153.1(b)(2), and 58-307 are each amended by substituting "five dollars (\$5.00)" for "one dollar (\$1.00)".

Sec. 6. G.S. 58-52.1(d) is rewritten to read:

"(d) Upon receiving such service, the Commissioner or his duly appointed deputy shall within three business days send one of the copies of the process, by registered or certified mail, to the defendant agent, adjuster, motor vehicle damage appraiser, or broker at his last address of record as filed with the Commissioner."

Sec. 7. G.S. 58-154 is amended in the first sentence by substituting the word, "three" for the word, "two".

Sec. 8. G.S. 58-153.1(b)(2) is amended in the second sentence by substituting the words, "within three business days" for the word, "forthwith"; and by inserting before the word, "registered" the words, "certified or".

Sec. 9. G.S. 58-397 is amended by rewriting lines 4 through 8 to read:

"service of process on its behalf. The provisions of G.S. 58- 153 and 58-154 shall apply to service of process under this section, except that such service shall be mailed to the insurance-support organization at its last known principal place of business."

Sec. 10. G.S. 58-31.2 is repealed.

Sec. 11. G.S. 58-27.1, 58-27.2, and 143A-76 are repealed.

Sec. 12. G.S. 143A-77 and Article 27A of General Statutes Chapter 58 are repealed.

Sec. 13. G.S. 58-22 is amended by rewriting the third, fourth, and fifth lines to read:

"making oath to or subscribing the statement shall be guilty of a misdemeanor and, upon conviction, shall be severally punished by a fine of not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000)."

Sec. 14. G.S. 58-34 is amended by rewriting the second sentence to read:

"Any company or agent thereof who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000)."

Sec. 15. G.S. 58-46 is amended by rewriting lines 6, 7, and 8 to read:

"insurance, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment for not more than one year, or both, in the discretion of the court."

Sec. 16. G.S. 58-47 is amended by substituting "one thousand dollars (\$1,000)" for "two hundred dollars (\$200.00)" and "two thousand dollars (\$2,000)" for "five hundred dollars (\$500.00)".

Sec. 17. G.S. 58-49 is amended by rewriting lines 7 through 11 to read:

"a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment for not less than 30 days nor more than one year, or both, in the discretion of the court. This section shall also apply to contracts and certificates issued under General Statutes Chapters 57 and 57B."

Sec. 18. G.S. 58-50 is amended by rewriting the first phrase to read:

"Any agent who signs any blank contract or policy of insurance is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000);".

Sec. 19. G.S. 58-51 is amended by substituting "one thousand dollars (\$1,000)" for "two hundred dollars (\$200.00)" and "five thousand dollars (\$5,000)" for "five hundred dollars (\$500.00)".

Sec. 20. G.S. 58-52, 58-61, 58-146 and 58-164(h) are each amended by substituting "one thousand dollars (\$1,000)" for "one hundred dollars (\$100.00)" and "five thousand dollars (\$5,000)" for "five hundred dollars (\$500.00)".

Sec. 21. G.S. 58-54.11 is amended by rewriting the fifth and sixth lines to read:

"occurred the sum of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation, which if not paid shall be recovered pursuant to G.S. 58-9.7."

Sec. 22. G.S. 58-54.22 is amended in the third and fourth lines of the second paragraph by substituting "one thousand dollars (\$1,000)" for "one hundred dollars (\$100.00)" and "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)".

Sec. 23. G.S. 58-124.8 is amended in lines 8, 9, and 10 by substituting "not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000)" for "not more than five hundred dollars (\$500.00)"; and in lines 8 and 9 by inserting after the word "Article" the following:

"shall be guilty of a misdemeanor and, upon conviction,".

Sec. 24. G.S. 58-135.1(b) is amended by substituting "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)".

Sec. 25. The text of G.S. 58-162 is rewritten to read:

"It shall be unlawful for any fire, marine, or fire and marine insurance company licensed to do business in this State to assume reinsurance on property located in this State from a company that is not licensed to do business in this State. Any person that violates this section shall be subject to cancellation of its license to do business in this State; and upon conviction the person shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each offense, in the discretion of the court."

Sec. 26. G.S. 58-172 is amended by substituting "one thousand dollars (\$1,000)" for "two hundred and fifty dollars (\$250.00)" and "five thousand dollars (\$5,000)" for "five hundred dollars (\$500.00)".

Sec. 27. G.S. 58-173 is amended by rewriting lines 10 through 12 to read:

"the plaintiff, shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000); but the policy shall be binding upon the company issuing it."

Sec. 28. G.S. 58-262 is amended by rewriting the second and third lines to read:

"in willful violation of this Subchapter, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars (\$5,000) for each offense; and the".

Sec. 29. G.S. 58-302 is amended:

(a) in the first paragraph, by substituting "one thousand dollars (\$1,000)" for "one hundred dollars (\$100.00)" and "five thousand dollars (\$5,000)" for "five hundred dollars (\$500.00)";

(b) in the second paragraph, by substituting "one thousand dollars (\$1,000)" for "fifty dollars (\$50.00)" and "five thousand dollars (\$5,000)" for "two hundred dollars (\$200.00)"; and

(c) in the third paragraph, by rewriting the last line to read: "guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five thousand dollars (\$5,000)."

Sec. 30. G.S. 58-306 is amended by substituting "fifteen thousand dollars (\$15,000)" for "five thousand dollars (\$5,000)".

Sec. 31. G.S. 58-315 is amended by substituting "five hundred dollars (\$500.00)" for "fifty dollars (\$50.00)".

Sec. 32. G.S. 58-357 is amended by substituting "one thousand dollars (\$1,000)" for "two hundred fifty dollars (\$250.00)", "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)", and "two thousand dollars (\$2,000)" for "five hundred dollars (\$500.00)".

Sec. 33. G.S. 58-403 is amended in the third line by inserting between "shall" and "be" the following:

", upon conviction, be guilty of a misdemeanor and"; and in the fourth line by inserting "not" between "for" and "more".

Sec. 34. G.S. 58-16 is amended by rewriting lines 17 and 18 to read:

"or already admitted to do business in this State. Any domestic or foreign company examined under this section shall pay the proper charges incurred in the examination, including the expenses of the".

Sec. 35. Article 1 of General Statutes Chapter 58 is amended by adding a new section to read:

**"§ 58-9.7. Civil penalties or restitution for violations.** – (a) This section applies to any person who is subject to licensure or certification under the provisions of this Chapter, General Statutes Chapters 57, 57B or 85C, Articles 9B or 9C of General Statutes Chapter 66, or Articles 9A or 9B of General Statutes Chapter 143.

(b) Whenever the Commissioner has reason to believe that any person has violated any of the provisions of the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or whenever the Commissioner has reason to believe that any person has violated Article 3A of this Chapter, the Commissioner may issue and serve upon that person a written statement of charges and a written notice of hearing, to be held at a time and place fixed in the notice. The date for the hearing shall not be less than 10 days after the date of service. It shall be sufficient to give such notice either by delivering it to the person charged or by sending the notice to the last known address of that person

by certified mail, return receipt requested. At the time and place fixed for the hearing the person charged shall have an opportunity to answer the charges against him and present evidence on his behalf. Upon good cause shown, the Commissioner may permit any adversely affected person to intervene, appear, and be heard at the hearing by counsel or in person. The Commissioner may consolidate a hearing under this section with a hearing allowed under G.S. 58-54.6 where there is common subject matter involved and subject to procedural requirements set out in both sections being followed.

(c) In any case where a hearing pursuant to subsection (b) of this section results in the findings by the Commissioner of a knowing violation of any of the provisions of the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or findings by the Commissioner of a knowing violation of Article 3A of this Chapter, the Commissioner may, in addition to or in lieu of suspending or revoking the license or certification, apply to a court of competent jurisdiction for an order directing payment of a monetary penalty as provided in subsection (d) of this section or an order directing payment of restitution as provided in subsection (e) of this section, or both. Each day during which a violation occurs shall constitute a separate offense.

(d) Upon application by the Commissioner and a finding by the court of a knowing violation as specified in subsection (c) of this section, the court shall direct the payment of a penalty of not less than five hundred dollars (\$500.00) nor more than forty thousand dollars (\$40,000), in the discretion of the court. The penalty shall be payable to the Commissioner, who shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the penal laws of this State.

(e) Upon application of the Commissioner and a finding by the court of a knowing violation as specified in subsection (c) of this section, the court may order the person who committed the violation to make restitution in an amount that would make whole any person harmed by the violation.

(f) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(g) Nothing in this section shall prevent the Commissioner from negotiating a mutually acceptable agreement with any person as to the status of the person's license of certificate or as to any civil penalty or restitution; and to submit such agreement with respect to any civil penalty or restitution to the court pursuant to subsections (d) and (e) of this section for the court's adoption and approval."

Sec. 36. G.S. 58-131.55 is amended as follows:

(a) By rewriting the section heading to read:  
"Suspension of license.";

(b) by repealing subsection (a); and

(c) by rewriting the first line of subsection (c) to read: "No license shall be suspended."

Sec. 37. G.S. 58-248.38 is amended by rewriting the second paragraph to read:

"Any insurer or representative thereof who fails to comply with or violates this section shall be subject to suspension or revocation of his certificate or license and shall be subject to the provisions of G.S. 58-9.7."

Sec. 38. G.S. 143-143.13 is amended as follows:

(a) By striking from the section heading the semicolon and words, "; civil penalty"; and

(b) by repealing subsection (b).

Sec. 39. G.S. 143-138 is amended by adding a new subsection to read:

"(l) When any question arises as to any provision of the Code, judicial notice shall be taken of that provision of the Code."

Sec. 40. G.S. 58-164(e) (1) is repealed.

Sec. 41. G.S. 58-155.60 is amended by changing the period at the end of the first paragraph to a colon and by adding the following:

"Provided that before delivering any deposit to the Association the Commissioner may retain an amount of the deposit up to five thousand dollars (\$5,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term 'administrative costs' does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-155.11(f) or 58-155.36."

Sec. 42. G.S. 58-155.84 is amended by changing the period to a colon at the end of the first sentence and by inserting immediately thereafter the following:

"Provided that before delivering any deposit to the Association the Commissioner may retain an amount of the deposit up to five thousand dollars (\$5,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term 'administrative costs' does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-155.11(f) or 58-155.36."

Sec. 43. G.S. 58-131.36(6) and G.S. 58-132(b)(3) are repealed.

Sec. 44. Article 1 of General Statutes Chapter 58 is amended by adding a new section to read:

**"§ 58-7.4. Appointments of committees or councils.** – (a) As used in this section, the term 'committee' means a collective body that consults with and advises the Commissioner or his designee in detailed technical areas; and the term 'council' means a collective body that consults with and advises the Commissioner or his designee as representative of citizen advice in specific areas of interest.

(b) The Commissioner may create and appoint committees and councils, each of which shall consist of no more than 13 members unless otherwise provided by law. The members of any committee or council shall serve at the pleasure of the Commissioner and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with G.S. 138-5. Per diem, travel, and

subsistence payments to members of committees or councils that are created in connection with federal programs shall be paid from federal funds unless otherwise provided by law."

Sec. 45. G.S. 58-205.3(a) is amended in the first line and G.S. 58-205.3(c) is amended in the second line by deleting from those lines the word, "life" following the word, "transact".

Sec. 46. G.S. 58-201.1(d) is amended in the twelfth line of the second paragraph by substituting "first paragraph of this subsection" for "preceding paragraph"; and in the fourteenth line by substituting "(1)" for "(2)".

Sec. 47. Subchapter IX of General Statutes Chapter 58 is redesignated "MISCELLANEOUS PROVISIONS".

Sec. 48. G.S. 58-248.26 is amended by:

(a) Rewriting subsection (6) to read:

"(6) 'Motor vehicle' means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers)."; and

(b) Amending subsection (7) by striking from that subsection the words, "as defined in Article 9A of Chapter 20 of the General Statutes of North Carolina".

Sec. 49. G.S. 58-248.33(b)(1)d. and G.S. 58- 248.33(b)(2) are each amended by substituting "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)".

Sec. 50. G.S. 58-21 is amended in the section heading by inserting after the word "Annual" the following: ", semiannual, or quarterly".

Sec. 51. G.S. 58-21 is further amended by adding the following sentence:

"Provided further, the Commissioner may, in his discretion, require the statement required by this section to be filed semiannually or quarterly by any insurance company, association, or order."

Sec. 52. G.S. 57B-21(a) is rewritten to read:

"(a) The Commissioner may, in addition to or in lieu of suspending or revoking a certificate of authority under G.S. 57B- 16, proceed under G.S. 58-9.7, provided that the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the procedure under G.S. 58-9.7."

Sec. 53. G.S. 58-21.1 is rewritten to read:

**"§ 58-21.1. Reporting of professional liability experience.** – Every insurer authorized to write professional liability insurance in this State shall file with the Commissioner, along with the insurer's statement that is filed under G.S. 58-21, a report containing the information that is listed on the professional liability insurance supplement as promulgated and amended by the National Association of Insurance Commissioners."

Sec. 54. G.S. 58-21.2, as found in the 1983 Supplement, is amended in the third and fourth lines by substituting "statement that is filed under G.S. 58-21" for "annual statement".

Sec. 55. Article 2 of General Statutes Chapter 58 is amended by adding a new section to read:

**"§ 58-7.5 Deposits; use of master trust.** – Notwithstanding any other provision of law, the Commissioner is authorized to select a bank or trust company as master trustee to hold cash or securities to be pledged to the State when deposited with him pursuant to statute. Securities may be held by the master trustee in any form which, in fact, perfects the security interest of the State in the securities. The Commissioner shall by rule establish the manner in which the master trust shall operate. The master trustee may charge the company making the deposit reasonable fees for services rendered in connection with the operation of the trust."

Sec. 56. G.S. 58-182.6 is amended at the beginning of the first sentence by substituting "Unless a master trustee is selected by the Commissioner pursuant to G.S. 58-7.5, the" for "The".

Sec. 57. G.S. 58-187 is amended by inserting after "State Treasurer" the following: "or the trustee selected pursuant to G.S. 58-7.5".

Sec. 58. G.S. 58-188.5 is amended by inserting "or the Commissioner" after "Treasurer of North Carolina", and is amended in the section heading by inserting after "Treasurer" the following: "or Commissioner".

Sec. 59. G.S. 58-188.6 is amended by inserting "or Commissioner" after "Treasurer".

Sec. 60. G.S. 57-4.1 is amended:

(a) By rewriting lines 7 through 12 to read:

"Commissioner, who shall review the filing in accordance with the standards in G.S. 57-4. At any time within 60 days after the date of any filing under this section or G.S. 57-4, the Commissioner may give written notice to the corporation of a fixed time and place for a hearing on the filing, which time shall be no less than 20 days after notice is given. In the event no notice of hearing is issued within 60 days from the date of any filing, the filing shall be deemed to be approved, subject to modification by the Commissioner as authorized by G.S. 57-4. In the event the Commissioner gives notice of a hearing, the corporation making the filing shall, not less than 10 days before the time of the hearing, cause to be"; and

(b) By adding the following at the end:

"If the Commissioner does not issue an order within 45 days after the day on which the hearing began, the filing shall be deemed to be approved, subject to modification by the Commissioner as authorized by G.S. 57-4."

Sec. 61. G.S. 118-7 is amended by repealing subsection (3) and adding the following:

(5) To provide for benefits of supplemental retirement, additional workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund as set forth in Article 2 of this Chapter.

(6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund as set forth in Article 2 of this Chapter.

Notwithstanding any other provisions of law, no expenditures shall be made pursuant to subsections (5) and (6) of this section unless the State Firemen's Association



has certified that such expenditures will not render the Fund actuarially unsound for the purposes of providing the benefits set forth in subsections (1), (2), and (4) of this section. If, for any reason, funds made available for subsections (5) and (6) of this section shall be insufficient to pay in full any benefits, the benefits pursuant to subsections (5) and (6) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claim shall accrue with respect to any amount by which a benefit under subsections (5) and (6) shall have been reduced."

Sec. 62. G.S. 118-11 is rewritten to read:

**"§ 118-11. No discrimination on account of race.** – The local boards of trustees of the Firemen's Relief Fund shall make no discrimination based upon race in the payment of benefits."

Sec. 63. G.S. 118-8 is rewritten to read:

**"§ 118-8. Trustees to keep account and file certified reports.** – (a) Each local board of trustees shall keep a correct account of all monies received and disbursed by them. On a form prescribed by the North Carolina State Firemen's Association, each local board shall certify by October 31 of each year the following to the Association: the balance of the local fund, proof of sufficient bonding, a full accounting of the previous year's expenditures, and a full accounting of membership qualifications. Such certification shall be made concurrently with the local unit's statement of Fire Readiness.

(b) In turn, the State Firemen's Association shall certify to the Department of Insurance by January 1 of each year on a form prescribed by the Department, the local units which have complied with the requirements of subsection (a) of this section.

(c) In the event that any board of trustees in any of the towns and cities benefited by this Article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted in their care by obligating or disbursing such funds for any purpose other than those set forth in G.S. 118-7, then the Insurance Commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the State Firemen's Association, and adjusted to the satisfaction of the Insurance Commissioner.

(d) In the event that any local relief fund provided for in this Article becomes impaired, then the Firemen's Relief Fund may in the discretion of its board of trustees assist the local unit administering the fund in providing for relief to injured firemen and their dependents or survivors; provided, however, that any funds so provided to such impaired units shall be repaid in full at the statutory rate of interest from future local unit receipts if the impairment resulted from violations of this Article."

Sec. 64. G.S. 118-6 is amended by rewriting the first seven lines to read:

"For each county, town or city complying with and deriving benefits from the provisions of this Article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the local fire department or departments who are qualified as beneficiaries of such fund, two of whom shall be elected by the mayor and board of aldermen or other local governing body, and one of whom shall be named by

the Commissioner of Insurance. Their selection and term of office shall be as follows:" ; and by rewriting the last sentence to read:

"If the chief or chiefs of the local fire departments are not named on the board of trustees as above provided, then they shall serve as ex officio members without privilege of voting on matters before the board."

Sec. 65. G.S. 118-17 is amended in the last sentence of the section by deleting the words, "for general purposes" and inserting in lieu thereof the words, "for the purposes set forth in G.S. 118-7"; and is further amended by adding the following paragraph:

"Local units of the North Carolina State Volunteer Firemen's Association shall maintain records and report to the North Carolina State Firemen's Association in the same manner and to the same extent as provided for in G.S. 118-8, and shall be subject to the sanctions as set forth therein."

Sec. 66. G.S. 69-14 is amended by adding the following sentence at the end of the section: "As used in this Article and elsewhere in the General Statutes, 'State Fire Marshal' means the Commissioner of Insurance of the State of North Carolina."

Sec. 67. G.S. 20-310 is amended as follows:

- (a) By rewriting lines 2 and 3 of subdivision (f)(5) to read: "the insured that";
- (b) By inserting immediately before the semicolon in subdivision (g)(1) the following: ", including the mailing by first class mail of a premium notice or expiration notice, and the insured has failed to pay the required premium prior to the premium due date"; and
- (c) By inserting immediately after "purpose" on line 48 of subsection (i) the following: ", and any order entered by such hearing officer other than the Commissioner shall have the same force and effect as if entered by the Commissioner himself."

Sec. 68. G.S. 58-394 is amended:

- (a) By adding the following subsection:  
"(19) To authorized personnel of the Division of Motor Vehicles upon requests pursuant to G.S. 20-309(c) or G.S. 20- 309(f)."
- (b) By inserting "or" after the semicolon in subsection (17); and
- (c) By substituting "; or" for the period at the end of subsection (18).

Sec. 69. General Statutes Chapter 57B is amended by adding a new section to read:

**"§ 57B-3.1. Health maintenance organization of bordering states may be admitted to do business; reciprocity.** – A federally qualified health maintenance organization approved and regulated under the laws of a state bordering this State may be admitted to do business in this State by satisfying the Commissioner that it is fully and legally organized under the laws of that state, and that it complies with all requirements for health maintenance organizations organized within this State; provided that the bordering state has a law or regulation substantially similar to this section."

Sec. 70. G.S. 1-507.7 is amended by adding the following:

"As to delinquency proceedings for insurance companies under Article 17A of General Statutes Chapter 58, such prior notice need be given only to those claimants whose presented claims have been denied or have not been adjudicated; and notice is

satisfied by mailing either a general notice of application for distribution showing disposition of the claims or a copy of the application to such claimants. Proof of mailing with the United States Postal Service may be made by the receiver's certificate of service without either the necessity of postal receipt or the listing of individual claimants names and addresses."

Sec. 71. G.S. 58-251.2 is amended:

(a) By rewriting the last paragraph of subsection (a) to read:

"An insurer upon a showing of inadequacy of rates chargeable on accident and health policies, and a finding as to the same by the Commissioner, may increase such rates with the approval of the Commissioner. Thereafter, such rates shall be applicable to all policies of the same type; provided that no rate increase may become effective for any policy unless the insurer has given the policyholder written notice of the rate increase 45 days prior to the effective date of the increase. The policyholder thereafter must pay the increased rate in order to continue the policy in force."; and

(b) By adding a new subsection to read:

"(d) The requirements of this section do not apply to a refusal or renewal because of a change of occupation of an insured to one classified by the insurer as uninsurable nor to an increase in rate due to a change of occupation of an insured to a more hazardous occupation."

Sec. 72. G.S. 116B-13 is amended by adding a new subsection to read:

"(d) Negotiable Instruments. Any sum for the payment of a claim under an insurance policy or contract, which sum is payable on a negotiable instrument on which the insurer is the maker or drawer shall be presumed abandoned if, within 10 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

- (1) Negotiated the instrument;
- (2) Corresponded in writing with the insurer concerning it; nor
- (3) Otherwise indicated an interest by a writing on file with the insurer."

Sec. 73. G.S. 116B-14 is amended by adding a new subsection to read:

"(c) Negotiable Instruments. Any sum for the payment of a claim under an insurance policy or contract, which sum is payable on a negotiable instrument on which the insurer is the maker or drawer shall be presumed abandoned if, within five years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

- (1) Negotiated the instrument;
- (2) Corresponded in writing with the insurer concerning it; nor
- (3) Otherwise indicated an interest by a writing on file with the insurer."

Sec. 74. G.S. 20-279.21(b)(4) is amended by deleting the fifth sentence, which begins with "The insurer" and ends with "owner's policy", and by substituting for that sentence the following:

"Underinsured motorist coverage shall be deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of such liability coverage for purpose of any single liability claim presented for underinsured motorist

coverage shall be deemed to occur when either (a) the limits of liability per claim have been paid upon such claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage shall be deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant pursuant to the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant pursuant to the exhausted liability policy and the total limits of the owner's underinsured motorist coverages provided in the owner's policies of insurance; it being the intent of this paragraph to provide to the owner, in instances where more than one policy may apply, the benefit of all limits of liability of underinsured motorist coverage under all such policies: Provided that this paragraph shall apply only to nonfleet private passenger motor vehicle insurance as defined in G.S. 58-131.36(9) and (10).

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay monies without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of such payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice in advance of a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of such notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that such insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for monies beyond those paid by the underinsured motorist insurer shall prior to doing so give notice to such insurer and give such insurer, at its expense, the opportunity to participate in the prosecution of such claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon such judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the

owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of monies for such injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of such notice, the underinsured motorist insurer shall have the right to appear in defense of such claim without being named as a party therein, and without being named as a party may participate in such suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in such action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, prior to approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in such action on his separate behalf. In the event that an underinsured motorist insurer, following the approval of such application, pays in settlement or partial or total satisfaction of judgment monies to the claimant, such insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to such owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle."; and is further amended in the first sentence by substituting "in an amount equal to" for "but not to exceed".

Sec. 75. G.S. 58-77(9), as found in the 1983 Supplement, is amended by substituting "1987" for "1985".

Sec. 76. G.S. 143B-422, as found in the 1983 Supplement, is amended in the first sentence by substituting the word, "Insurance" for the word, "Administration".

Sec. 77. G.S. 143B-422, as found in the 1983 Supplement, is further amended in lines 4, 6, 11, 15, 17, 20, and 33 by substituting "Commissioner of Insurance" for "Governor".

Sec. 78. Article 9 of General Statutes Chapter 143A is amended by adding a new section to read:

**"§ 143A-79.1. Public Officers and Employees Liability Insurance Commission; transfer.** – The Public Officers and Employees Liability Insurance Commission, as contained in Part 20 of Article 9 of General Statutes Chapter 143B, is transferred by a Type II transfer to the Department of Insurance."

Sec. 79. Part 20 of Article 9 of General Statutes Chapter 143B, comprising G.S. 143B-422, 143B-423, 143B-424, 143B- 424.1., 143B-425, 143B-426, and 143B-

426.1, as amended by Sections 76 and 77 of this act, is recodified as Article 2B of General Statutes Chapter 58, comprising respectively G.S. 58- 27.20, 58-27.21, 58-27.22, 58-27.23, 58-27.24, 58-27.25 and 58- 27.26.

Sec. 80. G.S. 120-123(10) is amended by substituting "G.S. 58-27.20" for "G.S. 143B-422".

Sec. 81. Effective January 1, 1986, G.S. 66-49.9(6) is amended by deleting "not to exceed three hundred dollars (\$300.00)".

Sec. 82. The North Carolina Insurance Regulation Study Commission shall review and analyze the Safe Driver Insurance Plan, including the effect of the provisions of House Bill 248 of the 1985 General Assembly if those provisions were to become enacted by the 1987 General Assembly.

Sec. 83. G.S. 58-41.5 is amended by deleting "life" from the section heading; and in subsection (a) by substituting "life or fire and casualty insurance agent as defined in G.S. 58- 39.4(e) or (i): for "life insurance agent as defined in G.S. 58- 39.4(3)".

Sec. 84. G.S. 20-309(e) is amended by rewriting the first paragraph to read:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of such termination. The Division, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

- (1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or
- (2) In the case of a lapse in financial responsibility, pay a fifty dollar (\$50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle accident during the period of no financial responsibility."

Sec. 85. Sections 1 through 12, 34 through 42, 44 through 83, and this section are effective upon ratification. Section 43 shall become effective September 1, 1985. Sections 13 through 33, 74, and 84 of this act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 10th day of July, 1985.