

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 752
SENATE BILL 513

AN ACT TO MAKE VARIOUS SUBSTANTIVE CHANGES AND IMPROVEMENTS IN THE INSURANCE LAWS AND TO EXPRESSLY AUTHORIZE THE RECODIFICATION OF INSURANCE AND RELATED LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-26 is amended by adding a new subsection to read:

"(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-7.3 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record, which shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner or his authorized employee. Such expenses shall not exceed the per diem and allowances specified in G.S. 138-5; provided, the collection of such expense and allowance may, in the discretion of the Commissioner, be waived. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to examination or to pay the expenses of examination upon presentation of a bill therefor by the Commissioner or his authorized employee, is grounds for the revocation or refusal of a license. The Commissioner may institute a civil action to recover the expenses of examination against any person that refuses or fails to pay the expenses."

Sec. 2. G.S. 14-96.1 reads as rewritten:

"**§ 14-96.1. Report to Commissioner.**—Whenever any insurance company, its manager, general agent or other representative knows or has reasonable cause to believe that any agent, broker or other representative of such company ~~is guilty under~~ has violated the preceding section [G.S. 14-96] G.S. 14-96 or G.S. 14-213 through G.S. 14-216, it shall be the duty of such company, its manager, general agent or other representative, within 30 days after acquiring such knowledge to file with the Commissioner a complete statement of all the relevant facts and circumstances. All such reports shall be privileged communications, and when filed in good faith shall in nowise subject the company or individuals making the same to any liability whatsoever. The Commissioner may suspend the license to do business in this State of any insurance company, its general manager, agent or other representative who willfully fails to comply with this section."

Sec. 3. The catch line of G.S. 58-9.7 reads as rewritten:

"**§ 58-9.7. Civil penalties or restitution for violations; summary suspension of license or certificate.**"

Sec. 4. G.S. 58-9.7(g) reads as rewritten:

"(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 or 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. 5. G.S. 58-9.7 is amended by adding a new subsection to read:

"(h) Notwithstanding subsection (b) of this section, if the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, summary suspension of a license or certificate may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings to suspend, revoke, or refuse renewal provided for in subsection (b) of this section. The proceedings shall be promptly commenced and determined."

Sec. 6. G.S. 58-433 is amended by adding a subsection to read:

"(e) Any person who does not renew a surplus lines license and applies for another surplus lines license more than one year after the expiration date of the previous license shall be required to satisfy every condition in this section, including the written exam, before the Commissioner issues another surplus lines license to that person."

Sec. 7. G.S. 58-54 reads as rewritten:

"§ 58-54. Forms to be approved by Commissioner of Insurance.—It is unlawful for any insurance company doing business in this State to issue, sell, or dispose of any policy, contract, or certificate, or use applications in connection therewith, until the forms of the same have been submitted to and approved by the Commissioner of Insurance of North Carolina, and copies filed in the Insurance Department. If a policy form filing is disapproved by the Commissioner, the Commissioner may return the filing to the filer. As used in this section, 'policy form' includes endorsements, riders, or amendments to policies that have already been approved by the Commissioner."

Sec. 8. Chapter 58 of the General Statutes is amended by adding the following Article:

"ARTICLE 44.

"Managing General Agents.

"§ 58-575. Agency contracts.—(a) Any domestic insurer that contracts with any person whereby such person is granted the right or privilege to solicit, procure, write, or produce a major part of the insurance business for such insurer and collect premiums therefor shall file such contract with the Commissioner within 15 days from the execution of such contract or within 60 days following the end of any calendar quarter in which such person produces a major portion of the insurer's insurance business. For the purposes of this section, any person who produces in excess of five percent (5%) of an insurer's insurance premium volume during any one calendar quarter shall be deemed as having been granted the privilege of producing a major portion of such insurer's business. Failure of the Commissioner to disapprove any such contract within 30 days after the same shall be filed with him, shall constitute his approval thereof. An insurer may continue to accept business from such person until such contract is disapproved by

the Commissioner. Such disapproval shall be in writing, stating the reasons therefor, and a copy thereof shall be delivered to the company.

(b) The Commissioner shall not approve any such contract that:

- (1) subjects the insurer to excessive charges for expenses or commission;
- (2) vests in the agent or agency company any control over the management of the affairs of the insurer to the exclusion of the board of directors of the insurer;
- (3) gives to such person, the right to solicit, procure, write, or produce a major part of the insurance business for such insurer and collect and hold the premiums for such unreasonable period as may jeopardize the security of policyholders; or
- (4) fails to require such person to make available to the Commissioner or his designees all books, records, and documents pertaining to such person's insurance business.

(c) The Commissioner shall not approve any contract with any person if such person or its officers and directors are of known bad character or have been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relationships with any person or persons known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(d) The Commissioner, for the purpose of ascertaining the assets, conditions and affairs of any person having a contract as provided in subsection (a) of this section, may examine the books, records, documents, and assets of such person.

(e) The Commissioner may, after a hearing held pursuant to G.S. 58-9.2, withdraw his approval of any agency contract theretofore approved by him, if he finds that the basis of his original approval no longer exists, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsections (a) and (b) of this subsection.

(f) As used in this section, 'person' includes different legal entities that are directly or indirectly owned or controlled by the same person.

"§ 58-576. Retrospective compensation agreements.—(a) Retrospective compensation agreements for business written under this Chapter must be filed with the Commissioner for his approval.

(b) 'Retrospective compensation agreement' means any such arrangement, agreement, or contract having as its purpose the actual or constructive retention by the insurer of a fixed proportion of the gross premiums, with the balance of the premiums, retained actually or constructively by the agent or the producer of the business, who assumes to pay therefrom all losses, all subordinate commissions, loss adjustment expenses and his profit, if any, with other provisions of such arrangement, agreement, or contract auxiliary or incidental to such purpose.

(c) The standards for approval shall be as set forth under G.S. 58-575.

"§ 58-577. Management contracts.—(a) All agreements or contracts under which any person is delegated management duties or control of any insurer, or which transfer a substantial part of any major function of an insurer such as adjustment of losses, production of business, investment of assets, or general servicing of the insurer's

business must be filed with the Commissioner on or before the effective date of such contract or agreement.

(b) There shall be exempted from the filing requirement of this section contracts by groups of affiliated insurers on a pooled funds basis or service company management basis, where costs to the individual member insurers are charged on an actually incurred or closely estimated basis. However, these contracts must be reduced to written form.

G.S. 58-576, 58-577, and 58-578 do not apply to any power of attorney or other authority authorized by G.S. 58-138.

"§ 58-578. Grounds for disapproval.—(a) The Commissioner must disapprove any such management contract or service agreement if, at any time, he finds:

- (1) that the service or management charges are based upon criteria unrelated either to the managed insurer's profits or to the reasonable customary and usual charges for such services or are based on factors unrelated to the value of such services to the insurer; or
- (2) that management personnel or other employees of the insurer are to be performing management functions and receiving any remuneration therefor through the management or service contract in addition to the compensation by way of salary received directly from the insurer for their services; or
- (3) that the contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurance company management; or
- (4) that the contract contains provisions that would be clearly detrimental to the best interest of policyholders, stockholders, or members of the insurer; or
- (5) that the officers and directors of the management firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(b) If the Commissioner disapproves of any management contract or service agreement, notice of such action shall be given to the insurer assigning the reasons therefor in writing. The Commissioner shall grant any party to the contract a hearing upon request according to G.S. 58-9.2.

"§ 58-579. Supplement to financial statement.—Any insurer that has a management contract shall file with its financial statement a supplement on forms prescribed by the Commissioner which discloses the following: Salaries, commissions, or any valuable consideration paid to each officer and director of the management company or to any shareholder who owns, directly or indirectly, ten percent (10%) of the shares of either the managed insurer or the management company. Any changes in the officers or directors of the managing company are to be reported to the Commissioner."

Sec. 9. The Attorney General, through the Revisor of Statutes, and the Commissioner of Insurance, through the Legal Division of the Department of Insurance, are authorized to renumber, rearrange, and consolidate the provisions contained in General Statute Chapters 57, 57B, 58, 69, 85C, 109, and 118; in Articles 9B and 9C of General Statute Chapter 66; and in Articles 9A and 9B of General Statute Chapter 143. This authority to recodify these provisions includes the authority to make changes to statutory cross-references that will reflect the results of the recodification. This authority is in addition to the authority contained in G.S. 114-9 granted to the Attorney General to make similar changes in the format of the General Statutes.

Sec. 10. Article 6 of General Statute Chapter 58 is amended by adding the following sections:

"§ 58-75.3. Approval as a domestic insurer.—Any insurer that is organized under the laws of any other state and is licensed to transact the business of insurance in this State may become a domestic insurer by (i) complying with laws and regulations regarding the organization and licensing of a domestic insurer of the same type; (ii) designating its principal place of business at a place in this State; and (iii) obtaining the approval of the Commissioner. Such domestic insurer shall be entitled to like certificates of authority to transact business in this State and shall be subject to the authority and jurisdiction of this State. Articles of Incorporation of such domestic insurer may be amended to provide that the corporation is a continuation of the corporate existence of the original foreign corporation through adoption of this State as its corporate domicile and that the original date of incorporation in its original domicilliary state is the date of incorporation of such domestic insurer.

"§ 58-75.4. Conversion to foreign insurer.—Any domestic insurer may, upon the approval of the Commissioner, transfer its domicile to any other state in which it is licensed to transact the business of insurance. Upon such a transfer such insurer shall cease to be a domestic insurer and shall be licensed in this State, if qualified, as a foreign insurer. The Commissioner shall approve any such proposed transfer unless he determines that such transfer is not in the interest of the policyholders of this State.

"§ 58-75.5. Effects of redomestication.—The certificate of authority, agent appointments and licenses, rates, and other items that the Commissioner authorizes or grants, in his discretion, that are in existence at the time any insurer licensed to transact the business of insurance in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method, shall continue in full force and effect upon such transfer if such insurer remains duly licensed to transact the business of insurance in this State. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the insurer or its new location unless so ordered by the Commissioner. Every transferring insurer shall file new policy forms with the Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner: Provided, however, every such transferring insurer shall (i) notify the Commissioner of the details of the proposed transfer and (ii) promptly file any resulting amendments to corporate documents filed or required to be filed with the Commissioner."

Sec. 11. G.S. 58-153.1(b)(2) is amended in the second sentence by substituting "four" for "three"; and G.S. 58-154 is amended in the first sentence by substituting "four" for "three" and in the last sentence by substituting "12" for "10".

Sec. 12. G.S. 58-194.3(c) is amended by adding the following sentence to the end:

"When an employee retires from State employment and payroll deduction under this section is no longer available, the insurance company may not terminate life insurance products purchased under the payroll deduction plan without the retiree's specific written consent solely because the premium is no longer deducted from payroll."

Sec. 13. Subchapter IV of Chapter 58 of the General Statutes is amended by adding a new subsection to read:

"§ 58-213.1. Contestability after reinstatement.—A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance. The reinstatement application shall be deemed to be a part of the policy whether or not attached thereto."

Sec. 14. G.S. 58-210(1)b. reads as rewritten:

"b. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. ~~A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.~~ A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer."

Sec. 15. G.S. 58-210(2)b. reads as rewritten:

"b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. ~~A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy five percent (75%) of the then eligible debtors elect to pay the required charges.~~ A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual

insurability unless the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer."

Sec. 16. G.S. 58-210(3)b. reads as rewritten:

"b. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. ~~A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.~~ A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer."

Sec. 17. G.S. 58-210(4)b. reads as rewritten:

"b The premium for the policy shall be paid by the trustee wholly from funds contributed by the participating employer or labor union, or partly from funds contributed by the participating employer or labor union and partly from funds contributed by the insured persons. In no event shall the funds contributed by the participating employer or labor union represent less than twenty-five percent (25%) of the total cost of the insurance with respect to the insured persons of a participating employer or labor union.

If none of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for the insurance, all eligible employees of that particular participating employer or labor union must be insured, or all except any as to whom evidence of insurability is not satisfactory to the insurer. Insurance may not be placed into effect for employees of a participating employer or labor union if less than twenty-five percent (25%) of the total cost is paid by the participating employer or labor union.

~~If part of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for their insurance, coverage may be placed in force on employees of a participating employer or on members of a participating labor union only if at least seventy five percent (75%) and a minimum of five of the eligible persons in the unit subscribing to the trust, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect when enrolling to make the required contributions.~~ If part of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for their insurance, coverage may be placed in force on

employees of a participating employer or on members of a participating labor union provided the group is structured on an actuarially sound basis."

Sec. 18. G.S. 58-210(5)c. reads as rewritten:

"c. The premium for the policy shall be paid by the policyholder, either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance, nor if the Commissioner finds that the rate of such contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). ~~A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy five percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.~~ A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer."

Sec. 19. G.S. 58-254.4(b) reads as rewritten:

"(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following paragraph:

Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. ~~If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall comprise not less than seventy five percent (75%) of all persons eligible of any class or classes of employees, or agents, determined by conditions pertaining to the employment or agency.~~ If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall be structured on an actuarially sound basis."

Sec. 20. G.S. 97-106 reads as rewritten:

"§ 97-106. **Definitions.**—As hereafter used in this Article, unless the context or subject matter otherwise requires:

'Carrier' means either a stock carrier or a mutual carrier, as the context may require.

'Commissioner' means the Insurance Commissioner of this State.

'Fund' means either the stock fund or the mutual fund as the context may require.

'Funds' mean the stock fund and the mutual fund.

'Fund year' means the calendar year.

'Insolvent stock carrier' or 'insolvent mutual carrier' means a stock carrier or a mutual carrier, as the case may be, which has been determined to be insolvent, or for which or for the assets of which a receiver has been appointed by a court or public officer of competent jurisdiction and authority.

'Mutual carrier' means any mutual corporation or association and any reciprocal or interinsurance exchange authorized to transact the business of workmen's compensation insurance in this State, except an insolvent mutual carrier.

'Mutual fund' means the Mutual Workmen's Compensation Security Fund created by this Article.

'Stock carrier' means any stock corporation authorized to transact the business of workmen's compensation insurance in this State, except an insolvent stock carrier.

'Stock fund' means the Stock Workmen's Compensation Security Fund created by this Article.

'Workmen's Compensation Act' means the Workmen's Compensation Act of the State of North Carolina, being G.S. 97-1 to 97-101 as amended and supplemented or, with respect to claimants or insureds that are residents of this State at the time of the insured event, the Federal Longshoremen's and Harbor Worker's Compensation Act."

Sec. 21. Sections 1 through 6 of this act shall become effective September 1, 1987. Section 20 shall become effective January 1, 1986. The remaining sections of the act are effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1987.