

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 864  
HOUSE BILL 785

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE INSURANCE LAW  
AND TO ASSIST INSURED IN REPLACING COVERAGE FROM  
INSOLVENT INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-9.7(a) reads as rewritten:

"(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~~ Article 9B of General Statutes Chapter 143."

Sec. 2. G.S. 58-30.5(e) reads as rewritten:

"(e) Any adjustments in rates for nonfleet passenger motor vehicle insurance to offset any reduction in premium level due to the implementation of the provisions of this section shall be made through adjustments to the base rates for the affected coverages. Such adjustments shall be filed by the Bureau with the Commissioner in accordance with the standards and procedures of Articles 12B and 25A of this Chapter. ~~In no event shall such adjustments be deemed to be changes in the total combined general rate level within the meaning of G.S. 58-124.26.~~"

Sec. 3. (a) G.S. 58-42.1 reads as rewritten:

"**§ 58-42.1. 'Twisting' with respect to insurance policies defined; penalties.**—Any insurer, or any agent of any insurer, who shall engage in twisting, as defined in this section, shall be subject to the provisions of G.S. 58-37 and 58-38 or G.S. 58-44.4 and ~~58-44.6~~ 58-9.7. As used in this section 'twisting' shall mean the willful, material misrepresentation of an insurance contract, whereby an insured is deceived and induced to cancel or terminate insurance in force to such insured's detriment."

(b) G.S. 58-57 reads as rewritten:

"**§ 58-57. Investigations; hearings.**—For the purpose of conducting investigations and holding hearings on insurance premium finance companies, the Commissioner shall have the same authority as that vested in him by G.S. 58-9.2 and ~~58-44.6~~ 58-9.7."

(c) G.S. 66-49.13 reads as rewritten:

"**§ 66-49.13. Powers of Commissioner.**—The Commissioner shall have the same powers and authority for the purpose of conducting investigations and hearings under this Article as that vested in him by G.S. 58-9.2 and ~~58-44.6~~ 58-9.7."

(1) To investigate possible violation of this Article and to report evidence thereof to the Attorney General who may recommend prosecution to the appropriate solicitor;

(2) To suspend or revoke any license issued under this Article upon a finding, after notice and opportunity for hearing, that the holder of said license has violated any of the provisions of this Article, or has failed to maintain the standards requisite to original licensing as indicated in G.S. 66-49.12 hereof;

(3) To require any licensee to cease doing business through any particular agent or representative upon a finding after notice and opportunity for hearing, that such agent or representative has intentionally made false or misleading statements concerning the motor club services offered by the motor club represented by him;

(4) To approve or disapprove the name, trademarks, emblems, and all forms which an applicant for license or licensee employs or proposes to employ in connection with its business. If such name, trademarks or emblems is distinctive and not likely to confuse or mislead the public as to the nature or identity of the motor club using or proposing to use it, then it shall be approved, otherwise, the Commissioner may disapprove its use and effectuate such disapproval by the issuance of an appropriate order; and

(5) To make any rules or regulations necessary to enforce the provisions of this Article."

Sec. 4. G.S. 58-134.4 is amended by substituting "G.S. 58-134.3" for "G.S. 58-134.4" in the text of that section.

Sec. 5. G.S. 58-155.15(d) is amended by substituting "G.S. 58-155.10 through G.S. 58-155.17" for "this act".

Sec. 6. G.S. 58-155.60, as found in the 1985 Supplement, is amended in the first paragraph as follows:

(a) By substituting "this Chapter" for "Chapter 58 of the General Statutes"; and

(b) By deleting "in excess of one hundred dollars (\$100.00)".

Sec. 7. G.S. 58-177.1 is amended by substituting "Article 12B of this Chapter" for "G.S. 58-126.1".

Sec. 8. G.S. 58-188.9 is repealed.

Sec. 9. G.S. 58-3.2(2) reads as rewritten:

"(2) A warranty incidental to the sale of real property providing for the repair or replacement of the items covered by the warranty for defective parts and mechanical failure or resulting from ordinary wear and tear, which warranty excludes from its coverage damage from recognizable perils such as fire, flood, and wind, which perils do not relate to any defect in the items covered nor result from ordinary wear and tear. Any person issuing such warranties shall post a surety bond with the Secretary of State in the principal sum of not less than seventy-five thousand dollars (\$75,000), which bond shall be subject to the approval of the Secretary of State. Any person to whom the warranty is issued has the right to institute an action to recover against the warrantor and the surety bond for breach of warranty."

Sec. 10. G.S. 58-367(5) is amended by substituting "G.S. 58-2(3)" for "G.S. 58-2(2)".

Sec. 11. G.S. 58-371(a)(2) is amended by substituting "57B" for "57A".

Sec. 12. Article 24A of General Statute Chapter 58, comprising G.S. 58-241.6 through G.S. 58-241.34, is recodified as Part 13 of Article 10 of General Statute Chapter 143B, to comprise respectively G.S. 143B-472 through G.S. 143B-472.28.

Sec. 13. G.S. 58-241.6, recodified as G.S. 143B-472 by Section 12 of this act, is amended by substituting "G.S. 143B-472.1" for "G.S. 58-241.7".

Sec. 14. G.S. 58-241.11, recodified as G.S. 143B-472.5 by Section 12 of this act, is amended by substituting "G.S. 143B-472.3" for "Article 13 of [G.S. 58-241.9]".

Sec. 15. G.S. 58-241.13, recodified as G.S. 143B-472.7 by Section 12 of this act, is amended by substituting "G.S. 143B-472.16" for "[G.S. 58-241.22]".

Sec. 16. G.S. 58-241.16, recodified as G.S. 143B-472.10 by Section 12 of this act, is amended by substituting "G.S. 143B-472.3" for "[G.S. 58-241.9]".

Sec. 17. G.S. 58-164(d) is amended by substituting "surplus lines licensees as provided in Article 36 of this Chapter" for "authorized surplus lines agents or authorized surplus lines brokers as provided in G.S. 58-53.1, 58-53.2, and 58-53.3".

Sec. 18. G.S. 58-155.15(a)(3) and G.S. 58-155.15(a)(5) are each amended by substituting "those arising out of reinsurance agreements" for "reinsurers".

Sec. 19. (a) G.S. 58-7.1 reads as rewritten:

**"§ 58-7.1. Chief deputy commissioner.**—The Commissioner shall appoint and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner. He shall receive such compensation as fixed and provided by the ~~Budget Bureau~~ Department of Administration."

(b) G.S. 58-7.2 reads as rewritten:

**"§ 58-7.2. Chief actuary.**—The Commissioner shall appoint and may remove at his discretion a chief actuary, who shall receive such compensation as fixed and provided by the ~~Budget Bureau~~ Department of Administration."

Sec. 20. G.S. 58-7.3 reads as rewritten:

**"§ 58-7.3. Other deputies, actuaries, examiners and employees.**—The Commissioner shall appoint or employ such other deputies, actuaries, economists, examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers and may remove at his discretion ~~such other deputies, actuaries, examiners,~~ clerks and other employees as may be found necessary for the proper execution of the work of the ~~Insurance~~ Department, at such compensation as shall be fixed and provided by the ~~Budget Bureau~~ Department of Administration. If the Commissioner finds it necessary for the proper execution of the work of the Insurance Department to contract with persons, except to fill authorized employee positions, all those contracts, except those provided for in Articles 12B and 25A of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter 143 ~~of the General Statutes regarding contracts to obtain consultant services.~~"

Sec. 21. Effective September 1, 1987, G.S. 58-536(a) is amended in the first sentence by substituting "for which he is acting as an administrator" for "specified in G.S. 58-72(1) through G.S. 58-72(3)".

Sec. 22. G.S. 58-60 reads as rewritten:

**"§ 58-60. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.**—When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless such cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice be mailed to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. A notice thereof shall also be mailed to the insurance agent.

(2) After expiration of such period, the insurance premium finance company shall mail the insurer a request for cancellation, including a copy of the power of attorney, and shall mail a copy of the request for cancellation to the insured at his last known address as shown on the insurance premium finance agreement.

(3) Upon receipt of a copy of such request for cancellation notice by the insurer ~~or insurers~~, the insurance contract shall be cancelled with the same force and effect as if the aforesaid request for cancellation had been submitted by the insured himself, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he ~~or the insured~~ first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive such notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or insureds. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, such excess shall be remitted promptly to the order of the insured, subject to the minimum service charge provided for in this Article.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also, apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract."

Sec. 23. G.S. 58-7.5 reads as rewritten:

**"§ 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~~ person making the deposit reasonable fees for services rendered in connection with the operation of the trust."

Sec. 24. G.S. 58-173.8(b) and G.S. 58-173.20 are each amended by inserting the following immediately after "extended coverage": ", optional perils endorsements, or their successor forms of coverage,".

Sec. 25. G.S. 20-310(i) reads as rewritten:

"(i) Notwithstanding any provision herein contained, any insured may within 10 days of the receipt of the notice of cancellation or notice of intention not to renew, or the receipt of the reason or reasons for cancellation or refusal to renew if they were not stated in the notice, be entitled to request in writing that the Commissioner of Insurance review the action of an insurer in canceling or refusing to renew the policy of such insured. Within said 10-day period the insured may also request in writing a hearing in regard to such review; otherwise, the right of the insured for a hearing shall be deemed waived. On receiving a request in writing for a review of the action of such insurer, the Commissioner of Insurance shall immediately notify the insurer involved of the insured's request and the charges involved, if known, and on receipt of said notification and within 10 days thereafter the insurer may make a request in writing for a hearing in regard to such review; otherwise, the right of the insurer to such a hearing shall be deemed waived. If neither the insurer or the insured by request in writing or the Commissioner of Insurance of his own motion requires a hearing, then in such event the Commissioner of Insurance shall make such investigation as he deems appropriate to determine if the insurer has violated the provisions of this section, and shall after appropriate findings of fact either approve the cancellation or nonrenewal of such policy or order the insurer to renew, reissue, or reinstate such policy on such terms as may be just. At the written request of the insured or insurer or on his own motion, the Commissioner of Insurance shall after notice conduct a hearing to determine if the insurer has violated the provisions of this section, and after appropriate findings of fact, shall within 40 days after receipt in writing of a request for review by the insured, either approve the cancellation or nonrenewal of such policy or order the insurer to renew, reissue, or reinstate such policy on such terms as may be just. In addition, if the Commissioner of Insurance finds after notice and hearing and after appropriate findings of fact, that the insurer has willfully violated the provisions of this section or has acted without reasonable investigation into the grounds for action of cancellation or nonrenewal, he may order the insurer involved to pay the reasonable expenses and costs of the investigation and hearing conducted by the Commissioner not to exceed the sum of three hundred dollars (\$300.00) and such costs as are ordered paid by the Commissioner pursuant to the provisions of this section shall be paid as a condition of such insurer continuing to write automobile insurance business in this State. Any

insured or insurer aggrieved by any order or decision of the Commissioner of Insurance may appeal said order and decision to the Superior Court of Wake County pursuant to and subject to the provisions of G.S. 58-9.3. All examinations, investigations, and hearings provided by this subsection may be conducted by the Commissioner personally or by one or more of his deputies, actuaries, examiners, licensed attorneys, or employees designated by him for the purpose, 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. All hearings shall be held at such time and place as shall be designated in a notice which shall be given by the Commissioner in writing to the person cited to appear at least 10 days before the date designated thereon. The notice shall state the subject of the inquiry and the specific charges, if any. It shall be sufficient to give such notice either by delivering it or by depositing the same in the United States mail, postage prepaid and addressed to the last known address of such insured or insurer. The policy shall remain in full force and effect during the pendency of review by the Commissioner of Insurance or the court except where the Commissioner of Insurance has sustained the action of the insurer and except where the cancellation or failure to renew was for nonpayment under subdivision (1) of subsection (d) and subdivision (4) of subsection (e) of this section, in which case the policy shall terminate as of the date provided in the notice under subsection (f) of this section."

Sec. 26. G.S. 58-30.4 reads as rewritten:

**"§ 58-30.4. Revised classifications and rates; safe driver insurance plan.**—The North Carolina Rate Bureau shall promulgate a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) motor vehicles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications to wit: (i) pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Rate Bureau shall promulgate a revised subclassification plan which appropriately reflects the statistical driving experience and exposure of insureds in each of the four basic classifications provided for above, except that no subclassification shall be promulgated based, in whole or in part, directly or indirectly, upon the age or sex of the person insured. Such revised subclassification plan may provide for premium surcharges for insureds having less than two years' driving experience as licensed drivers, and shall provide for premium surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents, or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof. The subclassification plan to be effective January 1, 1984, shall provide that in a policy insuring more than one motor vehicle, driving record premium surcharges for chargeable accidents and moving traffic violations shall be distributed equally among the motor vehicles so insured. The classification plans and subclassification plans so promulgated by the Bureau shall be subject to the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-124.20, 58-124.21, and 58-124.22. As used in this section, the term 'conviction'

includes a determination that a person is responsible for an infraction as provided in Article 66 of Chapter 15A of the General Statutes."

Sec. 27. G.S. 58-30.5(b) reads as rewritten:

"(b) The subclassification plan shall provide that with respect to a conviction for a 'violation of speeding 10 miles per hour or less over the speed limit' there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal. As used in this section, the term 'conviction' includes a determination that a person is responsible for an infraction as provided in Article 66 of Chapter 15A of the General Statutes."

Sec. 28. G.S. 58-124.31(b) is amended by adding the following sentence, at the end:

"As used in this section, the term 'conviction' includes a determination that a person is responsible for an infraction as provided in Article 66 of Chapter 15A of the General Statutes."

Sec. 29. The catch line for G.S. 58-16.3 reads as rewritten:

**"§ 58-16.3. Examination, ~~annual~~ financial statement, and records of employers self-insuring for workers' compensation."**

Sec. 30. G.S. 58-490 is amended by substituting ", city, or housing authority" for "or municipal corporation".

Sec. 31. G.S. 58-44.5(b) reads as rewritten:

"(b) No insurer, broker, or agent ~~may shall~~ knowingly charge, ~~to or demand,~~ or receive from an applicant for insurance any money or other any consideration that exceeds the filed and approved premium for any policy of insurance in return for the processing of applications or other forms or for the rendering of services associated with the issuance or renewal of a contract of insurance, which money or other consideration is in addition to the filed and approved premium for such contract, unless the applicant for insurance consents in writing before any services are rendered. Any fee charged by a broker or agent for the purpose of compensation for the filling out and completion of applications or forms or the rendering of services associated with the issuance or renewal of a policy of insurance is not allowed, absent the applicant's prior consent, if a commission will be paid by an insurer to the agent or broker on the issuance or renewal of the policy."

Sec. 32. The catch line of G.S. 58-44.5 reads as rewritten:

**"§ 58-44.5. Rebates and charges in excess of premium prohibited; exception."**

Sec. 33. G.S. 58-124.31(c) is amended in the first sentence by changing the period to a semicolon and by adding the following:

"provided that the 105-day disapproval period in G.S. 58-124.21(a) and the 50-day deemer period in G.S. 58-124.21(b) do not apply to filings or modifications made under this section."

Sec. 34. G.S. 58-2 reads as rewritten:

**"§ 58-2. Definitions.**—In this Chapter, unless the context otherwise requires,

(1) 'Alien company' means a company incorporated or organized under the laws of any jurisdiction outside of the United States.

(2) 'Commissioner' means Commissioner of Insurance of North Carolina.

(3) 'Company' or 'insurance company' or 'insurer' shall be deemed to include any corporation, association, partnership, society, order, individual or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations.

(4) 'Department' means Department of Insurance of North Carolina.

(5) 'Domestic company' means a company incorporated or organized under the laws of this State.

(6) 'Foreign company' means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(7) 'NAIC' means the National Association of Insurance Commissioners.

~~(6a)~~(8) 'Nuclear insured' means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.

~~(7)~~(9) 'Person' includes an individual, aggregation of individuals, corporation, company, association and partnership.

~~(8)~~(10) The singular form shall include the plural, and the masculine form shall include the feminine wherever appropriate."

Sec. 35. G.S. 58-427(2) is amended by substituting "prescribed" for "furnished".

Sec. 36. G.S. 58-436 is amended by substituting "January, April, July, and October" for "March, June, September, and December" and by deleting "in duplicate".

Sec. 37. G.S. 58-437(b) is amended by substituting "At the same time that he files" for "Within 20 days after filing".

Sec. 38. G.S. 58-68 reads as rewritten:

**"§ 58-68. Policyholders to furnish information.**—To enable the Commissioner of Insurance the better to enforce the payment of the taxes imposed by this Chapter and by G.S. ~~405-421-105-228.5~~ every corporation, firm, or individual doing business in the State shall, upon demand of the Commissioner, furnish to him, upon blanks to be provided by him, a statement of the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the Commissioner calls for, or shall file an affidavit with the Commissioner that all their insurance is placed in companies licensed to do business in this State."

Sec. 39. The first paragraph of G.S. 58-72 reads as rewritten:

**"§ 58-72. Kinds of insurance authorized.**—The kinds of insurance which may be authorized in this State, subject to the other provisions of this Chapter, are set forth in the following paragraphs. Except to the extent an insurer participates in a risk sharing plan under Article 37 of this Chapter, nothing herein contained shall require any insurer to insure every kind of risk which it is authorized to insure. Except to the extent an



insurer participates in a risk sharing plan under Article 37 of this Chapter no insurer may transact any other business than that specified in its charter and articles of association. The power to do any kind of insurance against loss of or damage to property shall include the power to insure all lawful interests in such property and to insure against loss of use and occupancy, rents and profits resulting therefrom; but no kind of insurance shall be deemed to include life insurance or insurance against legal liability for personal injury or death unless specified herein. In addition to any power to engage in any other kind of business than an insurance business which is specifically conferred by the provisions of this Chapter, any insurer authorized to do business in this State may engage in such other kind or kinds of business to the extent necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this State. Each of the following paragraphs indicates the scope of the kind of insurance business specified therein:"

Sec. 40. G.S. 58-72(22) reads as rewritten:

"(22) 'Miscellaneous insurance,' meaning insurance against any other casualty authorized by the charter of the company, not included in subdivisions (1) to (21) inclusive of this section, which is a proper subject of insurance. ~~Except to the extent an insurer participates in a risk sharing plan under Article 37 of this Chapter, no corporation so formed may transact any other business than that specified in its charter and articles of association.~~"

Sec. 41. G.S. 58-173.7 is amended in the second and third sentences of the final paragraph by substituting "paragraph" for "subsection".

Sec. 42. G.S. 58-251.1(11) is amended by substituting "provided" for "required".

Sec. 43. G.S. 58-18.1(b) reads as rewritten:

"(b) In the absence of fraud or bad faith, no person is subject to civil liability for defamation for filing reports or furnishing other information, without malice, required by this Chapter or required by the Commissioner under the authority granted in this Chapter; and no cause of action for defamation arises against such person (1) for any information relating to suspected fraudulent insurance acts furnished to or received from the Commissioner, his designee, or law enforcement officials or their agents and employees; (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this Chapter; or (3) for any such information furnished in reports to the ~~Insurance Fraud Bureau of The National Association of Insurance Commissioners~~ Commissioner or his staff, the Attorney General or his staff, the NAIC, or any organization established to detect and prevent fraudulent insurance acts, or their agents, employees or designees; nor shall the ~~Commissioner or any employee of the Insurance Frauds Bureau or his staff, the Attorney General or his staff, or any representative of the NAIC,~~ acting without malice, in the absence of fraud or bad faith, be subject to liability for defamation, and no cause of action for defamation arises against such person for the publication of any confidential report or bulletin related to the official activities of the ~~Insurance Frauds Bureau~~ Commissioner, the Attorney General, or the NAIC. Nothing in this section

abrogates or modifies any common law or statutory privilege or immunity enjoyed by any person."

Sec. 44. G.S. 58-155.10(12) is rewritten to read:

"(12) 'State' means any state of the United States, the District of Columbia, or Puerto Rico."

Sec. 45. G.S. 58-40.5 reads as rewritten:

"§ 58-40.5. **Exceptions to requirements for licensing.**—Nothing contained in ~~Article 3 of Chapter 58~~ this Chapter shall be construed as prohibiting the purchase of insurance by, or requiring the licensing of, a person who arranges the purchase of insurance to cover property in which he or his employer has an insurable interest, provided such insurance is issued through an agent duly licensed under this Article."

Sec. 46. G.S. 58-54.20 reads as rewritten:

"§ 58-54.20. **Purpose of Article.**—It is the purpose of this Article to abate and prevent the practices of unauthorized insurers within the State of North Carolina, and to provide methods for effectively enforcing the laws of this State against such practices. The General Assembly finds that there is within this State a substantial amount of insurance business being transacted by insurers who have not complied with the laws of this State and have not been authorized by the Commissioner of Insurance to do business. These practices by unauthorized insurers are deemed to be harmful and contrary to public welfare of the citizens of this State. The difficulties which arise from the acts and practices of unauthorized insurers ~~is~~ are compounded by the fact that such companies ~~are~~ may be licensed in foreign jurisdictions and conduct a long-range business without having personal representatives or agents in proximity to insureds. The General Assembly further declares that it is a subject of vital public interest to the State that unlicensed and unauthorized companies have been and are now engaged in soliciting by way of direct mail and other advertising media, insurance risks within this State, and that such companies enjoy the many benefits and privileges provided by the State as well as the protection afforded to citizens under exercise of the police powers of the State, without themselves being subject to the laws designed to protect the insurance consuming public. The provisions of this Article are in addition to all other statutory provisions of this Chapter 58 relating to unauthorized insurers and do not replace, alter, modify or repeal such existing provisions."

Sec. 47. G.S. 58-54.21 reads as rewritten:

"§ 58-54.21. **Transacting business without certificate of authority prohibited; exceptions.**—Except as hereinafter provided, it shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-54.22 ~~of this Article~~, without a certificate of authority issued by the Commissioner ~~of Insurance~~. This section shall not apply to the following acts or transactions:

(1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 36 of this Chapter;

(2) Contracts of reinsurance;

(3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;

(4) Transactions in this State involving group or blanket insurance and group annuities where the master policy of such group insurance was lawfully issued and delivered in a state where the company was authorized to transact business;

(5) Transactions in this State involving all policies of insurance issued prior to July 1, 1967;

(6) The procuring of contracts of insurance issued to an 'industrial insured' as hereinafter defined, or to a nuclear insured.

For the purposes of this section, an 'industrial insured' is an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000), and (iii) who has at least 25 full-time employees: Provided, nothing herein shall relieve such industrial insured from complying with the provisions of Article 36 of this Chapter."

Sec. 48. Effective February 1, 1988, Section 7 of Chapter 629 of the 1987 Session Laws is rewritten to read:

"Sec. 7. G.S. 58-44.5 is repealed."

Sec. 49. Effective February 1, 1988, G.S. 58-626(a) and (b) are each amended by inserting "insurer," between "No" and "agent" in the first and second sentences of G.S. 58-626(a) and in the first sentence of G.S. 58-626(b).

Sec. 50. G.S. 58-241.9, recodified as G.S. 143-472.3 by Section 12 of this act, is amended in Articles 11 and 12 by substituting "G.S. 143-472.18" for "(G.S. 58-241.24)".

Sec. 51. Article 2 of General Statute Chapter 69, comprising G.S. 69-8 through G.S. 69-13, is repealed.

Sec. 52. G.S. 69-26 through G.S. 69-31 and G.S. 69-35 through G.S. 69-37 are repealed.

Sec. 53. G.S. 58-191.3 reads as rewritten:

**"§ 58-191.3. Professional liability insurance for officials and employees of the State.**—The Commissioner of Insurance may acquire professional liability insurance covering the officers and employees of any State department, institution or agency upon the request of such State department, institution or agency. Premiums for such insurance coverage shall be paid by the requesting department, institution or agency at rates fixed by the Commissioner from funds made available to it for the purpose. The Commissioner, in placing a contract for such insurance is authorized to place such insurance through the Public Officers and Employees' Liability Insurance Commission ~~of the Department of Administration~~, and shall exercise all efforts to place such insurance through the said commission prior to attempting to procure such insurance through any other source.

The Commissioner, pursuant to this section, may acquire professional liability insurance covering the officers and employees of a department, institution or agency of

State government only if the coverage to be provided by such policy is coverage of claims in excess of the protection provided by Articles 31 and 31A of Chapter 143 of the General Statutes.

The purchase, by any State department, institution or agency of professional liability insurance covering the law-enforcement officers, officers or employees of such department, institution or agency shall not be construed as a waiver of any defense of sovereign immunity by such department, institution or agency. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

The payment, by any State department, institution or agency of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, institution or agency is hereby declared to be for a public purpose."

Sec. 54. G.S. 97-107 reads as rewritten:

**"§ 97-107. Stock Workers' Compensation Security Fund created.**—There is hereby created a fund to be known as 'The Stock Workers' Compensation Security Fund,' for the purpose of assuring to persons entitled thereto the compensation provided by the Workers' Compensation Act for employments insured in insolvent stock carriers and for valid claims for the return of unearned premiums. Such fund shall be applicable to the payment of valid claims for the return of unearned premiums not exceeding ten thousand dollars (\$10,000) per policy and for compensation or death benefits heretofore or hereafter made pursuant to the Workers' Compensation Act, and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this Article, of an insolvent stock carrier. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by stock carriers, as herein defined, all property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys deposited or invested as herein provided. The fund shall be administered by the Commissioner of this State in accordance with the provisions of this Article."

Sec. 55. G.S. 97-113(a) reads as rewritten:

"(a) A valid claim for benefits, or installments thereof, heretofore or hereafter made pursuant to the Workers' Compensation Act, and for valid claims for the return of unearned premiums not exceeding ten thousand dollars (\$10,000) per policy, which has remained or shall remain due and unpaid for 60 days, by reason of default by an insolvent stock carrier, shall be paid from the stock fund in the manner provided in this section. Any person in interest may file with the Commissioner an application for payment of benefits from the stock fund on a form prescribed and furnished by the Commissioner. If there has been an award, final or otherwise, a certified copy thereof shall accompany the application. The Commissioner shall thereupon certify to the State Treasurer such award for payment according to the terms of the same, whereupon payment shall be made by the State Treasurer."

Sec. 56. G.S. 97-114 reads as rewritten:

**"§ 97-114. Mutual Workers' Compensation Security Fund created.**—There is hereby created a fund to be known as 'The Mutual Workers' Compensation Security Fund,' for

the purpose of assuring to persons entitled thereto the benefits provided by the Workers' Compensation Act for employments insured in insolvent mutual carriers and the valid claims for the return of unearned premiums. Such fund shall be applicable to the payment of valid claims for the return of unearned premiums not exceeding ten thousand dollars (\$10,000) per policy and for benefits heretofore or hereafter made pursuant to the Workers' Compensation Act, and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this Article, of an insolvent mutual carrier. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by mutual carriers, as herein defined, of property and securities acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys deposited or invested as herein provided. The fund shall be administered by the Commissioner in accordance with the provisions of this Article. The State Treasurer shall be the custodian of the fund, and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3."

Sec. 57. G.S. 97-119 is amended by adding a new subdivision to read:

"(4) Of all claims for return of unearned premiums not exceeding ten thousand dollars (\$10,000) per policy."

Sec. 58. G.S. 58-155.12(b) reads as rewritten:

"(b) The domiciliary receiver, for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books, and records of the insurer that are located in this State; and he shall have the immediate right, acting through the ancillary receiver, to recover balances, less allowable offsets as provided in G.S. 58-155.28, due from local agents and to obtain possession of any books and records of the insurer that are found in this State. He shall also be entitled to recover the other assets of the insurer located in this State except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this State."

Sec. 59. G.S. 58-155.28 is amended by adding a new subsection to read:

"(c) A set-off credit shall be permitted to local agents against agents' balances otherwise payable to the domiciliary or ancillary receiver for the amount expended by such agents to replace insurance coverage of their insureds and the reasonable expenses incident thereto as a result of any domestic, foreign or alien insurer being placed in delinquency proceedings. Agents claiming such set-off shall within 60 days of replacing such coverage provide a verified accounting of the replacement of such insurance to the domiciliary receiver, the ancillary receiver, if any, and the North

Carolina Insurance Guaranty Association or similar organization in the state of residence of the policyholder. The verified accounting shall include the name of the agent, the name of the insured, the policy number, the replacement policy number, the cost of the replacement policy, the amount of unearned premium under each policy as to which set off is claimed, any claimed expenses and a verification that the accounting has been provided to each of the persons and entities described herein. Unearned Premiums set off as provided above in any amount shall be deemed paid in full by the insurer and no person shall have a claim for such unearned premiums against the North Carolina Insurance Guaranty Association or similar organization in the state of residence of the policyholder."

Sec. 60. G.S. 58-155.47(a) reads as rewritten:

"(a) The board of directors of the Association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. One non-voting member of the board shall be a property and casualty insurance agent authorized to write insurance for a member insurer, and appointed by the Commissioner; and the remaining ~~The members of the board~~ shall be selected by member insurers subject to the approval of the Commissioner. Vacancies of the Board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within 60 days after June 25, 1971, the Commissioner may appoint the initial members of the board of directors."

Sec. 61. G.S. 58-54.24 reads as rewritten:

**"§ 58-54.24. Commissioner empowered to enjoin unauthorized companies authorized to seek injunctions against unauthorized insurers.**—Whenever the Commissioner of Insurance, from evidence satisfactory to him, has reasonable grounds for believing that any ~~foreign or alien company person~~ is violating or is about to violate the provisions of G.S. 58-54.21, ~~the Commissioner~~ he may through the Attorney General of this State cause a complaint to be filed in the Superior Court of Wake County to enjoin and restrain such ~~company person~~ from continuing or engaging in such violations or ~~engaging therein, or~~ doing any act in furtherance thereof. The court shall have jurisdiction ~~of over~~ of the proceedings and shall have the power to make and enter an appropriate order or judgment granting preliminary or final injunctive relief as in its discretion is proper: Provided, however, that the ~~company person~~ alleged to be in violation shall have been served with process as is provided ~~hereinafter in G.S. 58-54.25.~~

Sec. 62. G.S. 58-54.25(c) reads as rewritten:

"(c) Upon the return to the Secretary of State of the requested return receipt showing delivery and acceptance of such registered mail, or upon the return of such registered mail showing refusal thereof by such ~~foreign or alien unauthorized~~ insurer, the Secretary of State shall note thereon the date of such return to him and shall attach either the return receipt or such refused mail including the envelope, as the case may be, to the copy of the process, notice or demand theretofore retained by him and shall mail the same to the clerk of the court in which such action or proceeding is pending and in respect of which such process, notice or demand was issued. Such mailing, in addition

to the return by the sheriff, shall constitute the due return required by law. The clerk of the court shall thereupon file the same as a paper in such action or proceeding."

Sec. 63. G.S. 58-54.25(d) reads as rewritten:

"(d) Service made under this section shall have the same legal force and validity as if the service had been made personally in this State. The refusal of any such ~~foreign or alien-unauthorized~~ insurer to accept delivery of the registered mail provided for in subsection (b) of this section or the refusal to sign the return receipt shall not affect the validity of such service; and any foreign or alien insurer refusing to accept delivery of such registered mail shall be charged with knowledge of the contents of any process, notice or demand contained therein."

Sec. 64. G.S. 58-54.25(e) reads as rewritten:

"(e) Whenever service of process is made upon the Secretary of State as herein provided the defendant ~~foreign or alien-unauthorized~~ insurer shall have 30 days from the date when the defendant receives or refuses to accept the registered mail containing the copy of the complaint sent as in this section provided in which to appear and answer the complaint in the action or proceeding so instituted. Entries on the defendant's return receipt or the refused registered mail shall be sufficient evidence of such date. If the date of acceptance or refusal to accept the registered mail cannot be determined from the entries on the return receipt or from notations of the postal authorities on the envelope, then the date when the defendant accepted or refused to accept the registered mail shall be deemed to be the date that the return receipt or the registered mail was received back by the Secretary of State."

Sec. 65. G.S. 58-124.32(d) reads as rewritten:

"(d) If the Commissioner finds that a filing complies with the provisions of this Article, either after the hearing or at any other time after the filing has been properly made, he may issue an order approving the filing. If the Commissioner after the hearing finds that the filing does not comply with the provisions of this Article, he may issue an order disapproving the filing, determining in what respect the filing is improper, and specifying the appropriate rate level or levels that may be used by the members of the Bureau instead of the rate level or levels proposed by the Bureau filing, unless there has not been data admitted into evidence in the hearing that is sufficiently credible for arriving at the appropriate rate level or levels. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved. The Commissioner may thereafter review any filing in the manner provided; but if so reviewed, no adjustment of any premium on any policy then in force may be ordered."

Sec. 66. G.S. 58-131.35 is amended by deleting all of subdivisions (8) and (9).

Sec. 67. Article 13C of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-131.35A. **Other definitions.**—As used in this Article and in Articles 12B and 25A of this Chapter:

(1) 'Private passenger motor vehicle' means:

- a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
- b. A motor vehicle with a pick-up body, a delivery sedan or a panel truck that is owned by an individual or by husband and wife or individuals who are residents of the same household and that is not customarily used in the occupation, profession, or business of the insured other than farming or ranching. Such vehicles owned by a family farm copartnership or corporation shall be considered owned by an individual for purposes of this Article; or
- c. A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes.

(2) 'Nonfleet' motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or less motor vehicles owned or hired under a long-term contract by the policy named insured."

Sec. 68. Effective September 1, 1987, G.S. 58-543(3)c. is amended in the last sentence by deleting the word "Thirty" and substituting the word "Ninety".

Sec. 69. G.S. 58-143 is amended by adding a new sentence to read:

"The liability of the subscribers to make up any such deficiency may be limited by agreement between the subscribers and the attorney-in-fact, if the terms of such agreement and the conditions under which such agreement shall be applicable have been approved by the Commissioner."

Sec. 70. G.S. 58-54.21(4) is rewritten to read:

"(4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy of such insurance was lawfully issued and delivered in a state where the company was authorized to transact business;"

Sec. 71. Section 12 of Chapter 441 of the 1987 Session Laws is amended by substituting "obtain" for "obtained".

Sec. 72. G.S. 58-42 is repealed.

Sec. 73. G.S. 58-422(6) is amended by substituting "45" for "3".

Sec. 74. G.S. 58-42.1 is rewritten to read:

**"§ 58-42.1. Twisting with respect to insurance policies; penalties.**—No insurer shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of G.S. 58-9.7, 58-37 through 58-39, 58-42, and 58-44.4."

Sec. 75. G.S. 58-624 is rewritten to read:

**"§ 58-624. Twisting with respect to insurance policies; penalties.**—No licensee shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions,



or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of G.S. 58-9.7 and 58-618."

Sec. 76. G.S. 58-611(b) is amended by deleting the phrase, "as an independent contractor, as an employee of an insurer, or as an adjuster for any insured,".

Sec. 77. G.S. 58-611(e) is amended by deleting the phrase "as an independent contractor or as an employee of an independent contractor,".

Sec. 78. G.S. 58-614(g) is amended by deleting the comma after "insurer" and by inserting immediately after "58-617" the following: "or has a valid temporary license issued in accordance with G.S. 58-622".

Sec. 79. G.S. 58-614(o)(4) is amended by inserting "personal" between "and" and "supervision".

Sec. 80. G.S. 58-615(h)(2)b. is amended by deleting ", by facsimile signature and seal,".

Sec. 81. G.S. 58-616(5) is amended by inserting immediately after "representatives" the following: "or as motor vehicle damage appraisers."

Sec. 82. G.S. 58-622(b) is amended by adding the following at the end: "Upon meeting all license requirements the agent will be issued a permanent license. The temporary license will be cancelled and will be deemed to be a company appointment by the sponsoring company, if any."

Sec. 83. G.S. 58-622(e) is amended by deleting: "a permanent license that is issued to replace the temporary license"; and by inserting in lieu thereof: "an appointment by the sponsoring company that is recorded upon the licensee's qualifying for a permanent license".

Sec. 84. G.S. 58-634(a) is amended in the second paragraph by inserting "or appointed" between "licensed" and "to".

Sec. 85. G.S. 58-634(b) is amended by deleting "issuance of the permanent license" and substituting therefor "an appointment by the sponsoring company".

Sec. 86. G.S. 58-615(e)(1) is amended by substituting "or an adjuster" for ", adjuster, or motor vehicle damage appraiser".

Sec. 87. G.S. 58-614(f) is amended by inserting "G.S. 58-54.21 and" between "provided in" and "Article 36".

Sec. 88. G.S. 58-620(c) is amended in the second sentence by inserting "or other employer" between "insurer" and "and".

Sec. 89. G.S. 58-626 is amended in the section heading by inserting "; exceptions" immediately after "prohibited".

Sec. 90. (a) G.S. 95-111.3 is amended by adding a new subsection to read:

"(h) The term 'waterslide' shall mean a stationary amusement device that provides a descending ride on a flowing water film through a trough or tube or on an inclined plane into a pool of water. This term does not include devices where the vertical distance between the highest and the lowest points does not exceed 15 feet."

(b) G.S. 95-111.12 is amended by adding one new subsection to read:

"(d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a)."

(c) The Commissioner shall compile the notifications of the incidences of personal injuries involving waterslides and report on their frequency and type to the General Assembly on or before May 15, 1989.

Sec. 91. (a) G.S. 95-111.12(a), as amended by Chapter 635 of the 1987 Session Laws, is amended by deleting "three hundred thousand dollars (\$300,000)" and substituting "one hundred thousand dollars (\$100,000)".

(b) Subsection (a) of this section shall expire on December 31, 1989.

Sec. 92. G.S. 58-194.3(b) is amended by adding the following paragraph:

"All payroll units in existence on May 21, 1985, shall continue to be deemed payroll units, regardless of any subsequent consolidation of such payroll units, for purposes of the appointment of the members of the Employee Insurance Committee in order to assure such units the continuing ability to meet the needs and desires of the employees of such units by having the right to select insurance carriers and insurance products. In the event of the consolidation of a payroll unit, the head of the former payroll unit shall appoint the members of the Committee in accordance with the provisions of this section."

Sec. 93. Section 33 of this act is retroactively effective on July 16, 1986. Sections 54 through 60 shall become effective October 1, 1987. Sections 72 through 89 shall become effective February 1, 1988. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of August, 1987.