

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-211
HOUSE BILL 926

AN ACT PERTAINING TO CHANGES IN THE INSURANCE LAWS AND
RELATED LAWS.

The General Assembly of North Carolina enacts:

CHARITABLE GIFT ANNUITIES

Section 1.(a) G.S. 58-3-5 reads as rewritten:

"§ 58-3-5. No insurance contracts except under Articles 1 through 64 of this Chapter.

~~It~~ Except as provided in G.S. 58-3-6, it is unlawful for any company to make any contract of insurance upon or concerning any property or interest or lives in this State, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of Articles 1 though 64 of this Chapter."

(b) Chapter 58 of the General Statutes is amended by adding the following new section:

"§ 58-3-6. Charitable gift annuities.

(a) A charitable organization as described in section 501(c)(3) or section 170(c) of the Internal Revenue Code or an educational institution may receive a transfer of property from a donor in exchange for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes. The issuance of the annuity by a charitable organization does not constitute engaging in the business of insurance if the organization, when the annuity agreement is issued:

- (1) Has a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly-traded securities, exclusive of the assets contributed by the donor in return for the annuity agreement;
- (2) Has been in active, continuous operation for at least three years or is a successor to or affiliate of a charitable organization that has been in active operation for at least three years; and
- (3) Includes the following disclosure clause in each annuity agreement issued on or after November 1, 1998: 'This annuity is not issued by an insurance company, is not subject to regulation by the State of North Carolina, and is not protected or otherwise guaranteed by any government agency or insurance guaranty fund.'

Subdivisions (1) and (2) of this subsection do not apply to an educational institution that was issuing annuity agreements prior to the effective date of this section nor to an organization formed solely to support an educational institution in active operation at least three years prior to the effective date of this section.

(b) A charitable organization or educational institution that issues a charitable annuity shall notify the Department by January 1, 1999, or within 90 days of issuing its first annuity, whichever is later. The notice shall be signed by an officer or director of the organization or educational institution, identify the organization or institution, and certify that the organization or institution is a charitable organization or educational institution and that its annuities are issued in compliance with the applicable provisions of subsection (a) of this section.

(c) A charitable organization that issues charitable annuities must make available to the Commissioner, upon request, a copy of its Internal Revenue Service Form 990 or Form 990-EZ for the most recent fiscal year for which the due date has passed. If the organization was not required to file either form with the Internal Revenue Service for the preceding fiscal year, or was allowed to submit the form in abbreviated format, it shall make available to the Commissioner, upon request, the same information that would have been required to have been filed under the Form 990, in a similar format as specified by the Commissioner. A copy of the Form 990, or corresponding substitute information as authorized by the Commissioner, shall be made available to the prospective annuitant at the time of the initial solicitation of the contribution, and updated information shall be made available at the time of execution of the annuity agreement.

(d) The Department may enforce performance of the requirements of this section by notifying the organization or institution and demanding that it comply with the requirements of this section. The Department may fine an organization or educational institution, up to \$1,000 per annuity agreement, for failure to comply after notice and demand from the Commissioner.

(e) A charitable gift annuity issued by a charitable organization or educational institution prior to the effective date of this section does not constitute engaging in the business of insurance.

(f) For purposes of this section, an 'educational institution' means a public or private college, university, or community college that maintains a faculty to provide instruction to students."

(c) The Department of Insurance shall study the use of charitable gift annuities by tax-exempt organizations and educational institutions and the need for additional solvency requirements or regulation. The Department shall report its findings to the General Assembly no later than April 1, 1999.

PPO CONTRACT DEEMER PROVISION

Section 2. G.S. 58-50-56(b) reads as rewritten:

"(b) Insurers may enter into preferred provider contracts or enter into other cost containment arrangements approved by the Commissioner to reduce the costs of providing health care services. These contracts or arrangements may be entered into

with licensed health care providers of all kinds without regard to specialty of services or limitation to a specific type of practice. A preferred provider contract or other cost containment arrangement that is not disapproved by the Commissioner within 90 days of its filing by the insurer shall be deemed to be approved."

AVIATION INSURANCE

Section 3. G.S. 58-21-10(8) reads as rewritten:

"(8) 'Surplus lines insurance' means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, aviation insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities."

HMO INSOLVENCY CLAIMS PRIORITIES

Section 4. G.S. 58-30-220 reads as rewritten:

"§ 58-30-220. Priority of distribution.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds shall be retained for payment before the members of the next class receive any payment. No subcategories shall be established within the categories in a class. The order of distribution of claims shall be:

- (1) The receiver's expenses for the administration and conservation of assets of the insurer.
- (2) Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies; claims of HMO enrollees and HMO enrollees' beneficiaries; claims for unearned premiums; claims for funds or consideration held under funding agreements, as defined in G.S. 58-7-16; claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values; and claims of domestic and foreign guaranty associations, including claims for the reasonable administrative expenses of domestic and foreign guaranty associations; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.
- (2a) For HMOs, claims of providers and participating providers, as defined in G.S. 58-67-5(h) and G.S. 58-67-5(1), who are obligated by statute, agreement, or court order to hold enrollees harmless from liability for services provided and covered by an HMO.
- (3) Claims of the federal or any state or local government or taxing authority, including claims for taxes.

- (4) Compensation actually owing to employees other than officers of the insurer for services rendered within three months before the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars (\$1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.
- (5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages."

Section 5. G.S. 58-67-145 reads as rewritten:

"§ 58-67-145. _Rehabilitation, liquidation, or conservation of health maintenance organization.

Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the Commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies, except that the provisions of Articles 48 and 62 of this Chapter shall not apply to health maintenance organizations. The Commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon one or more grounds set out in Article 30 of this Chapter or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this State.

~~For the purpose of determining the priority of distribution of general assets, claims of enrollees and claims of enrollees' beneficiaries have the same claims' priorities as established by G.S. 58-30-220, for policyholders and beneficiaries of other insurance companies. Any provider who is obligated by statute, agreement, or court order to hold enrollees harmless from liability for services provided and covered by an HMO has a priority of distribution next subordinate to that of policyholders under G.S. 58-30-220, so that his status is after claims for unearned premiums, but before claims of general creditors. Providers who are not obligated to hold enrollees harmless shall be treated as general creditors and shall pursue claims against enrollees until final resolution of the estate of the liquidated HMO."~~

NCIUA TECHNICAL CORRECTION

Section 6. G.S. 58-45-10 reads as rewritten:

"§ 58-45-10. North Carolina Insurance Underwriting Association created.

There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, essential property insurance, except town and county mutual insurance

associations and assessable mutual companies as authorized by G.S. 58-7-75(5)b, 58-7-75(5)d, and 58-7-75(7)b and except an insurer who only writes insurance in this State on property exempted from taxation by the provisions of ~~G.S. 105-296 and 105-297.~~ G.S. 105-278.1 through G.S. 105-278.8. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State."

CHILDREN'S HEALTH INSURANCE PORTABILITY

Section 7. G.S. 58-68-30(c)(1) reads as rewritten:

"(1) Creditable coverage defined. – For the purposes of this Article, 'creditable coverage' means, with respect to an individual, coverage of the individual under any of the following:

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
- b. Group or individual health insurance coverage.
- c. Part A or part B of title XVIII of the Social Security Act.
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- e. Chapter 55 of title 10, United States Code.
- f. A medical care program of the Indian Health Service or of a tribal organization.
- g. A State health benefits risk pool.
- h. A health plan offered under chapter 89 of title 5, United States Code.
- i. A public health plan (as defined in federal regulations).
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
- k. The Health Insurance Program for Children established in Part 8 of Chapter 108A of the General Statutes, or any successor program.

'Creditable coverage' does not include coverage consisting solely of coverage of excepted benefits."

CONDOMINIUM INSURANCE/INDIVIDUAL UNITS

Section 8. (a) G.S. 47C-3-113(a) reads as rewritten:

"(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent available:

- (1) Property insurance on the common elements ~~and units~~ insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land,

excavations, foundations and other items normally excluded from property policies; and

- (2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) G.S. 47C-3-113(b) reads as rewritten:

"(b) ~~The insurance maintained under subdivision (a)(1)~~ In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners."

(c) G.S. 47C-3-113(c) reads as rewritten:

"(c) If the insurance described in subsection (a) or (b) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners."

SMALL EMPLOYER GROUP HEALTH INSURANCE

Section 9. G.S. 58-50-110(14) reads as rewritten:

"(14) ~~'Late enrollee' means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the end of the initial enrollment period provided under the terms of the health benefit plan in effect at the time the employee first became eligible;~~ has the same meaning as defined in G.S. 58-68-30(b)(2); provided that the initial enrollment period shall be a period of at least 30 consecutive calendar days. However, In addition to the special enrollment provisions in G.S. 58-68-30(f), an eligible employee or dependent shall not be considered a late enrollee under a small employer health benefit plan if:

- a. ~~The individual was covered under a public or private health benefit plan that provided, at the time the individual was eligible to enroll, benefits equal to or exceeding the same required level of benefits in the basic or standard health care plans adopted pursuant to G.S. 58-50-120 and either the individual:~~
 1. ~~Lost coverage under another health plan as a result of termination of employment, termination of a spouse's health plan coverage, or the death of a spouse or divorce and requests enrollment in a health benefit plan within 30 days after termination of coverage provided under another health plan; or~~

- 2. ~~Stated, in writing, during the enrollment period that coverage under another employer health benefit plan was the reason for declining coverage;~~
- a. 3, 4. Repealed by Session Laws 1993, c. 529, s. 3.3.
- b. The individual elects a different health benefit plan offered through the Alliance or by the small employer during an open enrollment period;
- ~~c. An eligible employee requests enrollment within 30 days of becoming an employee of a member small employer;~~
- d. A court has ordered coverage be provided for a spouse or minor child under a covered employee's health benefit plan and the request for enrollment for a spouse is made within 30 days after issuance of the court order. A minor child shall be enrolled in accordance with the requirements of ~~G.S. 58-51-120; G.S. 58-51-120;~~ or
- ~~e. The individual or employee enrollee makes a request for enrollment of the spouse or child within 30 days after the individual's or employee's marriage or the birth, adoption, or placement for adoption of a child."~~

Section 9.1. G.S. 58-50-130(b)(6) reads as rewritten:

"(6) For the purposes of subsection (b) of this section, a small employer carrier shall, unless the employer—small employer carrier uses composite rating, use the following age brackets:

- a. Younger than 15 years;
- b. 15 to 19 years;
- c. 20 to 24 years;
- d. 25 to 29 years;
- e. 30 to 34 years;
- f. 35 to 39 years;
- g. 40 to 44 years;
- h. 45 to 49 years;
- i. 50 to 54 years;
- j. 55 to 59 years;
- k. 60 to 64 years;
- l. 65 years.

Carriers may combine, but shall not split, complete age brackets for the purposes of determining rates under subsection (b) of this section. Small employer carriers shall be permitted to develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor."

Section 10. G.S. 58-50-130(g) reads as rewritten:

"(g) A small employer carrier shall make the information and documentation described in subsection (e) of this section available to the Commissioner upon request. Except in cases of violations of this Act, the information is proprietary and trade secret information and is not subject to disclosure by the Commissioner to persons outside of the Department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction. Nothing in this section affects the Commissioner's authority to approve rates before their use under G.S. 58-65-60(e) or G.S. 58-67-50(c)."

Section 11. G.S. 58-50-135(a) reads as rewritten:

"(a) Every small employer carrier shall elect either to become a risk-assuming carrier and comply with the provisions of G.S. 58-50-140 or become a reinsuring carrier and comply with the provisions of G.S. 58-50-145. The election shall be binding for a five-year period except that ~~the a newly licensed carrier's initial election shall be made within 60 days after January 1, 1992, and shall be made for two years.~~ The Commissioner may, for good cause, permit a carrier to modify its election during the five-year period. All carriers under common ownership or control must make the same election in this State; provided, however, that the Commissioner may, for good cause, permit an affiliated carrier to make a separate election."

MEDICARE SUPPLEMENT INSURANCE

Section 12. G.S. 58-54-25 reads as rewritten:

"§ 58-54-25. Disclosure standards.

(a) In order to provide for full and fair disclosure in the sale of policies, no policy or certificate shall be delivered in this State unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The Commissioner shall prescribe the format and content of the outline of coverage required by subsection (a) of this section. For purposes of this section, 'format' means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the exceptions, reductions, and limitations contained in the policy;
- (3) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums; and
- (4) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The Commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the Commissioner may require by rule that the information brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of

the outline of coverage. With respect to direct response insurance policies, the Commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare, but in no event later than the time of policy delivery.

(d) The Commissioner may adopt rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare, other than: Medicare supplement policies; disability income policies; basic, catastrophic, or major medical expense policies; or single premium, nonrenewable policies.

(e) The Commissioner may further adopt rules to govern the full and fair disclosure of the information in connection with the replacement of accident and health insurance policies, subscriber contracts, or certificates by persons eligible for Medicare.

(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:

- (1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.
- (2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.
- (3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.
- (4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases."

Section 13. Article 54 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"§ 58-54-45. By reason of disability.

In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plan A available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B.

"§ 58-54-50. Rules for compliance with federal law and regulations.

The Commissioner may adopt rules necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations, including:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements.

- (2) Establishing a uniform methodology for calculating and reporting loss ratios.
- (3) Assuring public access to policies, premiums, and loss ratio information of issuers of Medicare supplement insurance.
- (4) Establishing standards for Medicare Select policies and certificates."

LIFE INSURANCE ILLUSTRATIONS

Section 14. G.S. 58-60-5 reads as rewritten:

"§ 58-60-5. Scope of Article; exemptions.

(a) Except as ~~hereafter exempted~~, otherwise provided in this Article, this Article ~~shall apply~~ applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This Article ~~shall apply~~ applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this Article ~~shall~~ does not apply to:

- (1) Annuities,
- (2) Credit life insurance,
- (3) Group life insurance,
- (4) Life insurance policies issued in connection with pension and welfare plans as defined by and ~~which that~~ are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA),
- (5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this Article is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

CIVIL PENALTY LAW CHANGES

Section 15. G.S. 58-2-70 reads as rewritten:

"§ 58-2-70. Civil penalties or restitution for violations; ~~summary suspension of license or certificate.~~ administrative procedure.

(a) This section applies to any person who is subject to licensure or certification under ~~the provisions of Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter.~~

(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, this Chapter,~~ 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 63 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. 58-63-25 where there is common subject matter involved and subject to procedural requirements set out in both sections being followed. the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.~~

(c) ~~In any case where a hearing pursuant to subsection (b) of this section results in the findings by the Commissioner of~~ If, under subsection (b) of this section, the Commissioner finds a 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 violation of Article 63 of this Chapter, the Commissioner may, in addition to or in lieu instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section or apply to petition the Superior Court of Wake County for 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 constitutes a separate offense. violation.

(d) ~~Upon a finding by the Commissioner of a violation as specified in~~ If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the Commissioner shall direct the payment of a penalty of not shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. 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 criminal laws of this State.

(e) ~~Upon application petition of the Commissioner and a finding by the court of a violation as specified in subsection (c) of this section, the court may order the person who committed the a violation specified in subsection (c) of this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.~~

(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 prevents~~ 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.

(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. Unless otherwise specifically provided for, all administrative proceedings under this Chapter are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75."~~

NOTICES FROM INDIVIDUAL LICENSEES

Section 16. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-69. Notification of criminal convictions and changes of address; service of notice.

(a) As used in this section:

(1) 'License' includes any license, certificate, registration, or permit issued under this Chapter.

(2) 'Licensee' means any person who holds a license.

(b) Every applicant for a license shall inform the Commissioner of the applicant's residential address. Every licensee shall give written notification to the Commissioner of any change of the licensee's residential address within 10 business days after the licensee moves into the licensee's new residence. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location; in which case the licensee must notify the Commissioner within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the Commissioner.

(c) If a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner within 10 days after the date of the conviction. As used in this subsection, 'conviction' includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(d) Notwithstanding any other provision of law, whenever the Commissioner is authorized or required to give any notice under this Chapter to a licensee, the notice may be given personally or by sending the notice by first-class mail to the licensee at the address that the licensee has provided to the Commissioner under subsection (b) of this section.

(e) The giving of notice by mail under subsection (d) of this section is complete upon the expiration of four days after the deposit of the notice in the post office. Proof of the giving of notice by mail may be made by the certificate of any employee of the Department."

INSURANCE AGENTS, BROKERS, AND ADJUSTERS

Section 17. G.S. 58-33-25(h) reads as rewritten:

"(h) A partnership or corporation that negotiates or solicits insurance may be licensed as an agent, broker, or limited representative ~~provided that it maintains a place of business in this State.~~ representative. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this State in soliciting or negotiating policies of insurance shall be registered with the Commissioner and each such member, officer, director, stockholder or employee shall also qualify as an individual licensee. The partnership or corporate licensee shall within 30 days notify the Commissioner of any addition to or deletion from the list of registered individuals."

Section 18. G.S. 58-33-30(j) reads as rewritten:

"(j) Reciprocity Provision. – To the extent that other states that provide for the licensing and regulation of and payment of commissions to agents, limited representatives, or brokers, waive restrictions on the basis of reciprocity with respect to North Carolina licensees applying for or holding nonresident licenses in such those states, ~~all such the same~~ restrictions on licensees from ~~such those states~~ applying for or holding North Carolina nonresident licenses shall be waived."

Section 19. G.S. 58-33-70 reads as rewritten:

"§ 58-33-70. Special provisions for adjusters and motor vehicle damage appraisers.

(a) It shall be unlawful and cause for revocation of license for a licensed adjuster to engage in the practice of law.

(b) On behalf and on request of an insurer by which ~~he is appointed or for which he is licensed,~~ any an agent or limited representative is appointed, the agent or limited representative may from time to time act as an adjuster and investigate and report upon claims without being ~~required to be licensed as an adjuster, provided: In no event may any adjuster.~~ No agent or limited representative shall adjust any losses in any amount where his the agent's or representative's remuneration for the sale of insurance is in any way dependent upon the adjustment of such those losses.

(c) Upon the filing of the application for ~~the license as adjuster and an adjuster's license,~~ the advance payment of the examination fee ~~and upon fee,~~ and the filing with the Commissioner of a certificate signed by the ~~employer of the applicant certifying that the applicant is an individual of good character and is employed by the signer of the certificate and will operate as a student or learner under the instruction and general supervision of a licensed adjuster, and that the employer will be responsible for the adjustment acts of the learner during the learning period,~~ applicant's employer, the Commissioner may issue ~~to the applicant~~ a learner's permit authorizing the applicant to act as an adjuster for a learning period of 90 days without a requirement of any other ~~or additional license; provided that not license.~~ Not more than one learner learner's permit shall ever be issued to one individual. The employer's certificate required by this subsection shall certify that:

- (1) The applicant is an individual of good character.
- (2) The applicant is employed by the signer of the certificate.

- (3) The applicant will operate as a student or learner under the instruction and general supervision of a licensed adjuster.
- (4) The employer will be responsible for the adjustment acts of the applicant during the learning period.

(d) ~~No license shall be required of an adjuster licensed as such in another state for the adjustment in this State of a single loss, or of losses arising out of a catastrophe common to all such losses; provided that such adjuster notifies the Commissioner in writing prior to the adjusting of such loss or losses.~~

(e) The Commissioner may permit an experienced adjuster, who regularly adjusts in another state and who is licensed in ~~such the~~ other state (if ~~such that~~ state requires a license), to act as an adjuster in this State without a North Carolina ~~license~~, license only for an insurance company authorized to do business in this State, for emergency insurance adjustment work, for a period of not exceeding 30 days, to be determined by the Commissioner, done for an employer who is an adjuster licensed by this State or who is a regular employer of one or more adjusters licensed by this State; provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of any such emergency insurance adjustment work. As used in this subsection, 'emergency insurance adjustment work' includes, but is not limited to, (i) adjusting of a single loss or losses arising out of an event or catastrophe common to all of those losses or (ii) adjusting losses in any area declared to be a state of disaster by the Governor under G.S. 166A-6 or by the President of the United States under applicable federal law.

(f) The Commissioner may permit an experienced motor vehicle damage appraiser who is regularly appraising in another state and who is licensed in such other state (if ~~such that~~ state requires a license) to act as a motor vehicle damage appraiser in this State without a North Carolina license for emergency motor vehicle damage appraisal work for a period not exceeding 30 days done for an employer who notifies the Commissioner, in writing, at the beginning of the period of emergency appraisal work and who is:

- (1) An insurance adjuster licensed by this State;
- (2) A motor vehicle damage appraiser licensed by this State;
- (3) A regular employer of one or more insurance adjusters licensed by this State; or
- (4) A regular employer of one or more motor vehicle damage appraisers licensed by this State."

Section 20. G.S. 58-33-130(c) reads as rewritten:

"(c) ~~On and after January 1, 1992, any individual agent or broker desiring to renew an appointment or license shall offer evidence satisfactory to the Commissioner that he has complied with the continuing professional education requirements approved by the Commissioner. The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Commissioner may, for good cause shown, grant extensions of time to licensees to comply with these requirements.~~"

Section 21. G.S. 58-33-130(h) reads as rewritten:

"(h) Any licensee ~~who~~ who, after obtaining an extension under subsection (c) of ~~this section,~~ offers evidence satisfactory to the Commissioner ~~on forms prescribed by the Commissioner that he~~ that the licensee has satisfactorily completed the required continuing professional education courses ~~shall be deemed to have complied~~ is in compliance with this section."

TOWN AND COUNTY MUTUALS FINANCIAL REPORTS

Section 22. G.S. 58-2-165 reads as rewritten:

"§ 58-2-165. Annual, semiannual, monthly, or quarterly statements to be filed with Commissioner.

(a) Every insurance company shall file in the Commissioner's office, on or before March 1 of each year, a statement showing the business standing and financial condition of the company, association, or order on the preceding December 31, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner or some officer authorized by law to administer oaths. Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of the company's annual statement, for a reasonable period of time, not to exceed 30 days. In addition, the Commissioner may require any insurance company, association, or order to file its statement semiannually, quarterly, or ~~monthly~~ monthly, except that a town or county mutual, organized under G.S. 58-7-75(5)d., is required to file only an annual statement or an audited financial statement that was prepared by a certified public accountant if for the preceding year it had a direct written premium of less than one hundred fifty thousand dollars (\$150,000) and fewer than 400 policyholders.

(b) The Commissioner may require statements under this section, G.S. 58-2-170, and G.S. 58-2-190 to be filed in a format that can be read by electronic data processing equipment.

(c) All statements filed under this section must be prepared in accordance with the appropriate NAIC Annual Statement Instructions Handbook and pursuant to the NAIC Accounting Practices and Procedures Manual and on the NAIC Model Financial Statement Blank, unless further modified by the Commissioner as the Commissioner considers to be appropriate."

BAIL BONDSMEN AND RUNNERS

Section 23. G.S. 58-71-50 reads as rewritten:

"§ 58-71-50. Qualification for bail bondsmen and runners.

(a) An applicant for a license as a bail bondsman or ~~runner, must~~ runner shall furnish the Commissioner with a complete set of the applicant's fingerprints and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

(b) Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

- (1) Be 18 years of age or over.
- (2) Be a resident of this State.
- (3) ~~Be a person of good moral character and not have been convicted of a felony or any crime involving moral turpitude.~~
- (4) Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
- (5) Have no outstanding bail bond obligations.
- (6) Have no current or prior violations of any provision of this Article or of Article 26 of Chapter 15A of the General Statutes or of any similar provision of law of any other state.
- (7) Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business."

Section 24. G.S. 58-71-80 reads as rewritten:

"§ 58-71-80. Grounds for denial, suspension, revocation or refusal to renew licenses.

(a) The Commissioner may deny, suspend, ~~or revoke~~ revoke, or refuse to renew any license ~~issued~~ under this Article for any of the following causes:

- (1) For any cause sufficient to deny, suspend, or revoke the license under any other provision of this Article.
- (2) ~~Violation of any laws of this State relating to bail~~ A conviction of any misdemeanor committed in the course of dealings under the license issued by the Commissioner.
- (3) Material misstatement, misrepresentation or fraud in obtaining the license.
- (4) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.
- (5) Fraudulent or dishonest practices in the conduct of business under the license.
- (6) ~~Conviction of a felony regardless of the time the conviction occurred and regardless of whether the conviction resulted from conduct in or related to the bail bond business.~~ crime involving moral turpitude.
- (7) Failure to comply with or violation of the provisions of this Article or of any order, rule or regulation of the Commissioner.
- (8) When in the judgment of the Commissioner, the licensee has in the conduct of the licensee's affairs under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail bond business; or that the licensee is guilty of rebating, or offering to rebate, or offering to divide the premiums received for the bond.

- (9) For failing to pay any judgment or decree rendered on any forfeited undertaking in any court of competent jurisdiction.
- (10) For charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by this Article.
- (11) For requiring, as a condition of executing a bail bond, that the principal agree to engage the services of a specified attorney.
- (12) For cheating on an examination for a license under this Article.
- (13) For entering into any business association or agreement with any person who is at that time found by the Commissioner to be in violation of any of the bail bond laws of this State, or who has been in any manner disqualified under the bail bond laws of this State or any other state, whereby the person has any direct or indirect financial interest in the bail bond business of the licensee or applicant.
- (14) For knowingly aiding or abetting others to evade or violate the provisions of this Article.
- (15) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance.

~~(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Article, may, in any one proceeding, by order, require the licensee to pay to the school fund in the licensee's county of residence a civil penalty of two hundred fifty dollars (\$250.00) for each offense. Upon the licensee's failure to pay the penalty within 20 days after the order is mailed, postage prepaid, registered and addressed to the licensee's last known place of business, unless the order is stayed by an order of the court of competent jurisdiction or unless the Commissioner has already suspended or revoked the license of the licensee, the Commissioner may revoke the license or may suspend the license for any period.~~

(b) The Commissioner shall deny, revoke, or refuse to renew any license under this Article if the applicant or licensee is or has ever been convicted of a felony."

Section 25. G.S. 58-71-71(a) reads as rewritten:

"(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least 20-12 hours of education in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman."

Section 26. G.S. 58-71-71(b) reads as rewritten:

"(b) Each year every licensee shall complete at least 10-six hours of continuing education in subjects related to the duties and responsibilities of a runner or bail bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals."

Section 27. G.S. 58-71-165 reads as rewritten:

"§ 58-71-165. Monthly report required.

Each professional bail bondsman and surety bondsman shall file with the Commissioner ~~of Insurance~~ a written report in form prescribed by the Commissioner regarding all bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance. The report shall be filed on or before the fifteenth day of each month. ~~Within the same time, a copy of this written report must also be filed with the clerk of superior court in any county in which the bondsman is obligated on bail bonds.~~ Any person who knowingly and willfully falsifies a report required by this section is guilty of a Class I felony."

Section 28. G.S. 58-71-71(e) reads as rewritten:

"(e) ~~Any person who falsely represents to the Commissioner that the requirements of this section have been met is subject, after notice and opportunity for hearing, to G.S. 58-2-70.~~ The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Commissioner may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension under this subsection, offers evidence satisfactory to the Commissioner that the licensee has satisfactorily completed the required continuing professional education courses is in compliance with this section."

Section 29. G.S. 58-71-85(a) reads as rewritten:

"(a) The suspension or revocation of, or refusal to renew, any license under G.S. 58-71-80 shall be in accordance with the provisions of ~~Article 3A of~~ Chapter 150B of the General Statutes."

Section 30. G.S. 58-71-20 reads as rewritten:

"§ 58-71-20. Surrender of defendant by surety; when premium need not be returned.

At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed; in such case the full premium shall be ~~returned.~~ returned within 72 hours after the surrender. The defendant may be surrendered without the return of premium for the bond if ~~he has been guilty of nonpayment of premium, changing address without notifying his bondsman, concealing himself, leaving the jurisdiction of the court without the permission of his bondsman or violating his obligation to the court.~~ the defendant does any of the following:

- (1) Willfully fails to pay the premium to the surety or willfully fails to make a premium payment under the agreement specified in G.S. 58-71-167.
- (2) Changes his or her address without notifying the surety before the address change.
- (3) Physically hides from the surety.
- (4) Leaves the State without the permission of the surety.

(5) Violates any order of the court."

Section 31. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned ~~upon~~ within 72 hours after final termination of liability on the bond."

VIATICAL SETTLEMENT PROVIDERS

Section 32. G.S. 58-58-42(j) reads as rewritten:

"(j) Authority to Adopt Standards. – The Commissioner may:

- (1) Adopt rules to implement this section.
- (2) Establish standards for evaluating reasonableness of payments under contracts. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy.
- (3) Establish appropriate registration and other regulatory requirements for brokers.
- (4) ~~Require a bond."~~

HOME INSPECTORS

Section 33. G.S. 143-151.45 reads as rewritten:

"§ 143-151.45. Definitions.

The following definitions apply in this Article:

- (1) Associate home inspector. – An individual who is affiliated with or employed by a licensed home inspector to conduct a home inspection of a residential building on behalf of the licensed home inspector.
- (2) Board. – The North Carolina Home Inspector Licensure Board.
- (3) Compensation. – A fee or anything else of value.
- (4) Home inspection. – A written evaluation of ~~one~~ two or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.
- (5) Home inspector. – An individual who engages in the business of performing home inspections for compensation.
- (6) Residential building. – A structure intended to be, or that is in fact, used as a residence by one or more individuals."

Section 34. G.S. 143-151.52 reads as rewritten:

"§ 143-151.52. Requirements to be licensed as an associate home inspector.

To be licensed as an associate home inspector, a person must do all of the following:

- (1) Submit a completed application to the Board upon a form provided by the Board.
- (2) Pass a licensing examination prescribed by the Board.
- (3) Pay the applicable fees.
- (4) Have a high school diploma or its equivalent.
- (5) Be employed by or affiliated with or intend to be employed by or affiliated with a licensed home inspector and submit a sworn statement by ~~the~~ that licensed home inspector ~~with whom the applicant is or intends to be affiliated~~ certifying that the licensed home inspector will actively supervise and train the applicant."

Section 35. G.S. 143-151.53 reads as rewritten:

"§ 143-151.53. Notification of to applicant following evaluation of application.

~~The Board must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The Board must send the notification of acceptance or rejection within 30 days of receiving the application. If the Board rejects an application, the notice sent to the applicant must state the reasons for the rejection. If the Board finds that the applicant has not met fully the requirements for licensing, the Board shall refuse to issue the license and shall notify in writing the applicant of the denial, stating the grounds of the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-151.56. Within 30 days after service of the notification, the applicant may make a written demand upon the Board for a review to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Board for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.~~"

Section 36. G.S. 143-151.56 reads as rewritten:

"§ 143-151.56. Suspension, revocation, and refusal to renew license.

(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

- (1) Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.
- (2) Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.
- (3) Without having a current license, either performed home inspections for compensation or claimed to be licensed.
- (4) Engaged in conduct that could result in harm or injury to the public.
- (5) Been convicted of or pled guilty or nolo contendere to any ~~crime~~ misdemeanor involving moral ~~turpitude~~ turpitude or to any felony.
- (6) Been adjudicated ~~insane or incompetent and has not presented proof of recovery from the condition.~~ incompetent.

- (7) Engaged in any act or practice that violates any of the provisions of this Article or any rule issued by the Board, or aided, abetted, or assisted any person in a ~~violation~~ violation of any of the provisions of this Article.

(b) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year."

MANUFACTURED HOME DEALERS

Section 37. Article 9A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-143.21B. Dealer cancellation; deposit refund.

A dealer shall refund to a buyer the full amount of a deposit on the purchase of a manufactured home if the buyer has fulfilled his obligations under the purchase agreement and the dealer cancels the purchase at any time."

PROXY VOTES FOR MUTUALS

Section 37.1. (a) G.S. 58-8-10 reads as rewritten:

"§ 58-8-10. Policyholders are members of mutual companies.

Every person insured by a mutual insurance company is a member while ~~his~~ that person's policy is in force, entitled to one vote for each policy ~~he~~ that person holds, and must be notified of the time and place of holding ~~its~~ the company's meetings by a written notice or by an imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

The insured is hereby notified that by virtue of this policy ~~he~~ the insured is a member of the insurance company, and that the annual meetings of the company are held at its home office on the day of, in each year, at o'clock.

The blanks shall be duly filled in print and are a sufficient notice. A corporation ~~which~~ that becomes a member of ~~such a mutual insurance company~~ may authorize any person to represent it, ~~the corporation~~; and this representative has all the rights of an individual member. A person holding property in trust may insure it in ~~such a mutual insurance company~~, and as trustee assume the liability and be entitled to the rights of a ~~member, member~~; but is not personally liable upon the contract of insurance. Members may vote by proxies, dated and executed within ~~three months~~, one year after receipt, and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; ~~but no person as proxy or otherwise may cast more than 20 votes.~~ used."

- (b) This section is effective when it becomes law.

FORM FILINGS FOR LICENSED CARRIERS

Section 37.3. (a) G.S. 58-3-150(a) reads as rewritten:

"(a) It is unlawful for any insurance company ~~doing~~ licensed and admitted to do 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, and copies filed in the 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."

(b) This section becomes effective November 1, 1998.

EFFECT OF HEADINGS

Section 38. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

EFFECTIVE DATES

Section 39. Except as otherwise provided herein, this act is effective as follows: this section and Sections 1, 2, 3, 4, 5, 6, 7, 9.1, 10, 11, 14, 15, 17, 18, 22, 27, 29, 32, 33, 34, 37.1, and 38 of this act are effective when they become law. Sections 9, 12, 13, 19, 20, 21, 23, 24, 25, 28, 30, 31, 35, 36, and 37 of this act become effective November 1, 1998. Sections 8, 16, and 26 of this act become effective January 1, 1999. G.S. 58-54-45, as enacted by Section 13 of this act, expires November 1, 2001.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

s/ Frank W. Ballance, Jr.
Deputy President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:59 a.m. this 30th day of October, 1998