

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-566
HOUSE BILL 1166

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING INSURANCE PRODUCERS AND BROKERS, BAIL BONDSMEN, MOTOR CLUBS, PREMIUM FINANCE COMPANIES, AND COLLECTION AGENCIES, TO REQUIRE AN INSURER TO PROVIDE CERTAIN INFORMATION REGARDING A DECEASED PERSON'S LIFE INSURANCE TO A FUNERAL DIRECTOR OR ESTABLISHMENT, TO DELETE OBSOLETE REFERENCES TO ASSIGNMENTS OF ERROR, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-10 is amended by adding a new subdivision to read:

"(4a) "FINRA" means the Financial Industry Regulatory Authority or any successor entity."

SECTION 2. G.S. 58-33-26(e) reads as rewritten:

"(e) A variable life and variable annuity products license authorizes a resident agent to sell, solicit, or negotiate variable contracts if the agent satisfies the Commissioner that the agent has met the ~~National Association of Securities Dealers~~ FINRA requirements of the Secretary of State of North Carolina."

SECTION 3. G.S. 58-33-26(p) reads as rewritten:

"(p) An individual shall not simultaneously hold ~~an agent's a property, casualty, or personal lines insurance license~~ and an adjuster's license in this State. An individual who holds a ~~property and liability~~ property, casualty, or personal lines insurance license may apply for an adjuster license without having to take the adjuster examination in G.S. 58-33-30(e) if the individual applies for the adjuster license within 60 days after surrendering the ~~property and liability~~ property, casualty, or personal lines insurance license. An individual who holds an adjuster license may apply for a property and liability insurance license without having to take the property and liability insurance agent examination in G.S. 58-33-30(e) if the individual applies for the ~~property and liability~~ property, casualty, or personal lines insurance license within 60 days after surrendering the adjuster license."

SECTION 4. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-48. Criminal history record checks.

(a) An applicant for an insurance producer license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner. 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) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) This section does not apply to a person applying for renewal or continuation of a home state insurance producer license or a nonresident insurance producer license."

SECTION 5. G.S. 58-33-32(k) reads as rewritten:

"(k) A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. As used in this subsection, "administrative action" includes enforcement action taken against the producer by the ~~National Association of Securities Dealers-FINRA~~. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 6.(a) G.S. 58-33-35 is repealed.

SECTION 6.(b) G.S. 58-33-30(e)(1) reads as rewritten:

"(e) Examination.

(1) After completion and filing of the application with the Commissioner, ~~except as provided in G.S. 58-33-35,~~ the Commissioner shall require each applicant for license as an agent or an adjuster to take an examination as to the applicant's competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner."

SECTION 7. G.S. 58-33-40(a) reads as rewritten:

"(a) ~~No~~ Except as provided in subsection (b) of this section, no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed."

SECTION 8. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. To appoint an individual as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment within 15 days after the date the first insurance application is submitted. ~~Upon the appointment, the~~The individual shall be authorized to act as an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited."

SECTION 9. G.S. 58-33-40(c) and (h) are repealed.

SECTION 10. G.S. 58-33-46(a)(2) and (a)(6) read as rewritten:

"§ 58-33-46. Suspension, probation, revocation, or nonrenewal of licenses.

(a) The Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this Article, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, for any one or more of the following causes:

...

(2) Violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violating any rule of the ~~National Association of Securities Dealers-FINRA~~.

...

(6) Having been convicted of a ~~felony,~~ felony or a misdemeanor involving dishonesty, a breach of trust, or ~~a misdemeanor involving~~ moral turpitude."

SECTION 11. G.S. 58-21-65(f) reads as rewritten:

"(f) A person licensed as a surplus lines licensee under the laws of a state bordering this State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the bordering state are substantially similar to the provisions of this Article and (ii) the bordering state has a law or regulation substantially similar to this subsection that permits surplus lines licensees licensed under this Article to be licensed by the bordering state and (iii) the person complies with all requirements of this Article and submits himself or herself to the Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter."

SECTION 12. G.S. 58-71-50(a) reads as rewritten:

"(a) An applicant for a license as a bail bondsman or runner shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner 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."

SECTION 13. G.S. 58-71-70 reads as rewritten:

"§ 58-71-70. Examination; fees.

Each applicant for a license as a professional bondsman, surety bondsman, or runner shall appear in person and take ~~a written~~ an examination prepared by the Commissioner testing the applicant's ability and qualifications. Each applicant is eligible for examination 30 days after the date the application is received by the Commissioner. If an applicant is unable to complete the examination requirement within 30 days after notification from the Commissioner of the applicant's eligibility to take the examination, the applicant shall again be subject to the criminal history record check prescribed by G.S. 58-71-50(a) so that current information is available for review with the application. Each examination shall be held at a time and place as designated by the Commissioner. Each applicant shall be given notice of the designated time and place no sooner than 15 days before the examination. The Commissioner may contract with a person to process applications for the examination and administer and grade the examination in the same manner as for agent examinations under Article 33 of this Chapter.

The fee for each examination is twenty-five dollars (\$25.00) plus an amount that offsets the cost of any contract for examination services. This examination fee is nonrefundable.

An applicant who fails an examination may take a subsequent examination, but at least one year must intervene between examinations."

SECTION 14. G.S. 58-71-45 reads as rewritten:

"§ 58-71-45. Terms of licenses.

A license issued to a bail bondsman or to a runner authorizes the licensee to act in that capacity until the license is suspended or revoked. Upon the suspension or revocation of a license, the licensee shall return the license to the Commissioner. A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable renewal fee under G.S. 58-71-75. The Commissioner is not required to print renewal licenses. After notifying the Commissioner in writing, a professional bondsman who employs a runner may cancel ~~the runner's license and the runner's authority to act for the professional bondsman.~~

SECTION 15. G.S. 58-71-120 reads as rewritten:

"§ 58-71-120. Bail bondsman to give notice of discontinuance of business; cancellation of license.

Any bail bondsman who discontinues writing bail bonds during the period for which ~~he the~~ the bail bondsman is licensed shall ~~notify the clerks of the superior court with whom he is~~

~~registered and return his the~~ license to the Commissioner for cancellation within 30 days after ~~such the~~ discontinuance."

SECTION 16. G.S. 58-70-40(b) reads as rewritten:

"(b) If an individual proprietor, officer, or partner of the collection agency has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the collection agency shall notify the Commissioner in writing of the conviction 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. The conviction by a court of competent jurisdiction of any permittee for a violation of this Article shall automatically have the effect of suspending the permit of that permittee until such time that the permit is reinstated by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere."

SECTION 17. G.S. 58-70-40 is amended by adding a new subsection to read:

"(e) A collection agency shall report to the Commissioner any administrative action taken against the collection agency by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 18. Article 69 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-69-60. Notification of criminal or administrative actions.

(a) If an individual proprietor, officer, or partner of a motor club has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the motor club shall notify the Commissioner in writing of the conviction 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.

(b) A motor club shall report to the Commissioner any administrative action taken against the motor club by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 19. Article 35 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-35-22. Notification of criminal or administrative actions.

(a) If an individual proprietor, officer, or partner of an insurance premium finance company has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the premium finance company shall notify the Commissioner in writing of the conviction 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.

(b) An insurance premium finance company shall report to the Commissioner any administrative action taken against the premium finance company, including any branch office, by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 20. G.S. 58-2-69(b) reads as rewritten:

"(b) Every applicant for a license shall inform the Commissioner of the applicant's residential ~~address~~ address and provide the applicant's e-mail address to which the Commissioner can send electronic notifications and other messages. Every licensee shall give written notification to the Commissioner of any change of the licensee's residential or e-mail address within 10 business days after the licensee moves into the licensee's new

~~residence~~-residence or obtains a different e-mail address. 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 shall 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, though a licensee who violates this subsection shall pay an administrative fee of fifty dollars (\$50.00) to the Commissioner."

SECTION 21. G.S. 58-70-5 is amended by adding two new subsections to read:

"(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with subsection (k) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subsection (k) of this section."

SECTION 22. Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-70-6. Definitions.

For purposes of G.S. 58-70-5 and this section, the following definitions apply:

- (1) An "affiliate" of or a person "affiliated" with a specific person. – A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (2) Control, including the terms "controlling," "controlled by," and "under common control with." – The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.
- (3) Holding company system. – An entity comprising two or more affiliated persons.
- (4) Person. – An individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.
- (5) Subsidiary of a specified person. – An affiliate controlled by that person indirectly through one or more intermediaries or directly.
- (6) Voting security. – Includes any security convertible into or evidencing a right to acquire a voting security."

SECTION 23. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-58-97. Provision of life insurance information upon notification of insured's death.

(a) Any person licensed to practice funeral directing or any employee of a funeral establishment licensed under the provisions of Article 13A of Chapter 90 of the General Statutes providing funeral service, as that term is defined in G.S. 90-210.20, for a deceased person insured or believed to be insured under a contract of life insurance may request information regarding the deceased person's life insurance contracts by providing an insurer with (i) a copy of a notification of death filed pursuant to G.S. 130A-112 and (ii) written authorization from the person or persons with legal authority to direct disposition of the deceased's body as prescribed under G.S. 90-210.124 or G.S. 130A-420. As soon as possible after receipt of the request, the life insurance company shall inform the person authorized by this section to make an inquiry of the following:

- (1) The existence of any contract insuring the life of the deceased person.
- (2) Any beneficiaries on record under any life insurance contract insuring the life of the deceased person.
- (3) The amount of any liens or loans outstanding on the policy.
- (4) The amount of benefits payable to the beneficiaries.
- (5) Whether the policy has been reinstated within the last 24 months.

The insurer shall provide a claim form to any person or assignee making the request.

(b) If any person making a written request under subsection (a) of this section who has provided all the information required by subsection (a) of this section does not receive a timely response from the insurer, then the person may refer the request to the Consumer Services Division of the Department, which shall treat the referral as a consumer complaint. The referral shall include all the information provided to the insurer under subsection (a) of this section as well as copies of all communications and information received from the insurer regarding the request for information.

(c) If the beneficiary of record under the life insurance contract is not the estate of the deceased, then any person authorized to request information under subsection (a) of this section shall make reasonable efforts to locate the beneficiaries within 100 hours of receiving information from the insurance carrier regarding any life insurance contracts and shall provide to all beneficiaries all documents and information obtained from the insurance carrier. The person obtaining the information also shall inform all beneficiaries in writing in bold print that "THE BENEFICIARY OF A LIFE INSURANCE POLICY HAS NO LEGAL DUTY OR OBLIGATION TO SPEND ANY OF THAT MONEY ON THE FUNERAL, DEBTS, OR OBLIGATIONS OF THE DECEASED" and shall do so before discussing with the beneficiaries financial arrangements for burial of the deceased.

(d) Any licensee or employee of a funeral establishment licensed under Article 13A of Chapter 90 of the General Statutes who makes a false request for information under this section or fails to do that required by subsection (c) of this section shall be deemed guilty of fraud or misrepresentation in the practice of funeral service as defined in G.S. 90-210.25(e)(1)b. and unfit to practice funeral service."

SECTION 24. G.S. 58-39-75 is amended by adding a new subdivision to read:

"(4a) To a person making an inquiry under G.S. 58-58-97 when providing funeral service to a deceased insured; or"

SECTION 25. The Department shall report to the Chairs of the House Insurance Committee and the Senate Commerce Committee by March 1, 2011, the number of insurance policy beneficiary information inquiries referred to it under G.S. 58-58-97, as enacted by this act; the identity of the insurers whose refusal or delay resulted in the referrals; the reasons the insurers were unable to respond to the inquiries; and any recommendations for administrative, legislative, or regulatory changes needed to enhance the ability of individuals arranging for funeral services to obtain timely access to information about life insurance policies held by a deceased person.

SECTION 26. G.S. 58-2-85 reads as rewritten:

"§ 58-2-85. Procedure on appeal under § 58-2-80.

Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be subject to the following provisions:

- (1) No party to a proceeding before the Commissioner may appeal from any final order or decision of the Commissioner unless within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commissioner, by order made within 30 days, the party aggrieved by such decision or order shall file with the Commissioner notice of ~~appeal, appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commissioner.~~
- (2) Any party may appeal from all or any portion of any final order or decision of the Commissioner in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commissioner, to each party to the proceeding to the addresses as they appear in the files of the Commissioner in the proceeding. The failure of any party, other than the Commissioner, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.
- (3) ~~The Commissioner may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commissioner.~~
- (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.
- (5), (6) Repealed by Session Laws 1975, c. 391, s. 11.
- (7) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals.
- (8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.
- (9) In any appeal to the Court of Appeals, the complainant in the original complaint before the Commissioner shall be a party to the record and each of the parties to the proceeding before the Commissioner shall have a right to appear and participate in said appeal.
- (10) An appeal under this section shall operate as a stay of the Commissioner's order or decision until said appeal has been dismissed or the questions raised by the appeal determined according to law."

SECTION 27. G.S. 58-2-90 reads as rewritten:

"§ 58-2-90. Extent of review under § 58-2-80.

(a) On appeal the court shall review the record ~~and the exceptions and assignments of error~~ in accordance with the rules of the Court of Appeals, and any alleged irregularities in

procedures before the Commissioner, not shown in the record, shall be considered under the rules of the Court of Appeals.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any action of the Commissioner. The court may affirm or reverse the decision of the Commissioner, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commissioner's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Commissioner, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. ~~The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commissioner.~~

(d) The court shall also compel action of the Commissioner unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or order made by the Commissioner under the provisions of Articles 1 through 64 of this Chapter shall be prima facie correct."

SECTION 28. If Senate Bill 660 becomes law, then Section 3 of that act reads as rewritten:

"**SECTION 3.** This act becomes effective ~~October 1, 2009,~~ January 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date."

SECTION 29. Section 4 of this act becomes effective October 1, 2010, and applies to applications made on or after that date. Sections 16, 17, 18, and 19 of this act become effective October 1, 2009. Section 20 of this act becomes effective January 1, 2010. Sections 23, 24, and 25 of this act become effective October 1, 2010. Sections 26 and 27 of this act become effective October 1, 2009, and apply to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 2:00 p.m. this 28th day of August, 2009