

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 345

Pensions and Retirement/Insurance/State Personnel Committee Substitute Adopted 5/10/95

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Short Title: Insurance Omnibus Changes/AB.

(Public)

Sponsors:

Referred to: Finance

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-70 reads as rewritten:

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

(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~~ When the Commissioner has reason to believe that any person has violated any of the provisions of ~~the statutes cited in subsection (a) of this section, and the violation subjects the license or certification of that person to suspension or revocation, or whenever the Commissioner has reason to believe that any person has violated Article 63 of this Chapter, this Chapter, any rules adopted under this Chapter, or any order of the Commissioner,~~ 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

1 certified mail, return receipt requested. At the time and place fixed for the hearing the
2 person charged shall have an opportunity to answer the charges ~~against him~~ and present
3 evidence on his or her behalf. Upon good cause shown, the Commissioner may permit
4 any adversely affected person to intervene, appear, and be heard at the hearing by counsel
5 or in person. The Commissioner may consolidate a hearing under this section with a
6 hearing allowed under G.S. 58-63-25 where there is common subject matter involved and
7 subject to procedural requirements set out in both sections being followed.

8 (c) In any case where a hearing ~~pursuant to~~ under subsection (b) of this section
9 results in the findings by the Commissioner of a violation of any ~~of the provisions of the~~
10 ~~statutes cited in subsection (a) of this section, and the violation subjects the license or~~
11 ~~certification of that person to suspension or revocation, or findings by the Commissioner of a~~
12 ~~violation of Article 63 of this Chapter, statute, rule, or order specified in subsection (b) of~~
13 this section, the Commissioner may, in addition to or in lieu of suspending or revoking
14 the license or certification, order the payment of a monetary penalty as provided in
15 subsection (d) of this section or apply to the Superior Court of Wake County for an order
16 directing payment of restitution as provided in subsection (e) of this section, or both.
17 Each day during which a violation occurs shall constitute a separate offense.

18 (d) Upon a finding by the Commissioner of a violation as specified in subsection
19 (c) of this section, the Commissioner shall direct the payment of a penalty of not less than
20 one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In
21 determining the amount of the penalty, the Commissioner shall consider the degree and
22 extent of harm caused by the violation, the amount of money that inured to the benefit of
23 the violator as a result of the violation, whether the violation was committed willfully,
24 and the prior record of the violator in complying or failing to comply with ~~laws,~~ statutes,
25 rules, or orders applicable to the violator. The penalty shall be payable to the
26 Commissioner, who shall then forward the clear proceeds of which to the State Treasurer
27 for deposit in the General Fund of the State. Payment of the civil penalty under this
28 section shall be in addition to payment of any other penalty for a violation of the criminal
29 laws of this State.

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

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

37 (g) Nothing in this section shall prevent the Commissioner from negotiating a
38 mutually acceptable agreement with any person as to the status of the person's license or
39 certificate or as to any civil penalty or restitution.

40 ~~(h) Notwithstanding subsection (b) of this section, if the Commissioner finds that~~
41 ~~the public health, safety, or welfare requires emergency action and incorporates this~~
42 ~~finding in his order, summary suspension of a license or certificate may be ordered~~
43 ~~effective on the date specified in the order or on service of the certified copy of the order~~

1 at the last known address of the licensee, whichever is later, and effective during the
2 proceedings to suspend, revoke, or refuse renewal provided for in subsection (b) of this
3 section. The proceedings shall be promptly commenced and determined."

4 Sec. 2. Reserved.

5 Sec. 3. Article 2 of Chapter 58 of the General Statutes is amended by adding a
6 new section to read:

7 "**§ 58-2-171. Qualifications of actuaries.**

8 The Commissioner may adopt rules setting forth requisite qualifications of consulting
9 actuaries for the sole purpose of qualifying them to certify financial statements filed and
10 rate filings made by entities under this Chapter as to the actuarial validity of those filings.
11 The qualifications shall be commensurate with the degree of complexity of the actuarial
12 principles applicable to the various statements filed or rate filings made. Nothing in this
13 section affects the scope of practice or the professional qualifications of actuaries."

14 Sec. 4. G.S. 58-3-90 reads as rewritten:

15 "**§ 58-3-90. Revocation, suspension, or restriction of license of foreign**
16 **company; publication of notice.**

17 (a) If the Commissioner ~~is of the opinion, believes,~~ upon examination or other
18 evidence, that a foreign insurance company is in an unsound condition; or, if a life
19 insurance company, that its actual funds, exclusive of its capital, are less than its
20 liabilities; or that the company has failed to comply with the statutes, rules, or orders
21 applicable to it; or if the company, its officers, employees, agents, or other
22 representatives refuse to submit to examination or to perform any legal obligation in
23 relation to an examination, ~~he the Commissioner shall revoke or suspend all licenses and~~
24 ~~authority to do business granted to the company or its agents, and shall give written~~
25 ~~notification of the revocation or suspension to all of the company's agents in this State;~~
26 ~~and no new business may thereafter be done by the company or its agents in this State until the~~
27 ~~company's license and authority to do business is restored by the Commissioner. State. Until~~
28 ~~the Commissioner restores the company's license and authority to do business in this~~
29 ~~State, neither the company nor its agents shall do any new business in this State.~~

30 (b) The Commissioner may, after considering the standards under G.S. 58-30-
31 60(b), restrict a foreign insurer's license by prohibiting or limiting the kind or amount of
32 insurance written by that insurer in this State. The Commissioner shall remove any
33 restriction under this subsection once the Commissioner determines that the operations of
34 the insurer are no longer hazardous to the public or to the insurer's policyholders or
35 creditors."

36 Sec. 5. G.S. 58-7-30 reads as rewritten:

37 "**§ 58-7-30. Insolvency of ceding insurer; exceptions, exceptions; written reinsurance**
38 **agreements.**

39 (a) No credit shall be allowed, as an admitted asset or as a deduction from liability,
40 to any ceding insurer for reinsurance, unless the reinsurance is payable by the assuming
41 insurer, on the basis of claims allowed against the ceding insurer under the contract or
42 contracts reinsured without diminution because of the insolvency of the ceding insurer,
43 directly to the ceding insurer or to its domiciliary receiver except (1) where the contract

1 specifically provides for another payee of the reinsurance in the event of the insolvency
2 of the ceding insurer or (2) where the assuming insurer, with the consent of the direct
3 insured or insureds, has assumed the policy obligations of the ceding insurer as direct
4 obligations of the assuming insurer to the payees under the policies and in substitution of
5 the obligations of the ceding insurer to the payees.

6 (b) No credit shall be allowed, as an admitted asset or as a deduction from liability,
7 to any ceding insurer for reinsurance, unless the reinsurance is documented by a policy,
8 certificate, treaty, or other form of agreement that is properly executed by an authorized
9 officer of the assuming insurer. If the reinsurance is ceded through an underwriting
10 manager or agent, the manager or agent shall provide to the domestic ceding insurer
11 evidence of the manager or agent's authority to assume reinsurance for and on behalf of
12 the assuming insurer. The evidence shall consist of either an acceptable letter of
13 authority executed by an authorized officer of the assuming insurer or a copy of the
14 actual agency agreement between the underwriting manager or agent and the assuming
15 insurer; and the evidence shall be specific as to the classes of business within the
16 authority and as to the term of the authority. If there is any conflict between this
17 subsection and Article 9 of this Chapter, the provisions of Article 9 govern."

18 Sec. 6. Reserved.

19 Sec. 7. G. S. 58-12-30 reads as rewritten:

20 "**§ 58-12-30. Hearings.**

21 Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based
22 capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-
23 based capital plan or revised risk-based capital plan is unsatisfactory, and the notification
24 constitutes a regulatory action level event with respect to the insurer; or (iii) notification
25 to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based
26 capital plan or revised risk-based capital plan and that the failure has a substantial adverse
27 effect on the ability of the insurer to eliminate the company action level event with
28 respect to the insurer in accordance with its risk-based capital plan or revised risk-based
29 capital plan; or (iv) notification to an insurer by the Commissioner of a ~~Corrective Order~~
30 corrective order with respect to the insurer, the insurer has a right to a confidential
31 hearing, at which the insurer may challenge any determination or action by the
32 Commissioner. The insurer shall notify the Commissioner of its request for a hearing
33 within five days after the notification by the Commissioner under this section. Upon
34 receipt of the insurer's request for a hearing, the Commissioner shall set a date for the
35 ~~hearing, which hearing;~~ hearing; the date shall be no less than 10 days nor more than 30 days after
36 the date of the insurer's request."

37 Sec. 8. G.S. 58-16-5(3) is repealed.

38 Sec. 9. Article 16 of Chapter 58 of the General Statutes is amended by adding
39 a new section to read:

40 "**§ 58-16-6. Conditions of continued licensure.**

41 In order for a foreign insurance company to continue to be licensed, it shall report any
42 changes in the documents filed under G.S. 58-16-5(1) or G.S. 58-16-5(5), maintain the

1 amounts of capital and surplus specified in G.S. 58-16-5(2), and remain in substantial
2 compliance with the statutes listed in G.S. 58-16-5(6) and G.S. 58-16-5(7)."

3 Sec. 9.1. G.S. 58-16-30 reads as rewritten:

4 **"§ 58-16-30. Service of legal process upon Commissioner.**

5 As an alternative to service of legal process under ~~the provisions of Rule 4 of the Rules~~
6 ~~of Civil Procedure, G.S. 1A-1, Rule 4,~~ the service of such process upon any insurance
7 company or any foreign or alien entity licensed or admitted and authorized to do business
8 in this State under the provisions of Articles 1 through 64 of this Chapter may be made by
9 the sheriff or any other person delivering and leaving a copy of ~~such~~ the process in the
10 office of the Commissioner with a deputy or any other person duly appointed by the
11 Commissioner for ~~such purpose that purpose;~~ or acceptance of service of ~~such~~ the process
12 may be made by the Commissioner or ~~such a~~ duly appointed ~~deputy.~~ deputy or person.
13 Service may also be made by mailing a copy of the summons and of the complaint,
14 registered or certified mail, return receipt requested, addressed to the Commissioner. As
15 a condition precedent to a valid service of process under this section, the party obtaining
16 such service shall pay to the Commissioner at the time of service or acceptance of service
17 the sum of ten dollars (\$10.00), which ~~such~~ the party shall recover as part of the taxable
18 costs if ~~he~~ the party prevails in ~~his~~ the action."

19 Sec. 10. G.S. 58-19-5(2) reads as rewritten:

20 "(2) 'Control', including the terms 'controlling', 'controlled by', and 'under
21 common control with', means the direct or indirect possession of the
22 power to direct or cause the direction of the management and policies of
23 a person, whether through the ownership of voting securities, by
24 contract other than a commercial contract for goods or nonmanagement
25 services, or ~~otherwise, unless the power is the result of an official position~~
26 ~~with or corporate office held by the person.~~ otherwise. Control is presumed
27 to exist if any person directly or indirectly owns, controls, holds with
28 the power to vote, or holds proxies representing, ten percent (10%) or
29 more of the voting securities of any other person. This presumption
30 may be rebutted by a showing made in the manner provided by G.S. 58-
31 19-25(j) that control does not exist in fact. The Commissioner may
32 determine, after furnishing all persons in interest notice and opportunity
33 to be heard and making specific findings of fact to support such
34 determination, that control exists in fact, notwithstanding the absence of
35 a presumption to that effect."

36 Sec. 11. G.S. 58-19-5(5) reads as rewritten:

37 "(5) 'Person' means an individual, corporation, partnership, association, joint
38 stock company, trust, unincorporated organization, or any similar entity
39 or any combination of the foregoing acting in concert. ~~'Person' does not~~
40 ~~include any joint venture partnership exclusively engaged in owning,~~
41 ~~managing, leasing, or developing real or tangible personal property."~~

42 Sec. 11.1. G.S. 58-19-15(a) reads as rewritten:

1 (a) No person other than the issuer shall make a tender offer for or a request or
2 invitation for tenders of, or enter into any agreement to exchange securities, or seek to
3 acquire, or acquire, in the open market or otherwise, any voting security of a domestic
4 insurer, if, after the consummation thereof, ~~such the~~ person would, directly or indirectly
5 (or by conversion or by exercise of any right to acquire), be in control of ~~such the~~ insurer,
6 and no person shall enter into an agreement to merge with or otherwise to acquire control
7 of a domestic insurer or any person controlling a domestic insurer unless ~~such the~~ offer,
8 request, invitation, agreement, or acquisition is conditioned upon the approval of the
9 Commissioner ~~pursuant to~~ under this section. No such merger or other acquisition of
10 control ~~shall be~~ is effective until a statement containing the information required by this
11 section has been filed with the Commissioner and all other provisions of this section have
12 been complied with and the merger or acquisition of control has been approved by the
13 Commissioner ~~pursuant to~~ under this section. The statement containing the information
14 required by this section shall also be filed with the domestic insurer ~~at the time when~~ it is
15 filed with the Commissioner.

16 (a1) For the purposes of this section a 'domestic insurer' includes any person
17 controlling a domestic insurer. Further, for the purposes of this section, 'person' does not
18 include any securities broker holding, in the usual and customary broker's function, less
19 than twenty percent (20%) of the voting securities of an insurance company or of any
20 person that controls an insurance company."

21 Sec. 11.2. G.S. 58-19-15 is further amended by adding two new subsections to
22 read:

23 "(a2) Any acquisition of control of a domestic insurer must be completed not later
24 than 90 days after the date of the Commissioner's order approving the acquisition under
25 this section, unless the Commissioner grants an extension in writing on a showing of
26 good cause for the delay. Any increase in a company's capital and surplus required under
27 this Article as a result of the change of control of a domestic insurer must be completed
28 not later than 90 days after the date of the Commissioner's order approving the change of
29 control and before the company writes any new insurance business.

30 (a3) If the deadlines for completion in subsection (a2) of this section are not met,
31 the person seeking to acquire control of the domestic insurer must resubmit the statement
32 required by subsection (b) of this section, and the Commissioner may reconsider approval
33 of acquisition of control under this section."

34 Sec. 12. G.S. 58-30-180(b)(1) reads as rewritten:

35 "(1) Reserving amounts for the payment of expenses of administration and
36 the payment of claims of secured creditors, to the extent of the value of
37 the security held, and claims falling within the priorities established in
38 G.S. 58-30-220(1) and ~~(2);(4)~~."

39 Sec. 13. G.S. 58-30-220 reads as rewritten:

40 "**§ 58-30-220. Priority of distribution.**

41 The priority of distribution of claims from the insurer's estate shall be in accordance
42 with the order in which each class of claims is set forth in this section. Every claim in
43 each class shall be paid in full or adequate funds shall be retained for payment before the

1 members of the next class receive any payment. No subcategories shall be established
2 within the categories in a class. The order of distribution of claims shall be:

3 (1) ~~Claims for cost of~~ The receiver's expenses for the administration and
4 conservation of assets of the insurer.

5 (2) ~~Compensation actually owing to employees other than officers of the~~
6 ~~insurer for services rendered within three months prior to the~~
7 ~~commencement of a delinquency proceeding against the insurer under~~
8 ~~this Article, but not exceeding one thousand dollars (\$1,000) for each~~
9 ~~employee. In the discretion of the Commissioner, this compensation~~
10 ~~may be paid as soon as practicable after the proceeding has been~~
11 ~~commenced. This priority is in lieu of any other similar priority that~~
12 ~~may be authorized by law as to wages or compensation of those~~
13 ~~employees.~~

14 ~~(3)~~ Claims or portions of claims for benefits under policies and for losses
15 incurred, including claims of third parties under liability policies; claims
16 for unearned premiums; claims for funds or consideration held under
17 funding agreements, as defined in G.S. 58-7-16; claims under life
18 insurance and annuity policies, whether for death proceeds, annuity
19 proceeds, or investment values; and claims of domestic and foreign
20 guaranty associations; ~~associations, including claims for the reasonable~~
21 ~~administrative expenses of domestic and foreign guaranty associations;~~
22 but excluding claims of insurance pools, underwriting associations, or
23 those arising out of reinsurance agreements, claims of other insurers for
24 subrogation, and claims of insurers for payments and settlements under
25 uninsured and underinsured motorist coverages.

26 (3) Claims of the federal or any state or local government or taxing
27 authority, including claims for taxes.

28 (4) ~~Claims for unearned premiums.~~ Compensation actually owing to
29 employees other than officers of the insurer for services rendered within
30 three months before the commencement of a delinquency proceeding
31 against the insurer under this Article, but not exceeding one thousand
32 dollars (\$1,000) for each employee. In the discretion of the
33 Commissioner, this compensation may be paid as soon as practicable
34 after the proceeding has been commenced. This priority is in lieu of any
35 other similar priority that may be authorized by law as to wages or
36 compensation of those employees.

37 (5) Claims of general creditors, including claims of insurance pools,
38 underwriting associations, or those arising out of reinsurance
39 agreements; claims of other insurers for subrogation; and claims of
40 insurers for payments and settlements under uninsured and underinsured
41 motorist coverages."

42 Sec. 14. Article 31 of Chapter 58 of the General Statutes is amended by
43 adding a new section to read:

1 **"§ 58-31-52. State motor vehicle safety program.**

2 (a) Findings, Policy, and Purpose. – Motor vehicle accidents exact a terrible toll of
3 human tragedy and suffering as well as national resources within the United States. The
4 same is true, on a smaller scale, within North Carolina State government. Every year
5 State employees or members of the general public are killed or injured, and a significant
6 portion of the State's financial resources is expended as a direct result of accidents
7 involving State-owned vehicles. Accordingly, it is North Carolina policy that the State-
8 owned motor vehicle fleet and vehicles used on behalf of the State be operated and
9 maintained in such a manner as to minimize deaths, injuries, and costs. The purpose of
10 this section is to direct the Commissioner of Insurance to develop a program to provide
11 policy, requirements, procedures, technical information, and standards for administering
12 a State vehicle safety program which will apply to all State personnel involved in the
13 administration and operation of vehicles on behalf of the State.

14 (b) The Commissioner shall develop and adopt a State Motor Vehicle Safety
15 Program to assure that State-owned motor vehicles are operated and maintained in a safe
16 manner.

17 (c) In developing the program, the Commissioner shall include the following:

- 18 (1) Basic criteria concerning qualifications, screening, and education of
19 drivers.
20 (2) Required and prohibited driving practices.
21 (3) Safety maintenance requirements.
22 (4) Accident reporting and review procedures.

23 (d) The requirements and procedures established under the program apply to all
24 agencies and persons operating vehicles on behalf of the State, unless specifically
25 exempted by the Commissioner. Agencies may adopt more stringent requirements and
26 procedures than those adopted by the Commissioner under this section. The
27 administration of the program in each agency is the responsibility of each agency head or
28 that person's designee.

29 (e) The provisions of Chapter 150B of the General Statutes do not apply to the
30 program developed and adopted under this section."

31 Sec. 15. G.S. 58-33-25(e) reads as rewritten:

32 "(e) A limited representative may receive qualification for one or more licenses
33 without examination for the following kinds of insurance:

- 34 (1), (2) Repealed by Session Laws 1989, c. 485, s. 19.
35 (3) Credit Life, Accident and ~~Health~~-Health.
36 (4) Credit, as specified in ~~G.S. 58-7-15(17)~~-G.S. 58-7-15(17).
37 (5) Travel Accident and ~~Baggage~~-Baggage.
38 (6) Motor ~~Club~~-Club.
39 (7) Dental ~~Services~~-Services.
40 (8) Credit Property Insurance and Single Interest Automobile Physical
41 Damage Insurance when either is made in connection with a ~~loan~~-loan.
42 (9) Bail bonds executed or countersigned by surety bondsmen under Article
43 71 of this ~~Chapter~~-Chapter.

1 (10) Credit unemployment.

2 (11) Vehicle service agreements and mechanical breakdown insurance."

3 Sec. 16. Article 33 of Chapter 58 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 58-33-132. Qualifications of instructors.**

6 The Commissioner may adopt rules setting forth the requisite qualifications for
7 instructors of prelicensing and continuing education courses under this Article. No
8 person shall instruct any such course unless that person has been qualified and possesses
9 a certificate issued by the Commissioner."

10 Sec. 17. G.S. 58-42-55 reads as rewritten:

11 **"§ 58-42-55. Expiration.**

12 This Article shall expire on ~~July 1, 1995.~~ July 1, 1997."

13 Sec. 18. G.S. 58-45-35(b) reads as rewritten:

14 "(b) If the Association determines that the property is insurable and that there is no
15 unpaid premium due from the applicant for prior insurance on the property, the
16 Association, upon receipt of the premium, or part of the premium, as is prescribed in the
17 plan of operation, shall cause to be issued a policy of essential property insurance and
18 shall offer additional extended coverage, optional perils endorsements, crime insurance,
19 separate policies of windstorm and hail insurance, or their successor forms of coverage,
20 for a term of one ~~year.~~ year or three years. Any policy issued under ~~the provisions of this~~
21 ~~section shall be renewed annually, renewed,~~ upon application, ~~so as long as the property~~
22 ~~meets the definition of "insurable property" set forth in G.S. 58-45-5(5).~~ is insurable property."

23 Sec. 19. Reserved.

24 Sec. 20. Reserved.

25 Sec. 21. Article 50 of Chapter 58 of the General Statutes is amended by
26 adding a new section to read:

27 **"§ 58-50-149. Limit on cessions to the Reinsurance Pool.**

28 In addition to any individual or group previously reinsured in accordance with G.S.
29 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or delivered for
30 original issue by a reinsuring carrier on or after October 1, 1995, if the health benefit plan
31 provides coverage to a small employer with no more than 25 eligible employees,
32 including self-employed individuals."

33 Sec. 22. G.S. 58-53-60 reads as rewritten:

34 **"§ 58-53-60. Premium.**

35 (a) The premium for the converted ~~policy~~ policy or group conversion trust
36 certificate shall be determined in accordance with the insurer's table of premium rates
37 applicable to the age and class of risk to be covered under that policy and to the type and
38 amount of insurance provided.

39 (b) All insurers licensed to do business in this State, who issue conversion ~~policies~~
40 policies or group conversion trust certificates under this Part, ~~shall~~ have the right to
41 increase that element of the premium that applies to hospital room and board benefit
42 increases provided for in G.S. 58-53-95(5) by an amount proportionate to the increase

1 promulgated by the Commissioner. Such premium increases shall be filed with the
2 Commissioner.

3 (c) All premium rates and adjustments to premium rates for converted ~~policies~~
4 policies or group conversion trust certificates shall be reasonable and must be filed ~~with~~
5 with and approved by the Commissioner prior to use. A premium rate shall be deemed to
6 be reasonable if ~~it can be demonstrated by the insurer~~ demonstrates that the premium
7 charged is expected to produce an incurred loss ratio to earned premiums of not less than
8 sixty percent (60%) for all ~~individual policies~~ or group conversion trust certificates
9 providing similar benefits offered and issued by the insurer. If an insurer experiences an
10 incurred loss ratio of greater than eighty percent (80%) for all such policies, it shall be
11 deemed reasonable for that insurer to increase premium rates to a level that will produce
12 a prospective incurred loss ratio of no greater than eighty percent (80%), and the insurer
13 shall file such new rates with the Commissioner not more often than once a year."

14 Sec. 23. (a) Article 58 of Chapter 58 of the General Statutes is further amended
15 by adding the following new sections to read:

16 **"§ 58-58-22. Individual policy standard provisions.**

17 No policy of individual life insurance shall be delivered in this State unless it contains
18 in substance the following provisions, or provisions that in the Commissioner's opinion
19 are more favorable to the person insured:

- 20 (1) Grace Period. – A provision that the insured is entitled to a grace period
21 of 31 days for the payment of any premium due except the first, during
22 which grace period the death benefit coverage shall continue in force.
23 The policy may provide that if a claim arises under the policy during the
24 grace period, the amount of any premium due or overdue may be
25 deducted from any amount payable under the policy in settlement.
- 26 (2) Incontestability. – A provision that the validity of the policy shall not be
27 contested, except for nonpayment of premium, once it has been in force
28 for two years after its date of issue; and that no statement made by any
29 person insured under the policy about that person's insurability shall be
30 used during the person's lifetime to contest the validity of the policy
31 after the insurance has been in force for two years.
- 32 (3) Misstatement of Age or Gender. – A provision specifying an equitable
33 adjustment of premiums or benefits, or both, to be made if the age or
34 gender of the person insured has been misstated; the provision to
35 contain a clear statement of the method of adjustment to be used.
- 36 (4) Suicide. – A provision that may not limit payment of benefits for a
37 period more than two years after the date of issue of the policy because
38 of suicide and that provides for at least the return of premiums paid on
39 the policy if there is suicide during the two-year period.
- 40 (5) Reinstatement. – A provision that, unless the policy has been
41 surrendered for its cash surrender value, or its cash surrender value has
42 been exhausted, the policy will be reinstated at any time within five
43 years after the date of premium default upon written application

1 therefor, the production of evidence of insurability satisfactory to the
2 insurer, the payment of all overdue premiums and the payment of
3 reinstatement of any other indebtedness to the insurer upon the policy,
4 all with interest at the rate specified.

5 **"§ 58-58-23. Standard provisions for annuity and pure endowment contracts.**

6 No annuity or pure endowment contract, except a reversionary or survivorship annuity
7 and except a group annuity contract, shall be delivered or issued for delivery in this State
8 unless it contains in substance the following provisions or provisions that in the opinion
9 of the Commissioner are more favorable to the holders of the contracts:

10 (1) Grace Period. – A provision for a grace period of not less than 31 days
11 within which any stipulated payment to the insurer falling due after the
12 first payment may be made. During the grace period the contract shall
13 continue in full force. If a claim arises under the contract because of
14 death before the expiration of the grace period and before the overdue
15 payment to the insurer is made, the amount of the payments, with
16 interest on any overdue payments, may be deducted from any amount
17 payable under the contract.

18 (2) Incontestability. – If any statements are required as a condition of issue,
19 there shall be a provision that the contract shall be incontestable during
20 the lifetime of the person or of each of the persons as to whom the
21 statements are required after it has been in force for a period of two
22 years after its date of issue, except for nonpayment of stipulated
23 payments to the insurer.

24 (3) Misstatements of Age or Gender. – A provision that if the age or gender
25 of any person upon whose life the contract is made has been misstated,
26 the amount payable or benefits accruing under the contract shall be such
27 as the stipulated payment or payments to the insurer would have been
28 according to the correct age or gender; and if the insurer makes an
29 overpayment because of the misstatement, that amount with interest at
30 the rate specified in the contract may be charged against any current or
31 subsequent payment by the insurer under the contract.

32 (4) Reinstatement. – A provision that the contract may be reinstated at any
33 time within one year after a default in making stipulated payments to the
34 insurer, unless the cash surrender value has been paid; but all overdue
35 stipulated payments and any indebtedness to the insurer on the contract
36 shall be paid or reinstated with interest at a rate specified in the contract.
37 When applicable, the insurer may also require evidence of insurability
38 satisfactory to the insurer."

39 (b) Article 58 of Chapter 58 of the General Statutes is further amended by adding a
40 new section to read:

41 **"§ 58-58-42. Viatical settlements.**

42 (a) Definitions. – As used in this section:

- 1 (1) 'Broker' means a person who, for consideration and on behalf of
2 another, offers or advertises the availability of viatical settlements,
3 introduces viators to providers, or offers or attempts to negotiate viatical
4 settlement contracts between a viator and one or more providers; it does
5 not mean an attorney, accountant, or financial planner retained to
6 represent a viator and whose compensation is not paid by a provider.
- 7 (2) 'Policy' means an individual life insurance policy or a certificate under a
8 group life insurance policy.
- 9 (3) 'Provider' means a person who enters into a viatical settlement contract
10 with a viator. 'Provider' does not mean:
- 11 a. A licensed lending institution that takes an assignment of a
12 policy as collateral for a loan.
- 13 b. The issuer of a policy providing accelerated benefits under 11
14 NCAC 12.1200.
- 15 c. A natural person who enters into no more than one agreement in
16 a calendar year for the transfer of a policy for any value less than
17 the expected death benefit.
- 18 (4) 'Viatical settlement contract' or 'contract' means a written agreement
19 entered into between a provider and a viator that establishes the terms
20 under which the provider will pay consideration that is less than the
21 expected death benefit of the viator's policy in return for the viator's
22 assignment, transfer, sale, devise, or bequest of the death benefit or
23 ownership of the policy to the provider.
- 24 (5) 'Viator' means the owner or holder of a policy who has a catastrophic or
25 life-threatening illness or condition and who enters into a viatical
26 settlement contract.
- 27 (b) Registration. – No person may act as a provider or enter into or solicit a
28 contract without first registering with the Commissioner. The applicant shall register on
29 a form prescribed by the Commissioner. The Commissioner may require the applicant to
30 disclose fully the identity of all stockholders, partners, officers, and employees. The
31 Commissioner may refuse registration of any partnership, corporation, or other business
32 entity if not satisfied that any officer, employee stockholder, or partner who may
33 materially influence the applicant's conduct meets the standards of this section.
34 Registration of a partnership, corporation, or other business entity authorizes all
35 members, officers, and designated employees to act as providers under the registration;
36 all of those persons must be named in the application and any supplements to the
37 application. Before any registration is complete, the Commissioner shall investigate each
38 applicant and may register the applicant if the Commissioner finds that the applicant:
- 39 (1) Has provided a detailed plan of operation.
- 40 (2) Is competent and trustworthy and intends to act in good faith in the
41 capacity involved by the license applied for.

1 (3) Has a good business reputation and has had experience, training, or
2 education so as to be qualified in the business for which the license is
3 applied.

4 (4) If a corporation, is incorporated under the laws of this State or is a
5 foreign corporation authorized to transact business in this State.

6 No registration is complete for any nonresident applicant unless a written designation of
7 an agent for service of process is filed and maintained with the Commissioner or the
8 applicant has filed with the Commissioner the applicant's written irrevocable consent that
9 any action against the applicant may be commenced against the applicant by service of
10 process on the Commissioner.

11 (c) Enforcement. – The Commissioner may issue a cease and desist order upon
12 any provider if the Commissioner finds that:

13 (1) There was any misrepresentation in the application for registration;

14 (2) The provider has been guilty of fraudulent or dishonest practices, is
15 subject to a final administrative action, or is otherwise shown to be
16 untrustworthy or incompetent to act as a provider;

17 (3) The provider demonstrates a pattern of unreasonable payments to
18 policyowners;

19 (4) The provider has been convicted of a felony or any misdemeanor of
20 which criminal fraud is an element; or

21 (5) The provider has violated a provision of this section.

22 (d) Approval of Contracts. – No provider may use any viatical settlement contract
23 in this State unless it has been filed with and approved by the Commissioner. Any
24 contract form filed with the Commissioner is deemed to be approved if it has not been
25 disapproved within 90 days after the filing. The Commissioner shall disapprove a
26 contract form if, in the Commissioner's opinion, any provision of the contract is
27 unreasonable, contrary to the public interest, or otherwise misleading or unfair to the
28 policy owner.

29 (e) Reporting Requirements. – Each provider shall file with the Commissioner on
30 or before March 1 of each year a statement containing the information required by the
31 rules adopted by the Commissioner.

32 (f) Examination. – The Commissioner may, when the Commissioner deems it to
33 be reasonably necessary to protect the public interest, examine the business and affairs of
34 any provider or applicant for registration. The Commissioner may order any provider or
35 applicant to produce records, books, files, or other information that is necessary to
36 ascertain whether or not the provider or applicant is acting or has acted in violation of this
37 section or otherwise contrary to the public interest. The provider or applicant shall pay
38 the expenses incurred in conducting an examination. Names and individual identification
39 data for all viators are confidential and shall not be disclosed by the Commissioner. The
40 provider shall maintain records of all transactions of contracts and make the records
41 available to the Commissioner for inspection during reasonable business hours.

42 (g) Disclosure. – A provider shall disclose the following information to the viator
43 no later than the date the contract is signed by all parties:

- 1 (1) Options other than the contract for a person with a catastrophic or life-
2 threatening illness, including, but not limited to, accelerated benefits
3 offered by the issuer of the policy.
- 4 (2) The fact that some or all of the contract consideration may be taxable,
5 and that assistance should be sought from a personal tax advisor.
- 6 (3) The fact that the contract consideration could be subject to the claims of
7 creditors.
- 8 (4) The fact that receipt of the contract consideration may adversely affect
9 the viator's eligibility for Medicaid or other government benefits or
10 entitlements; and that advice should be obtained from the appropriate
11 government agencies.
- 12 (5) The viator's right to rescind a contract within 30 days after the date it is
13 executed by all parties or within 15 days after the receipt of the contract
14 consideration by the viator, whichever is less, as provided in subsection
15 (h) of this section.
- 16 (6) The date by which the contract consideration will be available to the
17 viator and the source of the consideration.
- 18 (h) General Rules. – A provider entering into a contract with a viator shall first
19 obtain:
- 20 (1) A written statement from a licensed attending physician that the viator is
21 of sound mind and under no constraint or undue influence.
- 22 (2) A witnessed document in which the viator (i) consents to the contract,
23 (ii) acknowledges the catastrophic or life-threatening illness, (iii)
24 represents that the viator has a full and complete understanding of the
25 contract, (iv) represents that the viator has a full and complete
26 understanding of the benefits of the policy, and (v) releases the medical
27 records and acknowledges that the contract has been entered into freely
28 and voluntarily.
- 29 All medical information solicited or obtained by any provider is subject to all State laws
30 relating to confidentiality of medical information. All contracts entered into in this State
31 shall contain an unconditional refund provision for at least 30 days after the date of the
32 contract, or 15 days after the receipt of the viatical settlement proceeds, whichever is less.
- 33 (i) Contract Consideration. – Immediately upon receipt from the viator of
34 documents to effect the transfer of the policy, the provider shall direct the contract
35 consideration to an escrow or trust account managed by a trustee or escrow agent in a
36 bank approved by the Commissioner, pending acknowledgment of the transfer by the
37 issuer of the policy. The trustee or escrow agent shall transfer the proceeds that are due
38 to the viator immediately upon receipt of acknowledgment of the transfer from the
39 insurer. Failure to tender the contract consideration by the date disclosed to the viator
40 renders the contract null and void.
- 41 (j) Authority to Adopt Standards. – The Commissioner may:
- 42 (1) Adopt rules to implement this section.

1 (2) Establish standards for evaluating reasonableness of payments under
2 contracts. This authority includes regulation of discount rates used to
3 determine the amount paid in exchange for assignment, transfer, sale,
4 devise, or bequest of a benefit under a policy.

5 (3) Establish appropriate registration and other regulatory requirements for
6 brokers.

7 (4) Require a bond.

8 (k) Unfair Trade Practices. – A violation of this section is considered an unfair
9 trade practice under Article 63 of this Chapter."

10 Sec. 24. G.S. 90-21.20 reads as rewritten:

11 **"§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.**

12 (a) ~~Such cases~~ Cases of wounds, injuries or illnesses ~~as that~~ are enumerated in
13 subsection (b) shall be reported as soon as ~~it becomes~~ practicable before, during or after
14 completion of treatment of a person suffering ~~such wounds, injuries, or illnesses~~ the wound,
15 injury, or illness. ~~If such a case~~ is treated in a hospital, sanitarium or other medical
16 institution or facility, ~~such the~~ report shall be made by the Director, Administrator, or
17 other person designated by the Director or ~~Administrator, or if such Administrator.~~ Administrator. If the
18 case is treated elsewhere, ~~such the~~ report shall be made by the physician or surgeon
19 treating the ~~ease, case~~ to the chief of police or the police authorities of the city or town of
20 this State in which the hospital or other institution, or place of treatment is located. If ~~such~~
21 the hospital or other institution or place of treatment is located outside the corporate
22 limits of a city or town, then the report shall be made by the proper person in the manner
23 set forth above to the sheriff of the respective county or to one of ~~his~~ the sheriff's
24 deputies.

25 (b) Cases of wounds, injuries or illnesses which shall be reported by ~~physicians,~~
26 physicians and hospitals include every case of a bullet wound, gunshot wound, powder
27 burn or any other injury arising from or caused by, or appearing to arise from or be
28 caused by, the discharge of a gun or ~~firearm, firearm;~~ every case of illness apparently
29 caused by poisoning, poisoning; every case of a burn-related injury from fire; every case
30 of a wound or injury caused, or apparently caused, by a knife or sharp or pointed
31 instrument if it appears to the physician or surgeon treating the case that a criminal act
32 was ~~involved, involved;~~ involved; and every case of a wound, injury or illness in which there is
33 grave bodily harm or grave ~~illness~~ illness, if it appears to the physician or surgeon treating
34 the case that the wound, injury or illness resulted from a criminal act of violence. As
35 used in this section, 'burn-related injury from fire' means, regardless of the degree of
36 burn, a burn injury to five percent (5%) or more of the body or any burn to the upper
37 respiratory tract.

38 (c) Each report made ~~pursuant to~~ under subsections (a) and (b) ~~above of~~ this section
39 shall state the name of the wounded, ill or injured person, if known, and the age, sex,
40 race, residence or present location, if known, and the character and extent of ~~his~~ the
41 injuries. In cases of burn-related injuries from fires, the law enforcement authorities to
42 whom reports are made under subsection (a) of this section shall, within five working
43 days after receiving those reports, forward copies of those reports to the Attorney

1 General, who may investigate the injuries under Article 1 of Chapter 69 of the General
2 Statutes.

3 (d) Any hospital, sanitarium, or other like institution or Director, Administrator, or
4 other designated person, or physician or surgeon participating in good faith in the making
5 of a report ~~pursuant to~~ under this section ~~shall have~~ has immunity from any liability, civil
6 or criminal, that might otherwise be incurred or imposed as the result of the making of
7 ~~such~~ the report."

8 Sec. 25. G.S. 131E-213 reads as rewritten:

9 "**§ 131E-213. North Carolina Medical Database not public records; release**
10 **of encrypted data.**

11 (a) The individual forms, computer tapes, or other forms of data collected by and
12 furnished to the Commission or data processor ~~shall not be~~ are not public records under
13 Chapter 132 of the General Statutes and ~~shall not be~~ are not subject to public inspection.
14 After approval by the Commission, the compilations prepared for release or
15 dissemination from the data collected, except for a report prepared for an individual data
16 provider containing information concerning only its transactions, ~~shall be~~ are public
17 records. The confidentiality of patient identifying information is to be protected and the
18 pertinent statutes, rules, and regulations of the State of North Carolina and of the Federal
19 Government relative to patient confidentiality ~~shall~~ apply. For purposes of this section,
20 patient identifying information means the name, address, social security number or
21 similar information by which the identity of the patient can be determined with
22 reasonable accuracy and speed either directly or by reference to other publicly available
23 information. The term does not include a patient identifying number assigned by a
24 program. ~~In any event, the~~ The patient identifying information ~~(as defined in this section)~~
25 obtained shall not be further disclosed, and may not be used in connection with any legal,
26 administrative, supervisory, or other action whatsoever with respect to ~~such~~ the patient.
27 The Commission shall hold such information in confidence, is prohibited from taking any
28 administrative, investigative, or other action with respect to any individual patient on the
29 basis of such information, and is prohibited from identifying, directly or indirectly, any
30 individual patient in any report of scientific research or long-term evaluation, or
31 otherwise disclosing patient identities in any manner. Further, patient identifying
32 information submitted to the Commission which would directly or indirectly identify any
33 patient may not be disclosed by the Commission either voluntarily or in response to any
34 legal ~~process~~ process, whether federal or ~~State~~ State, unless authorized by an appropriate
35 court of competent jurisdiction granted after application showing good cause therefor. In
36 assessing good cause the court shall weigh the public interest and the need for disclosure
37 against the injury to the patient, to the physician-patient relationship, and to the treatment
38 services. Upon the granting of ~~such~~ an order, the court, in determining the extent to
39 which any disclosure of all or any part of any record is necessary, shall impose
40 appropriate safeguards against unauthorized disclosure.

41 (b) Upon the recommendation of the Commission staff and after a majority vote of
42 the appointed Commission members, encrypted, nonaggregate patient
43 discharge/encounter information may be released, but only for research that (i) has a

1 clearly defined purpose and research methodology that has been reviewed and approved
2 by the Commission staff and (ii) will contribute to the understanding of health care costs,
3 utilization patterns, outcomes research, and public health research issues. Before each
4 time any of this information may be released, the person requesting the information must
5 prove to the Commission staff, in writing, that the criteria in this subsection for release
6 are satisfied. The Commission shall not otherwise report or release information in
7 nonencrypted form except to the State Health Director as provided in G.S. 131E-212(f)."

8 Sec. 25.1. Article 11 of Chapter 131E of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 131E-214. Expiration.**

11 This Article expires on July 1, 2001."

12 Sec. 26. Section 208(d) of Chapter 757 of the 1985 Session Laws, as amended
13 by Section 1 of Chapter 480 of the 1991 Session Laws, is repealed.

14 Sec. 27. If any section or provision of this act is declared unconstitutional or
15 invalid by the courts, it does not affect the validity of the act as a whole or any part other
16 than the part so declared to be unconstitutional or invalid.

17 Sec. 28. Sections 1, 5, 8 through 13, 18, 23, and 24 become effective October
18 1, 1995. The remainder of this act is effective upon ratification.