

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-187
HOUSE BILL 760**

AN ACT TO CLARIFY THE MOTOR VEHICLE REINSURANCE FACILITY AND BEACH AND FAIR PLAN LAWS; AMEND LAWS REGARDING DEPARTMENT OF INSURANCE OVERSIGHT OF INSURANCE COMPANY SOLVENCY; AMEND THE MANAGED CARE EXTERNAL REVIEW LAW TO PROVIDE FOR CLARITY IN MAILING NOTICES, THE SAME IMMUNITY TO MEDICAL PROFESSIONALS ADVISING THE COMMISSIONER AS PROVIDED TO EXTERNAL REVIEWERS, AND CONFIDENTIALITY OF CREDENTIALING INFORMATION IN THE POSSESSION OF THE COMMISSIONER; EXTEND THE RATE HEARING TIMETABLES FOR HOMEOWNERS' AND WORKERS' COMPENSATION INSURANCE; CLARIFY THE NORTH CAROLINA HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; EXTEND THE TIME FOR PREMIUM FINANCE COMPANY PREMIUM REFUNDS FOR AUDITED POLICIES; AMEND THE TITLE INSURANCE RESERVE LAWS TO ENHANCE INSOLVENCY PROTECTION; AND REDUCE THE NONFORFEITURE INTEREST RATE FOR INDIVIDUAL ANNUITIES.

The General Assembly of North Carolina enacts:

PART I. REINSURANCE FACILITY AND FAIR AND BEACH PLAN DEFINITION CLARIFICATIONS AND TECHNICAL AND SUBSTANTIVE CORRECTIONS.

SECTION 1.1. G.S. 58-37-1(8) reads as rewritten:

"(8) 'Person' means every natural person, firm, partnership, association, trust, limited liability company, firm, corporation, or government or agency thereof. ~~government, or governmental agency.~~"

SECTION 1.2. G.S. 58-37-35(b)(2) reads as rewritten:

"(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors up to the following:

- a. Bodily injury liability: one hundred thousand dollars (\$100,000) each person, three hundred thousand dollars (\$300,000) each accident;
- b. Property damage liability: fifty thousand dollars (\$50,000) each accident;
- c. Medical payments: two thousand dollars (\$2,000) each person; except that this coverage shall not be available for motorcycles;
- d. Underinsured motorist: one million dollars (\$1,000,000) each person and each accident for bodily injury liability; and
- e. Uninsured motorist: one million dollars (\$1,000,000) each person and each accident for bodily injury and fifty thousand dollars (\$50,000) each accident for property damage (one hundred dollars (\$100.00) deductible)."

SECTION 1.3. G.S. 58-37-35(b)(2a) reads as rewritten:

"(2a) For persons who must maintain liability coverage limits above those available under subdivision (2) of this subsection in order to obtain or continue coverage under personal excess liability or personal

'umbrella' insurance policies, additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors up to the following:

- a. Bodily injury liability: two hundred fifty thousand dollars (\$250,000) each person, five hundred thousand dollars (\$500,000) each accident.
- b. Property damage liability: one hundred thousand dollars (\$100,000) each accident.
- c. Medical payments: five thousand dollars (\$5,000) each ~~person-~~person; except that this coverage shall not be available for motorcycles.
- d. Uninsured motorist: one hundred thousand dollars (\$100,000) each accident for property damage (one hundred dollars (\$100.00) deductible)."

SECTION 1.4. G.S. 58-45-6 reads as rewritten:

"§ 58-45-6. Persons who can be insured by the Association.

As used in this Article, "person" includes the State of North Carolina and any county, city, or other political subdivision of the State of North Carolina."

SECTION 1.5. G.S. 58-46-2 reads as rewritten:

"§ 58-46-2. Persons who can be insured by the Association.

As used in this Article, "person" includes the State of North Carolina and any county, city, or other political subdivision of the State of North Carolina."

PART II. FINANCIAL EVALUATION AND SOLVENCY PROTECTION.

SECTION 2.1. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct a ~~regular-financial~~ examination of every domestic insurer not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

SECTION 2.2. G.S. 58-2-131(i) reads as rewritten:

"(i) Every person from whom information is sought and its officers, directors, and agents must provide to the Commissioner timely, convenient, and free access, at all reasonable hours at its offices, to all data relating to the property, assets, business, and affairs of the ~~insurer-entity~~ being examined. The officers, directors, employees, and agents of the ~~person-entity~~ must facilitate and aid in the examination. The refusal of any ~~insurer-entity~~, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the Commissioner or to knowingly or willfully make any false statement in regard to the examination or written request, is grounds for revocation, suspension, refusal, or nonrenewal of any license or authority held by the ~~insurer-entity~~ to engage in an insurance or other business subject to the Commissioner's jurisdiction."

SECTION 2.3. G.S. 58-2-134 reads as rewritten:

"§ 58-2-134. Cost of certain examinations.

(a) An insurer shall reimburse the State Treasurer for the actual expenses incurred by the Department in any examination of those records or assets conducted under G.S. 58-2-131, 58-2-132, or 58-2-133 ~~when:~~ under any of the following circumstances:

- (1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.
- (2) The insurer requests an examination of its records or assets.

- (3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.
- (4) The examination involves analysis of the company's investment portfolio, a material portion of which comprises a sophisticated derivatives program, material holdings of collateralized mortgage obligations with high flux scores, unusual real estate or limited partnership holdings, high or unusual portfolio turnover, material asset movement between related parties, or unusual securities lending activities.

(b) The amount paid by an insurer for an examination of records or assets under this section shall not exceed one hundred thousand dollars (\$100,000), unless the insurer and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds received under this section shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section."

SECTION 2.4. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-7-73. Dissolutions of insurers.

Upon reaching a determination of intent to dissolve and before filing articles of dissolution with the Office of the Secretary of State, a domestic insurer organized under this Chapter shall file a plan of dissolution for approval by the Commissioner. At such time the Commissioner may restrict the license of the insurer. In order to proceed with a dissolution, the plan must be approved by the Commissioner."

SECTION 2.5. G.S. 58-7-130(b) reads as rewritten:

"(b) No domestic stock insurance company shall declare or pay dividends to its stockholders except from the unassigned surplus of the company as reflected in the company's most recent financial statement filed with the Commissioner under G.S. 58-2-165."

SECTION 2.6. G.S. 58-7-178(b) reads as rewritten:

"(b) An insurer, whether or not it is authorized to do business or has outstanding insurance contracts on lives or risks in any foreign country, may invest in bonds, notes, or stocks of any foreign country or alien corporation that are substantially of the same kinds, classes, and investment grades as those otherwise eligible for investment under this Chapter. The aggregate ~~amount~~ cost of investments under this subsection shall not exceed ten percent (10%) of the insurer's admitted assets, provided that the cost of investments in any foreign country pursuant to this subsection shall not exceed three percent (3%) of the insurer's admitted assets."

SECTION 2.7. G.S. 58-9-2(a)(9) reads as rewritten:

"(9) 'Reinsurer' means any ~~licensed~~ insurer that is licensed by the Commissioner and that is authorized to assume reinsurance."

SECTION 2.8. G.S. 58-13-10 reads as rewritten:

"§ 58-13-10. Scope.

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under Articles 1 through 68 of this Chapter. Foreign insurers shall comply in substance with the requirements and limitations of this Article. This Article does not apply to the following:

- (1) Variable contracts or guaranteed investment contracts for which separate accounts are required to be maintained.
- (2) Statutory deposits that are required by insurance regulatory agencies to be maintained as a requirement for doing business in such jurisdictions.

(3) Real estate, authorized under G.S. 58-7-187, encumbered by a mortgage loan with a first lien."

SECTION 2.9. G.S. 58-13-25(a) reads as rewritten:

"(a) Every insurer subject to this Article shall at all times have and maintain free and unencumbered reserve assets equal to an amount that is ~~at least ten percent (10%) more than~~ the total of its policyholder-related liabilities and its required minimum capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber those reserve assets. The Commissioner, upon application made to the Commissioner, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer not otherwise prohibited upon a finding that the pledging, hypothecation, or encumbrance will not adversely affect the insurer's solvency."

SECTION 2.10. G.S. 58-30-62(a) reads as rewritten:

"(a) As used in this section, an insurer has 'exceeded its powers' when it: has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers, accounts or records necessary for an examination of the insurer; has failed to comply promptly with applicable financial reporting statutes or rules and related Department requests; continues to transact the business of insurance after its license has been revoked, suspended, or not renewed by the Commissioner; by contract or otherwise, has unlawfully, or has in violation of an order of the Commissioner, or has without first having obtained any legally required written approval of the Commissioner, totally reinsured its entire outstanding business or merged or consolidated substantially its entire property or business with another insurer; has engaged in any transaction in which it is not authorized to engage under the laws of this State; has not complied with G.S. 58-7-73; or has refused to comply with a lawful order of the Commissioner. As used in this section, 'Commissioner' includes an authorized representative or designee of the Commissioner."

PART III. EXTERNAL REVIEW CLARIFICATIONS.

SECTION 3.1. G.S. 58-50-80(b)(3) reads as rewritten:

"(3) Notify in writing the covered person and the covered person's provider who performed or requested the service whether the request is complete and whether the request has been accepted for external review. If the request is complete and accepted for external review, the notice shall include a copy of the information that the insurer provided to the Commissioner pursuant to subdivision (b)(1) of this section, and inform the covered person that the covered person may submit to the assigned independent review organization in writing, within seven days after the ~~date receipt~~ of the notice, additional information and supporting documentation relevant to the initial denial for the organization to consider when conducting the external review. If the covered person chooses to send additional information to the assigned independent review organization, then the covered person shall at the same time and by the same means, send a copy of that information to the insurer."

SECTION 3.2. G.S. 58-50-80 is amended by adding a new subsection to read:

"(m) For the purposes of this section, a person is presumed to have received a written notice two days after the notice has been placed, first-class postage prepaid, in the United States mail addressed to the person. The presumption may be rebutted by sufficient evidence that the notice was received on another day or not received at all."

SECTION 3.3. G.S. 58-50-89 reads as rewritten:

"§ ~~58-50-89.~~ **Hold harmless for Commissioner, Commissioner, medical professionals, and independent review organizations.**

~~The Commissioner or~~ Neither the Commissioner, a medical professional rendering advice to the Commissioner under G.S. 58-50-82(b)(2), an independent review

~~organization or organization, nor a clinical peer reviewer working on behalf of an organization shall not be liable for damages to any person for any opinions rendered during or upon completion of an external review conducted under this Part, unless the opinion was rendered in bad faith or involved gross negligence."~~

SECTION 3.4. G.S. 58-2-105 reads as rewritten:

"§ 58-2-105. **Confidentiality of medical and credentialing records.**

(a) All patient medical records in the possession of the Department are confidential and are not public records pursuant to G.S. 58-2-100 or G.S. 132-1. As used in this section, "patient medical records" includes personal information that relates to an individual's physical or mental condition, medical history, or medical treatment, and that has been obtained from the individual patient, a health care provider, or from the patient's spouse, parent, or legal guardian.

(b) Under Part 4 of Article 50 of this Chapter, the Department may disclose patient medical records to an independent review organization, and the organization shall maintain the confidentiality of those records as required by this section, except as allowed by G.S. 58-39-75 and G.S. 58-39-76.

(c) Under Part 4 of Article 50 of this Chapter, all information related to the credentialing of medical professionals that is in the possession of the Commissioner is confidential and is a public record neither under this section nor under Chapter 132 of the General Statutes."

PART IV. HOMEOWNERS' AND WORKERS' COMPENSATION INSURANCE RATE FILINGS.

SECTION 4.1. G.S. 58-36-15(a) reads as rewritten:

"(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate or loss costs filing shall become effective on the date specified in the filing, but not earlier than ~~105~~ 210 days from the date the filing is received by the Commissioner: Provided that (1) rate or loss costs filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than ~~120~~ 210 days from the date the filing is received by the Commissioner or on the date as provided in G.S. 58-36-100, whichever is earlier; and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau."

SECTION 4.2. G.S. 58-36-20(a) reads as rewritten:

"(a) At any time within 50 days ~~from and~~ after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent ~~he the Commissioner~~ contends ~~such the~~ filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. At ~~such the~~ hearing the factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which ~~such the~~ filing shall no longer be effective. Any order of disapproval under this section must be entered within ~~105~~ 210 days ~~of after~~ the date the filing is received by the Commissioner: ~~Provided that any order of disapproval under this section with respect to workers' compensation insurance and employers' liability insurance written in connection therewith shall be entered within 150 days of the date the filing is received by the Commissioner."~~

SECTION 4.3. G.S. 58-36-65(c) reads as rewritten:

"(c) The classifications and Plan filed by the Bureau shall be subject to the filing, hearing, modification, approval, disapproval, review, and appeal procedures provided by law; provided that the ~~105 day~~ 210-day disapproval period in G.S. 58-36-20(a) and the 50-day deemer period in G.S. 58-36-20(b) do not apply to filings or modifications made under this section. The classifications or Plan filed by the Bureau and

promulgated by the Commissioner shall of itself not be designed to bring about any increase or decrease in the overall rate level."

PART V. HIPAA CLARIFICATIONS.

SECTION 5.1. G.S. 58-68-25(b)(1) reads as rewritten:

- "(1) Benefits not subject to requirements. –
- a. Coverage only for accident or disability income insurance or any combination of these.
 - b. Coverage issued as a supplement to liability insurance.
 - c. Liability insurance, including general liability insurance and automobile liability insurance.
 - d. Workers' compensation or similar insurance.
 - e. Automobile medical payment insurance.
 - f. Credit-only insurance.
 - g. Coverage for on-site medical clinics.
 - h. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
 - i. Short-term limited-duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations."

SECTION 5.2. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply to:

- (1) Policies issued to eligible individuals under G.S. 58-68-60.
- (2) Excepted benefits as described in ~~G.S. 58-68-25(b)(1), (2), and (4).~~ G.S. 58-68-25(b)."

PART VI. PREMIUM FINANCE COMPANY PREMIUM REFUNDS FOR AUDITED POLICIES.

SECTION 6. G.S. 58-35-85(5) reads as rewritten:

- "(5) ~~Whenever~~ When an insurance contract is cancelled in accordance with this section, the insurer shall promptly return ~~whatever the gross unearned premiums that are due under the contract to the insurance premium finance company effecting the cancellation~~ the gross unearned premiums that are due under the contract to the insurance premium finance company effecting the cancellation, for the benefit of the insured or insureds, no later than 30 days after the effective date of cancellation. ~~Whenever~~ When the return premium is ~~in excess of more than the amount due the insured owes the insurance premium finance company by the insured under the agreement, the excess shall be promptly remitted promptly to the order of the insured, as provided in subdivision (8) of this section, subject to the minimum service charge provided for in this Article. In the event that~~ in excess of more than the amount due the insured owes the insurance premium finance company by the insured under the agreement, the excess shall be promptly remitted promptly to the order of the insured, as provided in subdivision (8) of this section, subject to the minimum service charge provided for in this Article. If a premium is subject to an audit to determine the final premium amount, the amount to be refunded to the premium finance company shall be calculated upon the deposit ~~premium~~ premium, and the insurer shall return that amount to the premium finance company no later than ~~30~~ 90 days after the effective date of cancellation. ~~This provision shall~~ subdivision does not limit any other remedies the insurer may have against the insured for additional premiums."

PART VII. AMEND TITLE INSURANCE RESERVE LAWS.

SECTION 7.1. G.S. 58-26-1(b) is repealed.

SECTION 7.2. G.S. 58-26-1 is amended by adding a new subsection to read:

"(b1) Domestic and foreign title insurance companies are subject to the same capital, surplus, and investment requirements that govern the formation and operation of domestic stock casualty companies. Domestic title insurance companies are subject to the same deposit requirements that govern the operation of other domestic casualty companies in this State. Foreign or alien title insurance companies are subject to an

initial deposit pursuant to G.S. 58-26-31(b), based on the forecasted statutory premium reserve and the supplemental reserve for the first full year of operation in this State, but not less than two hundred thousand dollars (\$200,000)."

SECTION 7.3. G.S. 58-26-20 reads as rewritten:

"§ 58-26-20. Unearned Statutory premium reserve.

Every domestic title insurance company shall, in addition to other reserves, establish and maintain a reserve to be known as the 'unearned statutory premium reserve' for title insurance, which shall at all times and for all purposes be considered and constitute ~~unearned portions of the original risk premiums and shall be charged as a reserve liability of such the title insurance company in determining its financial conditions. The unearned premium reserve shall be withdrawn from the use of the insurer for its general purposes and placed in a trust account, as approved by the Commissioner, in favor of the holders of title policies and held available for reinsurance of the title policies in the event of insolvency of the insurer. Nothing herein contained shall preclude such an insurer from investing said reserve in investments authorized by law for such an insurer, and the income from such invested reserve shall be included in the general income of the insurer to be used by such insurer for any lawful purpose. condition."~~

SECTION 7.4. G.S. 58-26-25(a) reads as rewritten:

"(a) The ~~unearned~~statutory premium reserve of every domestic title insurance company shall consist of the aggregate of:

- (1) The amount of the unearned premium reserve held as of December 31, 1998.
- (2) The amount of all additions required to be made to such reserve by this section, less the reduction of ~~such the~~ aggregate amount required ~~hereby by this section."~~

SECTION 7.5. G.S. 58-26-25(b) reads as rewritten:

"(b) A domestic title insurance company on and after January 1, 1999, shall reserve initially as an ~~unearned~~a statutory premium reserve a sum equal to ten ~~per cent~~percent (10%) of the following items set forth in the title insurer's most recent annual statement on file with the Commissioner:

- (1) Direct premiums ~~written; and written.~~
- (2) Premiums for reinsurance assumed less premiums for reinsurance ceded during the year."

SECTION 7.6. G.S. 58-26-25(c) reads as rewritten:

"(c) The aggregate of the amounts set aside in ~~unearned~~statutory premium reserves in any calendar year, ~~pursuant to~~under subsection (b) of this section, shall be reduced annually at the end of each calendar year following the year in which the policy is issued, over a period of 20 years, pursuant to the following: twenty percent (20%) the first year; ten percent (10%) for years two and three; five percent (5%) for years four through 10; three percent (3%) for years 11 through 15; and two percent (2%) for years 16 through 20."

SECTION 7.7. G.S. 58-26-30 is repealed.

SECTION 7.8. Article 26 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-26-31. Statutory premium reserve held in trust or as a deposit.

(a) Each domestic title insurance company shall withdraw from use funds to be used by the Commissioner in the event of the insurer's insolvency, the funds being equal to the statutory premium reserve and the supplemental reserve pursuant to G.S. 58-26-25. The amount shall be held in a trust account, as approved by the Commissioner. The trust account will be held in favor of the holders of title policies in the event of the insolvency of the insurer. Nothing in this section precludes the insurer from investing the reserve in investments authorized by law for that insurer, and the income from the invested reserve shall be included in the general income of the insurer to be used by the insurer for any lawful purpose.

(b) Each foreign or alien title insurance company shall withdraw from use funds to be used by the Commissioner in the event of the insurer's insolvency, the funds being equal to the statutory premium reserve and the supplemental reserve as calculated under G.S. 58-26-25 for North Carolina risks. The Commissioner shall hold the funds as a deposit in accordance with G.S. 58-5-20. Annually, the company shall file a statement of actuarial opinion consistent with the annual statement instructions for North Carolina risks, issued by a qualified actuary, in support of this deposit.

(c) A title insurance company shall have 30 days after notification by the Commissioner to increase the amounts held on deposit. If the amount held on deposit is greater than the amount required under subsection (b) of this section, the Commissioner shall release the excess within 30 days after a request by the insurer."

SECTION 7.9. G.S. 58-26-35 reads as rewritten:

"§ 58-26-35. Maintenance of the ~~unearned~~ statutory premium reserve.

~~If by reason of any cause, other than depreciation in the market value of investments, the amount of the assets of a title insurance company held as investments of its unearned premium reserve in trust or held by the Commissioner under G.S. 58-26-31 should on any date be less than the amount required to be maintained by law in such reserve, maintained, and the deficiency shall is not be promptly cured, such the title insurance company shall forthwith immediately give written notice thereof of the deficiency to the Commissioner and shall make no further policies, contracts of title insurance or reinsurance agreements of title insurance not write or assume any title insurance until the deficiency shall have has been eliminated and until it shall have has received written approval from the Commissioner authorizing it to again issue such policies, contracts of title insurance or agreements. write and assume title insurance."~~

SECTION 7.10. G.S. 58-26-40 is repealed.

PART VIII. ANNUITY NONFORFEITURE RATE CHANGE.

SECTION 8. G.S. 58-58-60(d) reads as rewritten:

"(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of ~~three percent (3%)~~ one and one-half percent (1½%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

- (i) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~three percent (3%)~~ one and one-half percent (1½%) per annum; and
- (ii) The amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half (87 1/2%) of the net considerations for the second and later contract years.

Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).

- (2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:
 - (i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22 1/2%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
 - (ii) The annual contract charge shall be the lesser of (i) thirty dollars (\$30.00) or (ii) ten percent (10%) of the gross annual considerations.
- (3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00)."

SECTION 9. Section 8 of this act is effective when it becomes law and applies to policies issued 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 2nd day of October, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:47 p.m. this 31st day of October, 2002