

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 580*

Short Title: Insurance Financial Changes.-AB

(Public)

Sponsors: Senators Dalton; Atwater and Dorsett.

Referred to: Commerce.

March 16, 2005

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE FINANCIAL
LAWS UNDER CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-150 reads as rewritten:

"§ 58-2-150. Oath required for compliance with law.

Before issuing license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with him the affidavit of its president or other chief officer that it accepts the terms and obligations of Articles 1 through ~~64~~ 67 of this Chapter as a part of the consideration of the license."

SECTION 2. G.S. 58-3-100(a)(2) reads as rewritten:

~~"(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus. After considering the standards under G.S. 58-30-60(b), the Commissioner determines that the continued operation of the insurer is hazardous to its policyholders, to its creditors, or to the general public."~~

SECTION 3. G.S. 58-5-50 reads as rewritten:

"§ 58-5-50. Deposits of foreign life insurance companies.

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of four hundred thousand dollars (\$400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional two hundred thousand dollars (\$200,000) where such companies cannot show three years of net operational gains prior to admission. ~~Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section."~~

SECTION 4. G.S. 58-5-90 reads as rewritten:

1 **"§ 58-5-90. Deposits held in trust by Commissioner or Treasurer.**

2 (a) Deposits by Domestic Company. – The Commissioner or the Treasurer, in his
3 official capacity, shall take and hold in trust deposits made by any domestic insurance
4 company for the benefit of all of the insurer's policyholders and for the purpose of
5 complying with the laws of any other state to enable the company to do business in that
6 state. The company making the deposits is entitled to the income thereof, and may, from
7 time to time, with the consent of the Commissioner or Treasurer, and when not
8 forbidden by the law under which the deposit was made, change in whole or in part the
9 securities which compose the deposit for other solvent securities of equal par value.
10 Upon request of any domestic insurance company such officer may return to the
11 company the whole or any portion of the securities of the company held by him on
12 deposit, when he is satisfied that they are subject to no liability and are ~~not~~ no longer
13 required to be ~~longer~~ held by any provision of law or purpose of the original deposit.

14 (b) Deposits by Foreign or Alien Company. – The Commissioner or Treasurer, in
15 that respective officer's official capacity, shall take and hold in trust deposits made by
16 any foreign or alien insurance company for the benefit of the holders of all insurance
17 contracts of the company who are citizens or residents of this State or who hold policies
18 issued upon property in this State in accordance with G.S. 58-5-70. The Commissioner
19 or Treasurer may return to the trustees or other representatives authorized for that
20 purpose any deposit made by a foreign or alien insurance company, when it appears that
21 the company has ceased to do business in the State and is under no obligation to
22 policyholders or other persons in the State for whose benefit the deposit was made.

23 (c) Action to Enforce or Terminate the Trust. – An insurance company which has
24 made a deposit in this State pursuant to Articles 1 through 64 of this Chapter, or its
25 trustees or resident managers in the United States, or the Commissioner, or any creditor
26 of the company, may at any time bring an action in the Superior Court of Wake County
27 against the State and other parties properly joined therein, to enforce, administer, or
28 terminate the trust created by the deposit. The process in this action shall be served on
29 the officer of the State having the deposit, who shall appear and answer in behalf of the
30 State and perform such orders and judgments as the court may make in such action."

31 **SECTION 5.** G.S. 58-6-15 reads as rewritten:

32 **"§ 58-6-15. Annual license continuation fee definition; requirements.**

33 For purposes of this Chapter only, "annual license continuation ~~fee means~~" fee
34 means the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the
35 license is in effect after the company's year of initial licensing. The annual license
36 continuation fee must be submitted annually on or before the first day of March ~~on a~~
37 ~~form to be supplied by the Commissioner each year~~ for as long as the license is to
38 remain in effect. If the Commissioner is satisfied that the company has met all
39 requirements of law and appears to be financially solvent, the Commissioner shall not
40 revoke or suspend the license of the company, and the company shall be authorized to
41 do business in this State, subject to all other applicable provisions of the insurance laws
42 of this State. Nothing contained in this section shall be interpreted as applying to
43 licenses issued to individual representatives of insurance companies."

1 **SECTION 6.** Article 7 of Chapter 58 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 58-7-46. Notification to Commissioner for president/chief executive officer**
4 **changes.**

5 All domestic insurers organized under the laws of this Chapter shall provide the
6 Commissioner written notice of any change that occurs within the position of president
7 or chief executive officer of the insurer no later than 30 days after the change. Notice
8 shall include the name of the insurer, the name of the person previously holding the
9 position of president or chief executive officer, the name of the new person currently
10 holding the position, and the date the position change took place."

11 **SECTION 7.** G.S. 58-7-170 reads as rewritten:

12 **"§ 58-7-170. Diversification.**

13 (a) Every insurer must maintain an amount equal to its entire
14 policyholder-related liabilities and the minimum capital and surplus required to be
15 maintained by the insurer under this Chapter invested in coin or currency of the United
16 States and in investments authorized under this Chapter, other than the investments
17 authorized under G.S. 58-7-183 or G.S. 58-7-187, except G.S. 58-7-187(b)(1).

18 (b) Investments eligible under subsection (a), except investments acquired under
19 G.S. 58-7-183, are subject to the following limitations, other limitations of this section,
20 and any other limitations that are expressly provided for in any provision under which
21 the investment is authorized:

22 (1) The cost of investments made by insurers in stock authorized by
23 G.S. 58-7-173 shall not exceed twenty-five percent (25%) of the
24 insurer's admitted assets, provided that no more than twenty percent
25 (20%) of the insurer's admitted assets shall be invested in common
26 stock; and the cost of an investment in stock of any one corporation
27 shall not exceed three percent (3%) of the insurer's admitted assets.
28 Notwithstanding any other provision in this Chapter, the financial
29 statement carrying value of all stock investments shall be used for the
30 purpose of determining the asset value against which the percentage
31 limitations are to be applied. Investments in the voting securities of a
32 depository institution, or any company that controls a depository
33 institution, shall not exceed five percent (5%) of the insurer's admitted
34 assets. As used in this subdivision, "depository institution" has the
35 same meaning as in section 3 of the Federal Deposit Insurance Act, 12
36 U.S.C. § 1813; and includes any foreign bank that maintains a branch,
37 an agency, or a commercial lending company in the United States.

38 (2) The cost of Canadian investments authorized by G.S. 58-7-173 shall
39 not exceed forty percent (40%) of the insurer's admitted assets in the
40 aggregate, provided that no more than twenty-five percent (25%) of
41 the insurer's admitted assets shall be invested in Canadian investments
42 authorized by G.S. 58-7-173(11).

43 (c) The cost of investments made by an insurer in mortgage loans authorized by
44 G.S. 58-7-179 with any one person, or in ~~mortgage pass through securities and~~

1 ~~derivatives of mortgage pass through mortgage-backed~~ securities authorized by
2 G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral ~~package, pool,~~ shall
3 not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not
4 invest in additional mortgage loans or ~~mortgage pass through securities and derivatives~~
5 ~~of mortgage pass through mortgage-backed~~ securities without the Commissioner's
6 consent if the admitted value of all those investments held by the insurer exceeds an
7 aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the
8 aggregate sixty percent (60%) limitation, the admitted value of all ~~mortgage~~
9 ~~pass through securities and derivatives of mortgage pass through mortgage-backed~~
10 securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of
11 the admitted assets of the insurer. The admitted value of other mortgage loans permitted
12 by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the
13 insurer. ~~Mortgage pass through Mortgage-backed~~ securities authorized by
14 G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral ~~package pool~~
15 limitation and the sixty percent (60%) aggregate limitation. No later than January 31,
16 1999, an insurer that has mortgage investments that exceed the limitations specified in
17 this subsection shall submit to the Commissioner a plan to bring the amount of
18 mortgage investments into compliance with the specified limitations by January 1,
19 2004.

20 (d) Without the Commissioner's prior written approval, the cost of investments
21 permitted under G.S. 58-7-173 and G.S. 58-7-178, and that are classified as medium to
22 lower quality obligations, other than obligations of subsidiaries or affiliated
23 corporations as that term is defined in G.S. 58-19-5, shall be limited to:

- 24 (1) No more than twenty percent (20%) of an insurer's admitted assets;
25 (2) No more than ten percent (10%) of an insurer's admitted assets in
26 obligations ~~that have been given a rating of designated a 4, 5, or 6 by~~
27 ~~the Securities Valuation Office of the NAIC; in accordance with the~~
28 Purposes and Procedures Manual of the NAIC Securities Valuation
29 Office;
30 (3) No more than three percent (3%) of an insurer's admitted assets in
31 obligations ~~that have been given a rating of designated a 5 or 6 by the~~
32 ~~Securities Valuation Office of the NAIC; in accordance with the~~
33 Purposes and Procedures Manual of the NAIC Securities Valuation
34 Office; and
35 (4) No more than one percent (1%) of an insurer's admitted assets in
36 obligations ~~that have been given a rating of designated a 6 by the~~
37 ~~Securities Valuation Office of the NAIC. in accordance with the~~
38 Purposes and Procedures Manual of the NAIC Securities Valuation
39 Office.
40 (5), (6). Repealed by Session Laws 1993, c. 452, s. 11.

41 (e) As used in subsections (d), (f), (g), and (h) of this section, "medium to lower
42 quality obligations" means obligations ~~that have been given a rating of designated a 3,~~
43 ~~4, 5, or 6 by the Securities Valuation Office of the NAIC. in accordance with the~~
44 Purposes and Procedures Manual of the NAIC Securities Valuation Office.

1 (f) Each insurer shall possess and maintain adequate documentation to establish
2 that its investments in medium to lower quality obligations do not exceed the limitations
3 under subsection ~~(d)~~. (d) of this section.

4 ~~(g) The provisions of subsections (d), (e), and (f) of this section apply to any~~
5 ~~investment made after December 31, 1991. If an insurer's investments in medium to~~
6 ~~lower quality obligations equal or exceed the maximum amounts permitted by~~
7 ~~subsection (d) as of December 31, 1991, the insurer shall not acquire any additional~~
8 ~~medium to lower quality obligations without the Commissioner's prior written approval.~~
9 ~~An insurer that is not in compliance with subsection (d) of this section as of December~~
10 ~~31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner,~~
11 ~~only those medium to lower quality obligations it owns on that date, if the obligations~~
12 ~~were obtained in compliance with the law in effect when the investments were made. If~~
13 ~~the insurer sells, transfers, or otherwise disposes of the securities before maturity, the~~
14 ~~insurer may not acquire any medium to lower quality obligations as substitutions or~~
15 ~~replacements without the Commissioner's prior approval.~~

16 ~~(h) An insurer that is not in compliance with subsection (d) of this section on~~
17 ~~December 31, 1991, shall file with its annual statement a separate schedule of the~~
18 ~~medium to lower quality obligations it owns on December 31, 1991. Until it is in~~
19 ~~compliance with subsection (d) of this section, the insurer shall file with each~~
20 ~~succeeding annual and quarterly statement a separate schedule of the medium to lower~~
21 ~~quality obligations it owns as of the reporting date of the filed statement.~~

22 (i) Failure to obtain the Commissioner's prior written approval shall result in any
23 investments in excess of those permitted by subsection (d) of this section not being
24 allowed as an asset of the insurer.

25 (j) The Commissioner may limit the extent of an insurer's deposits with any
26 financial institution if the Commissioner determines that the financial solvency of the
27 insurer is threatened by a deposit in excess of insured limits.

28 (k) The provisions of this section supersede any inconsistent provision of section
29 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to
30 the extent permitted by that Act."

31 **SECTION 8.** G.S. 58-7-173(11) reads as rewritten:

32 "(11) Bonds, notes, or other interest-bearing or interest-accruing obligations
33 of any solvent institution organized under the laws of the United
34 States, of any state, Canada or any Canadian province; provided such
35 instruments are ~~rated and valued by the Securities Valuation Office of~~
36 ~~the NAIC.~~ designated and valued in accordance with the Purposes and
37 Procedures Manual of the NAIC Securities Valuation Office. The cost
38 of investments made under this subdivision in any one issuer shall not
39 exceed three percent (3%) of an insurer's admitted assets."

40 **SECTION 9.** G.S. 58-7-173(17) reads as rewritten:

41 "(17) ~~Mortgage pass-through securities and derivatives thereof, that have~~
42 ~~been rated as investment grade by the Securities Valuation Office of~~
43 ~~the NAIC.~~ Mortgage-backed securities that are designated a 1 or 2 in
44 accordance with the Purposes and Procedures Manual of the NAIC

1 Securities Valuation Office including, without limitation, collateral
2 mortgage obligations backed by a pool of mortgages of the kind, class,
3 and investment quality as those eligible for investment under
4 G.S. 58-7-179."

5 **SECTION 10.** G.S. 58-7-178(b) reads as rewritten:

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

14 **SECTION 11.** G.S. 58-10-120(1) reads as rewritten:

15 "(1) "Mortgage guaranty insurers report of policyholders position" means
16 the ~~annual~~-supplementary report required by the Commissioner."

17 **SECTION 12.** Article 10 of Chapter 58 of the General Statutes is amended
18 by adding a new section to read:

19 "**§ 58-10-140. Report of policyholder's position.**

20 Each mortgage guaranty insurance company doing business in this State must file on
21 a form prescribed by the Commissioner a Mortgage Guaranty Insurers Report of
22 Policyholders Position. The supplemental reports are to be filed with the annual and
23 quarterly statements pursuant to G.S. 58-2-165."

24 **SECTION 13.** G.S. 58-15-30(a) reads as rewritten:

25 "(a) No reciprocal shall engage in any insurance transaction in this State until it
26 has obtained a license to do so in accordance with the applicable provisions of Articles
27 1 through 64 of this Chapter. ~~Such~~The license shall ~~expire on the last day of June of~~
28 ~~each year.~~ continue in full force and effect, subject to timely payment of an annual
29 license continuation fee in accordance with G.S. 58-6-7 and subject to any other
30 applicable provisions of the insurance laws in this State."

31 **SECTION 14.** G.S. 58-16-6 reads as rewritten:

32 "**§ 58-16-6. Conditions of continued licensure.**

33 In order for a foreign insurance company to continue to be licensed, it shall report
34 any changes in the documents filed under G.S. 58-16-5(1) or ~~G.S. 58-16-5(5),~~
35 G.S. 58-16-5(5); maintain the amounts of capital and surplus specified in
36 ~~G.S. 58-16-5(2),~~ G.S. 58-16-5(2); and remain in ~~substantial~~-compliance with ~~the~~
37 ~~statutes listed in~~ G.S. 58-16-5(6), (7), and ~~(8).~~ (8) and with G.S. 58-7-46."

38 **SECTION 15.** G.S. 58-19-30(b)(1) reads as rewritten:

39 "(1) Sales, purchases, exchanges, loans or extensions of credit, ~~guarantees,~~
40 or investments, provided the transactions equal or exceed: (i) with
41 respect to nonlife insurers, the lesser of three percent (3%) of the
42 insurer's admitted assets or twenty-five percent (25%) of surplus as
43 regards policyholders; (ii) with respect to life insurers, three percent

1 (3%) of the insurer's admitted assets; each as of the preceding
2 December 31."

3 **SECTION 16.** G.S. 58-47-140 reads as rewritten:

4 "**§ 58-47-140. Other provisions of this Chapter.**

5 The following provisions of this Chapter apply to workers' compensation
6 self-insurance groups that are subject to this Article:

7 G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161,
8 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120,
9 ~~58-3-125~~, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19,
10 30, 33, 34, and 63 of this Chapter apply to groups."

11 **SECTION 17.** G.S. 58-56-2(5)l. reads as rewritten:

12 "l. ~~A person licensed as a managing general agent in this State,~~
13 ~~whose activities are limited exclusively to the scope of activities~~
14 ~~conveyed under the license.~~ A managing general agent as
15 defined in G.S. 58-34-2(a)(3), whose activities are limited
16 exclusively to the scope of the activities set forth in the
17 managing general agency contract filed by an insurer with the
18 Commissioner in accordance with G.S. 58-34-2(i)."

19 **SECTION 18.** G.S. 58-65-2 reads as rewritten:

20 "**§ 58-65-2. Other laws applicable to service corporations.**

21 The following provisions of this Chapter are applicable to service corporations that
22 are subject to this Article:

- 23 G.S. 58-2-125. Authority over all insurance companies; no exemptions from
24 license.
- 25 G.S. 58-2-150. Oath required for compliance with law.
- 26 G.S. 58-2-155. Investigation of charges.
- 27 G.S. 58-2-160. Reporting and investigation of insurance and reinsurance
28 fraud and the financial condition of licensees; immunity from
29 liability.
- 30 G.S. 58-2-162. Embezzlement by insurance agents, brokers, or
31 administrators.
- 32 G.S. 58-2-185. Record of business kept by companies and agents;
33 Commissioner may inspect.
- 34 G.S. 58-2-190. Commissioner may require special reports.
- 35 G.S. 58-2-195. Commissioner may require records, reports, etc., for agencies,
36 agents, and others.
- 37 G.S. 58-2-200. Books and papers required to be exhibited.
- 38 G.S. 58-3-50. Companies must do business in own name; emblems,
39 insignias, etc.
- 40 G.S. 58-3-100(c),(e). Insurance company licensing provisions.
- 41 G.S. 58-3-115. Twisting with respect to insurance policies; penalties.
- 42 G.S. 58-7-46. Notification to Commissioner for president/chief executive
43 officer changes.
- 44 G.S. 58-50-35. Notice of nonpayment of premium required before forfeiture.

1 G.S. 58-51-25. Policy coverage to continue as to mentally retarded or
2 physically handicapped children."

3 **SECTION 19.** G.S. 58-67-25 reads as rewritten:

4 "**§ 58-67-25. Deposits.**

5 (a) The Commissioner shall require a minimum deposit of five hundred thousand
6 dollars (\$500,000) for all full service medical health maintenance organizations or such
7 higher amount as he deems necessary for the protection of enrollees. ~~The minimum~~
8 ~~deposit for a full service medical health maintenance organization authorized to operate~~
9 ~~on July 17, 1987, and having a deposit of less than five hundred thousand dollars~~
10 ~~(\$500,000) shall be as follows:~~

11 (1) \$250,000 by December 31, 1987

12 (2) \$500,000 by December 31, 1988.

13 ~~Any health maintenance organization not authorized to do business on July 17, 1987,~~
14 ~~must comply with the minimum initial deposit of five hundred thousand dollars~~
15 ~~(\$500,000).~~

16 (b) The Commissioner shall require a minimum deposit of twenty-five thousand
17 dollars (\$25,000) for all single service health maintenance organizations or such higher
18 amount as he deems necessary for the protection of enrollees.

19 (c) All deposits required by this section shall be administered in accordance with
20 the provisions of ~~G.S. 58-5-1.~~ Article 5 of this Chapter."

21 **SECTION 20.** G.S. 58-67-115(b)(2) reads as rewritten:

22 "(2) Whenever the reimbursements described in this subsection exceed ten
23 percent (10%) of the HMO's total costs for health care services over
24 the immediately preceding six months, the HMO shall file a written
25 report with the Commissioner containing the information necessary to
26 determine compliance with sub-subdivision (b)(1)a. of this section ~~no~~
27 ~~later than 30 business days from the first day of the month.~~ with its
28 financial statements filed pursuant to G.S. 58-2-165. Upon an adequate
29 showing by the HMO that the requirements of this section should be
30 waived or reduced, the Commissioner may waive or reduce these
31 requirements to such an amount as he deems sufficient to protect
32 enrollees of the HMO consistent with the intent and purpose of this
33 Article."

34 **SECTION 21.** G.S. 58-67-171 reads as rewritten:

35 "**§ 58-67-171. Other laws applicable to HMOs.**

36 The following provisions of this Chapter are applicable to HMOs that are subject to
37 this Article:

38 G.S. 58-2-125. Authority over all insurance companies; no exemptions from
39 license.

40 G.S. 58-2-150. Oath required for compliance with law.

41 G.S. 58-2-155. Investigation of charges.

42 G.S. 58-2-160. Reporting and investigation of insurance and reinsurance
43 fraud and the financial condition of licensees; immunity from
44 liability.

- 1 G.S. 58-2-162. Embezzlement by insurance agents, brokers, or
- 2 administrators.
- 3 G.S. 58-2-185. Record of business kept by companies and agents;
- 4 Commissioner may inspect.
- 5 G.S. 58-2-190. Commissioner may require special reports.
- 6 G.S. 58-2-195. Commissioner may require records, reports, etc., for agencies,
- 7 agents, and others.
- 8 G.S. 58-2-200. Books and papers required to be exhibited.
- 9 G.S. 58-3-50. Companies must do business in own name; emblems,
- 10 insignias, etc.
- 11 G.S. 58-3-100(c),(e). Insurance company licensing provisions.
- 12 G.S. 58-3-115. Twisting with respect to insurance policies; penalties.
- 13 G.S. 58-7-46. Notification to Commissioner for president/chief executive
- 14 officer changes.
- 15 G.S. 58-7-73. Dissolution of insurers.
- 16 G.S. 58-50-35. Notice of nonpayment of premium required before forfeiture.
- 17 G.S. 58-51-25. Policy coverage to continue as to mentally retarded or
- 18 physically handicapped children.
- 19 G.S. 58-51-35. Insurers and others to afford coverage to mentally retarded
- 20 and physically handicapped children.
- 21 G.S. 58-51-45. Policies to be issued to any person possessing the sickle-cell
- 22 trait or hemoglobin C trait."

23 **SECTION 22.** G.S. 58-2-215(b)(1) reads as rewritten:

24 "(1) For the purpose of retaining outside actuarial and economic
 25 consultants, legal counsel, and court reporting services in the review
 26 and analysis of rate ~~filings,~~ filings and any other insurance regulatory
 27 matters, in conducting all hearings, and through any final
 28 adjudication."

29 **SECTION 23.** G.S. 58-12-40 reads as rewritten:

30 **"§ 58-12-40. Supplemental provisions; rules; exemptions.**

31 (a) The provisions of this Article are supplemental to any other provisions of the
 32 laws of this State, and do not preclude or limit any other powers or duties of the
 33 Commissioner under those laws, including Article 30 of this Chapter.

34 (b) Risk-based capital instructions, risk-based capital reports, adjusted risk-based
 35 capital reports, risk-based capital plans, and revised risk-based capital plans are solely
 36 for use by the Commissioner in monitoring the solvency of insurers and the need for
 37 possible corrective action with respect to insurers. The Commissioner shall not use any
 38 of these reports or plans for rate making nor consider or introduce them as evidence in
 39 any rate proceeding. The Commissioner shall not use these reports or plans to calculate
 40 or derive any elements of an appropriate premium level or rate of return for any kind of
 41 insurance that an insurer or any affiliate is authorized to write.

42 (c) The Commissioner may exempt from the application of this Article any
 43 domestic property or casualty insurer ~~that does all of the following: that:~~

- 44 (1) Writes direct business only in this ~~State.~~ State.

- 1 (2) Writes direct annual premiums of ~~one thousand dollars (\$1,000) or~~
2 ~~less; two million dollars (\$2,000,000) or less.~~
- 3 (3) Assumes no reinsurance in excess of five percent (5%) of direct
4 written premiums.
- 5 (d) The Commissioner may, in the Commissioner's discretion, exempt from the
6 application of this Article:
- 7 (1) Any domestic town or county mutual insurance company organized
8 pursuant to G.S. 58-7-75(5)(d).
- 9 (2) Any domestic life or health insurer that:
- 10 a. Has no direct or assumed annual premiums; and
11 b. Has no direct or assumed policyholder obligations.
- 12 (3) Any domestic health maintenance organization that:
- 13 a. Writes only direct business in this State;
14 b. Assumes no reinsurance in excess of five percent (5%) of direct
15 written premiums; and
16 c. Writes direct annual premiums for a comprehensive medical
17 business of two million dollars (\$2,000,000) or less, or is a
18 single service health maintenance organization that covers less
19 than 2,000 lives."

20 **SECTION 24.** G.S. 58-67-10 reads as rewritten:

21 **"§ 58-67-10. Establishment of health maintenance organizations.**

22 (a) Notwithstanding any law of this State to the contrary, any person may apply
23 to the Commissioner for a ~~certificate of authority~~ license to establish and operate a
24 health maintenance organization in compliance with this Article. No person shall
25 establish or operate a health maintenance organization in this State, nor sell or offer to
26 sell, or solicit offers to purchase or receive advance or periodic consideration in
27 conjunction with a health maintenance organization without obtaining a ~~certificate of~~
28 ~~authority~~ license under this Article. A foreign corporation may qualify under this
29 Article, subject to its full compliance with Article 16 of this Chapter.

- 30 (b) (1) It is specifically the intention of this section to permit such persons as
31 were providing health services on a prepaid basis on July 1, 1977, or
32 receiving federal funds under Section 254(c) of Title 42, U.S. Code, as
33 a community health center, to continue to operate in the manner which
34 they have heretofore operated.
- 35 (2) Notwithstanding anything contained in this Article to the contrary, any
36 person can provide health services on a fee for service basis to
37 individuals who are not enrollees of the organization, and to enrollees
38 for services not covered by the contract, provided that the volume of
39 services in this manner shall not be such as to affect the ability of the
40 health maintenance organization to provide on an adequate and timely
41 basis those services to its enrolled members which it has contracted to
42 furnish under the enrollment contract.

- 1 (3) This Article shall not apply to any employee benefit plan to the extent
2 that the Federal Employee Retirement Income Security Act of 1974
3 preempts State regulation thereof.
- 4 (3a) This Article does not apply to any prepaid health service or capitation
5 arrangement implemented or administered by the Department of
6 Health and Human Services or its representatives, pursuant to 42
7 U.S.C. § 1396n or Chapter 108A of the General Statutes, a provider
8 sponsored organization or other organization certified, qualified, or
9 otherwise approved by the Division of Medical Assistance of the
10 Department of Health and Human Services pursuant to Article 17 of
11 Chapter 131E of the General Statutes, or to any provider of health care
12 services participating in such a prepaid health service or capitation
13 arrangement. Article; provided, however, that to the extent this Article
14 applies to any such person acting as a subcontractor to a Health
15 Maintenance Organization licensed in this State, that person shall be
16 considered a single service Health Maintenance Organization for the
17 purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-110.
- 18 (4) Except as provided in paragraphs (1), (2), (3), and (3a) of this
19 subsection, the persons to whom these paragraphs are applicable shall
20 be required to comply with all provisions contained in this Article.
- 21 (c) Each application for a ~~certificate of authority~~ license shall be verified by an
22 officer or authorized representative of the applicant, shall be in a form prescribed by the
23 Commissioner, and shall be set forth or be accompanied by the following:
- 24 (1) A copy of the basic organizational document, if any, of the applicant
25 such as the articles of incorporation, articles of association, partnership
26 agreement, trust agreement, or other applicable documents, and all
27 amendments ~~thereto~~; thereto. Any proposed articles of incorporation
28 for the formation of a domestic health maintenance organization shall
29 be filed with the Commissioner. The Commissioner shall examine the
30 proposed articles. If the Commissioner finds that the proposed articles
31 meet the requirements of the insurance laws of this State and otherwise
32 determines that the articles should be approved, the Commissioner
33 shall place a certificate of approval on the articles and submit the
34 approved articles to the Secretary of State;
- 35 (2) A copy of the bylaws, rules and regulations, or similar document, if
36 any, regulating the conduct of the internal affairs of the applicant;
- 37 (3) A list of the names, addresses, and official positions of persons who
38 are to be responsible for the conduct of the affairs of the applicant,
39 including all members of the board of directors, board of trustees,
40 executive committee, or other governing board or committee, the
41 principal officers in the case of a corporation, and the partners or
42 members in the case of a partnership or association;
- 43 (4) A copy of any contract form made or to be made between any class of
44 providers and the HMO and a copy of any contract form made or to be

- 1 made between third party administrators, marketing consultants, or
2 persons listed in subdivision (3) of this subsection and the HMO;
- 3 (5) A statement generally describing the health maintenance organization,
4 its health care plan or plans, facilities, and personnel;
- 5 (6) A copy of the form of evidence of coverage to be issued to the
6 enrollees;
- 7 (7) A copy of the form of the group contract, if any, which is to be issued
8 to employers, unions, trustees, or other organizations;
- 9 (8) Financial statements showing the applicant's assets, liabilities, and
10 sources of financial support. If the applicant's financial affairs are
11 audited by independent certified public accountants, a copy of the
12 applicant's most recent regular certified financial statement shall be
13 deemed to satisfy this requirement unless the Commissioner directs
14 that additional or more recent financial information is required for the
15 proper administration of this Article;
- 16 (9) A financial feasibility plan, which includes detailed enrollment
17 projections, the methodology for determining premium rates to be
18 charged during the first 12 months of operations certified by an actuary
19 or a recognized actuarial consultant, a projection of balance sheets,
20 cash flow statements, showing any capital expenditures, purchase and
21 sale of investments and deposits with the State, and income and
22 expense statements anticipated from the start of operations until the
23 organization has had net income for at least one year; and a statement
24 as to the sources of working capital as well as any other sources of
25 funding;
- 26 (10) A power of attorney duly executed by such applicant, if not domiciled
27 in this State, appointing the Commissioner and his successors in office,
28 and duly authorized deputies, as the true and lawful attorney of such
29 applicant in and for this State upon whom all lawful process in any
30 legal action or proceeding against the health maintenance organization
31 on a cause of action arising in this State may be served;
- 32 (11) A statement reasonably describing the geographic area or areas to be
33 served;
- 34 (12) A description of the procedures to be implemented to meet the
35 protection against insolvency requirements of G.S. 58-67-110;
- 36 (13) A description of the internal grievance procedures to be utilized for the
37 investigation and resolution of enrollee complaints and grievances; and
- 38 (14) Such other information as the Commissioner may require to make the
39 determinations required in G.S. 58-67-20.
- 40 (d) (1) A health maintenance organization shall file a notice describing any
41 significant modification of the operation set out in the information
42 required by subsection (c) of this section. Such notice shall be filed
43 with the Commissioner prior to the modification. If the Commissioner
44 does not disapprove within 90 days after the filing, such modification

1 shall be deemed to be approved. Changes subject to the terms of this
2 section include expansion of service area, changes in provider contract
3 forms and group contract forms where the distribution of risk is
4 significantly changed, and any other changes that the Commissioner
5 describes in properly promulgated rules. Every HMO shall report to
6 the Commissioner for his information material changes in the provider
7 network, the addition or deletion of Medicare risk or Medicaid risk
8 arrangements and the addition or deletion of employer groups that
9 exceed ten percent (10%) of the health maintenance organization's
10 book of business or such other information as the Commissioner may
11 require. Such information shall be filed with the Commissioner within
12 15 days after implementation of the reported changes. Every HMO
13 shall file with the Commissioner all subsequent changes in the
14 information or forms that are required by this Article to be filed with
15 the Commissioner.

16 (1a) Any proposed change to the articles of incorporation shall be filed with
17 the Commissioner. The Commissioner shall examine the proposed
18 change to the articles. If the Commissioner determines that the
19 proposed change should be approved, the Commissioner shall place
20 a certificate of approval on the change and submit the approved change
21 to the Secretary of State.

22 (2) The Commissioner may promulgate rules and regulations exempting
23 from the filing requirements of subdivision (1) those items he deems
24 unnecessary."

25 **SECTION 25.** G.S. 58-15-30 reads as rewritten:

26 "**§ 58-15-30. License, surplus, and deposit requirements.**

27 (a) No reciprocal shall engage in any insurance transaction in this State until it
28 has obtained a license to do so in accordance with the applicable provisions of Articles
29 1 through 64 of this Chapter. ~~Such~~ The license shall expire on the last day of June of
30 each year. continue in full force and effect, subject to timely payment of an annual
31 license continuation fee in accordance with G.S. 58-6-7 and subject to any other
32 applicable provision of the insurance laws of this State.

33 (b) No domestic or foreign reciprocal shall be licensed in this State unless it has a
34 surplus to policyholders of at least eight hundred thousand dollars (\$800,000); and no
35 alien reciprocal shall be licensed unless it has a trusteed surplus of at least eight hundred
36 thousand dollars (\$800,000).

37 (c) Each domestic, foreign, or alien reciprocal licensed in this State ~~must~~
38 ~~maintain a minimum deposit~~ shall deposit and maintain deposits with the
39 Commissioner of at least ~~one hundred thousand dollars (\$100,000)~~ four hundred
40 thousand dollars (\$400,000) in cash or in value of securities of the kind specified in
41 G.S. 58-5-15, which shall be subject to the same conditions as contained in Article 5 of
42 this Chapter."

43 **SECTION 26.** G.S. 58-13-20 reads as rewritten:

44 "**§ 58-13-20. Exception.**

1 (a) This Article does not apply to those reserve assets of an insurer that are held,
2 deposited, pledged, hypothecated, or otherwise encumbered as provided in this section
3 to secure, offset, protect, or meet those policyholder-related liabilities of the insurer that
4 are established, incurred, or required under the provisions of a reinsurance agreement
5 whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer,
6 provided:

7 (1) The ceding insurer and the reinsurer are both licensed to transact
8 business in this State;

9 (2) Pursuant to a written agreement between the ceding insurer and the
10 reinsurer, reserve assets substantially equal to the policyholder-related
11 liabilities required to be established by the reinsurer on the reinsured
12 business are either (i) deposited by or are withheld from the reinsurer
13 and are in the custody of the ceding insurer as security for the payment
14 of the reinsurer's obligations under the reinsurance agreement, and
15 such assets are held subject to withdrawal by and under the separate or
16 joint control of the ceding insurer, or (ii) deposited and held in trust
17 account for that purpose and under those conditions with a ~~State or~~
18 ~~national bank domiciled in this State.~~ qualified United States financial
19 institution.

20 (b) The Commissioner has the right to examine any of such assets, reinsurance
21 agreements, or deposit arrangements at any time in accordance with his authority to
22 make examinations of insurers as conferred by other provisions of this Chapter.

23 (c) For purposes of subdivision (a)(2) of this section, "qualified United States
24 financial institution" means an institution that:

25 (1) Is organized or, in the case of a United States office of a foreign
26 banking organization, licensed under the laws of the United States or
27 any of its states;

28 (2) Is regulated, supervised, and examined by United States federal or
29 state authorities having regulatory authority over banks and trust
30 companies; and

31 (3) Has been determined by either the Commissioner or the Securities
32 Valuation Office of the NAIC to meet such standards of financial
33 condition and standing as are considered necessary and appropriate to
34 regulate the quality of financial institutions who serve as trustees."

35 **SECTION 27.** G.S. 58-8-20(e) reads as rewritten:

36 "(e) Guaranty capital may be reduced or retired by vote of the policyholders of the
37 company and the assent of the Commissioner, if the net assets of the company above its
38 reserve and all other claims and obligations, exclusive of guaranty capital, for two years
39 immediately preceding and including the date of its last annual statement, is not less
40 than twenty-five percent (25%) of the guaranty capital. Due notice of such proposed
41 action on the part of the company must be mailed to each policyholder of the company
42 not less than 30 days before the meeting when the action may be taken, and must also be
43 advertised in two papers of general circulation, approved by the Commissioner, not less
44 than three times a week for a period of not less than four weeks before such meeting.

1 The written notification to policyholders shall include a proxy statement to allow
2 policyholders to vote on the proposed action without personal attendance at the meeting,
3 and the Commissioner shall approve both the written notification and the proxy
4 statement. The proposed action shall be effected by a vote of two-thirds of the
5 policyholders voting thereon in person or by proxy."

6 **SECTION 28.** This act becomes effective October 1, 2005.