

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

4

SENATE BILL 342*

Insurance Committee Substitute Adopted 5/13/91

House Committee Substitute Favorable 6/25/91

House Committee Substitute #2 Favorable 7/2/91

Short Title: Insurer Solvency Program.

(Public)

Sponsors:

Referred to:

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND AND IMPROVE THE INSURANCE LAWS ON THE MONITORING OF THE FINANCIAL CONDITION OF INSURANCE COMPANIES IN ACCORDANCE WITH THE FINANCIAL REGULATION STANDARDS AND INSURANCE DEPARTMENT ACCREDITATION PROGRAM OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-25 reads as rewritten:

"§ 58-2-25. Other deputies, actuaries, examiners and employees.

(a) The Commissioner shall appoint or employ such other deputies, actuaries, economists, financial analysts, financial examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees as may be found that the Commissioner considers to be necessary for the proper execution of the work of the Department, at such the compensation as shall be that is fixed and provided by the Department of Administration. If the Commissioner finds it considers it to be necessary for the proper execution of the work of the Insurance Department to contract with persons, except to fill authorized employee positions, all of those contracts, except those provided for in

1 Articles 36 and 37 of this Chapter, shall be made pursuant to the provisions of Article
2 3C of Chapter ~~143-~~143 of the General Statutes.

3 Whenever the Commissioner or any deputy or employee of the Department is
4 requested or subpoenaed to testify as an expert witness in any civil or administrative
5 action, the party making the request or filing the subpoena and on whose behalf the
6 testimony is given shall, upon receiving a statement of the cost from the Commissioner,
7 reimburse the Department for the actual time and expenses incurred by the Department
8 in connection with the testimony.

9 (b) The minimum education requirements for financial analysts and
10 examiners referred to in subsection (a) of this section are a bachelors degree, with the
11 appropriate courses in accounting as defined in 21 NCAC 8A.0309, and other courses
12 that are required to qualify the applicant as a candidate for the uniform certified public
13 accountant examination, based on the examination requirements in effect at the time of
14 employment by the Department of the analyst or examiner."

15 Sec. 2. Article 2 of Chapter 58 of the General Statutes is amended by adding
16 the following new sections:

17 **"§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct**
18 **of examinations.**

19 (a) This section and G.S. 58-2-132 and G.S. 58-2-133 shall be known and
20 may be cited as the Examination Law. The purpose of the Examination Law is to
21 provide an effective and efficient system for examining the activities, operations,
22 financial condition, and affairs of all persons transacting the business of insurance in
23 this State and all persons otherwise subject to the Commissioner's jurisdiction; and to
24 enable the Commissioner to use a flexible system of examinations that directs resources
25 that are appropriate and necessary for the administration of the insurance statutes and
26 rules of this State.

27 (b) As used in this section, G.S. 58-2-132 and G.S. 58-2-133, unless the context
28 clearly indicates otherwise:

29 (1) 'Commissioner' includes an authorized representative or designee of
30 the Commissioner.

31 (2) 'Examination' means an examination conducted under the
32 Examination Law.

33 (3) 'Examiner' means any person authorized by the Commissioner to
34 conduct an examination.

35 (4) 'Insurance regulator' means the official or agency of another
36 jurisdiction that is responsible for the regulation of a foreign or alien
37 insurer.

38 (5) 'Person' includes a trust or any affiliate of a person.

39 (c) Before licensing any person to write insurance in this State, the
40 Commissioner shall be satisfied, by such examination and evidence as the
41 Commissioner decides to make and require, that the person is otherwise duly qualified
42 under the laws of this State to transact business in this State.

43 (d) The Commissioner may conduct an examination of any insurer whenever the
44 Commissioner deems it to be prudent for the protection of policyholders but shall at a

1 minimum conduct an examination of every domestic insurer not less frequently than
2 once every three years. In scheduling and determining the nature, scope, and frequency
3 of examinations, the Commissioner shall consider such matters as the results of
4 financial statement analyses and ratios, changes in management or ownership, actuarial
5 opinions, reports of independent certified public accountants, and other criteria as set
6 forth in the NAIC Examiners' Handbook.

7 (e) To complete an examination of any insurer, the Commissioner may authorize
8 an examination or investigation of any person, or the business of any person, insofar as
9 the examination or investigation is necessary or material to the insurer under
10 examination.

11 (f) Instead of examining any foreign or alien insurer licensed in this State, the
12 Commissioner may accept an examination report on that insurer prepared by the
13 insurer's insurance regulator until January 1, 1994. Thereafter, reports may only be
14 accepted if (i) the insurance regulator was at the time of the examination accredited
15 under NAIC Financial Regulation Standards and Accreditation Program, or (ii) the
16 examination is performed under the supervision of an NAIC-accredited insurance
17 regulator or with the participation of one or more examiners who are employed by the
18 regulator and who, after a review of the examination work papers and report, state under
19 oath that the examination was performed in a manner consistent with the standards and
20 procedures required by the regulator.

21 (g) If it appears that the insurer is of good financial and business standing and is
22 solvent, and it is certified in writing and attested by the seal, if any, of the insurer's
23 insurance regulator that it has been examined by the regulator in the manner prescribed
24 by its laws, and was by the examination found to be in sound condition, that there is no
25 reason to doubt its solvency, and that it is still permitted under the laws of such
26 jurisdiction to do business therein, then, in the Commissioner's discretion, further
27 examination may be dispensed with, and the obtained information and the furnished
28 certificate may be accepted as sufficient evidence of the solvency of the insurer.

29 (h) Upon determining that an examination should be conducted, the
30 Commissioner shall issue a notice of examination appointing one or more examiners to
31 perform the examination and instructing them about the scope of the examination. In
32 conducting the examination, an examiner shall observe the guidelines and procedures in
33 the NAIC Examiners' Handbook. The Commissioner may also use such other
34 guidelines or procedures as the Commissioner deems to be appropriate.

35 (i) Every person from whom information is sought and its officers, directors, and
36 agents must provide to the Commissioner timely, convenient, and free access, at all
37 reasonable hours at its offices, to all data relating to the property, assets, business, and
38 affairs of the insurer being examined. The officers, directors, employees, and agents of
39 the person must facilitate and aid in the examination. The refusal of any insurer, by its
40 officers, directors, employees, or agents, to submit to examination or to comply with
41 any reasonable written request of the Commissioner or to knowingly or willfully make
42 any false statement in regard to the examination or written request, is grounds for
43 revocation, suspension, refusal, or nonrenewal of any license or authority held by the

1 insurer to engage in an insurance or other business subject to the Commissioner's
2 jurisdiction.

3 (j) The Commissioner may issue subpoenas, administer oaths, and examine
4 under oath any person about any matter pertinent to the examination. Upon the failure
5 or refusal of any person to obey a subpoena, the Commissioner may petition the
6 Superior Court of Wake County, and upon proper showing the Court may enter any
7 order compelling the witness to appear and testify or produce documentary evidence.
8 Failure to obey the Court order is punishable as contempt of court.

9 (k) When making an examination, the Commissioner may retain attorneys,
10 appraisers, independent actuaries, independent certified public accountants, or other
11 professionals and specialists as examiners, the cost of which shall be borne by the
12 insurer that is the subject of the examination.

13 (l) Pending, during, and after the examination of any insurer the Commissioner
14 shall not make public the financial statement, findings, or examination report, or any
15 report affecting the status or standing of the insurer examined, until the insurer has
16 either accepted and approved the final examination report or has been given a
17 reasonable opportunity to be heard on the report and to answer or rebut any statements
18 or findings in the report. The hearing, if requested, shall be informal and private.

19 (m) Nothing in the Examination Law limits the Commissioner's authority to
20 terminate or suspend any examination in order to pursue other legal or regulatory action
21 under the laws and rules of this State and to use any final or preliminary examination
22 report, any examiner or insurer work papers or other documents, or any other
23 information discovered or developed during any examination in the furtherance of any
24 legal or regulatory action that the Commissioner may consider to be appropriate.
25 Findings of fact and conclusions made pursuant to any examination are **prima facie**
26 evidence in any legal or regulator action.

27 **"§ 58-2-132. Examination reports.**

28 (a) All examination reports shall comprise only facts appearing upon the books,
29 records, or other documents of the insurer, its agents or other persons examined, or as
30 ascertained from the testimony of its officers or agents or other persons examined
31 concerning its affairs, and conclusions and recommendations that the examiners find
32 reasonably warranted from the facts.

33 (b) No later than 60 days following completion of an examination, the examiners
34 shall file with the Department a verified written examination report under oath. Upon
35 receipt of the verified report, the Department shall send the report to the insurer
36 examined, together with a notice that affords the insurer examined a reasonable
37 opportunity of not more than 30 days to make a written submission or rebuttal with
38 respect to any matters contained in the examination report. Within 30 days of the date
39 of the examination report, the insurer shall file affidavits executed by each of its
40 directors stating under oath that they have received and read a copy of the report.

41 (c) At the end of the 30 days provided for the receipt of written submissions or
42 rebuttals, the Commissioner shall fully consider and review the report, together with any
43 written submissions or rebuttals and any relevant parts of the examiners' work papers
44 and enter an order:

- 1 (1) Adopting the examination report as filed or with modifications or
2 corrections. If the examination report reveals that the insurer is
3 operating in violation of any law, rule, or prior order of the
4 Commissioner, the Commissioner may order the insurer to take any
5 action the Commissioner considers necessary and appropriate to cure
6 the violation; or
- 7 (2) Rejecting the examination report with directions to the examiners to
8 reopen the examination to obtain additional data, documentation of the
9 information, and refileing under subdivision (1) of this subsection; or
- 10 (3) Calling for an investigatory hearing with no less than 20 days' notice to
11 the insurer for purposes of obtaining additional documentation, data,
12 and testimony.

13 (d) All orders entered under subdivision (c)(1) of this section shall be
14 accompanied by findings and conclusions resulting from the Commissioner's
15 consideration and review of the examination report, relevant examiner work papers, and
16 any written submissions or rebuttals. Any such order shall be considered a final
17 administration decision and shall be served upon the insurer by certified mail. Any
18 hearing conducted under subdivision (c)(3) of this section shall be conducted as a
19 nonadversarial confidential investigatory proceeding as necessary for the resolution of
20 any inconsistencies, discrepancies, or disputed issues apparent on the face of the filed
21 examination report or raised by or as a result of the Commissioner's review of relevant
22 work papers or by the written submission or rebuttal of the insurer. Within 20 days
23 after the conclusion of any such hearing, the Commissioner shall enter an order under
24 subdivision (c)(1) of this section. The Commissioner may not appoint a member of the
25 Department's examination staff as an authorized representative to conduct the hearing.
26 The hearing shall proceed expeditiously with discovery by the insurer limited to the
27 examiner's work papers that tend to substantiate any assertions set forth in any written
28 submission or rebuttal. The Commissioner may issue subpoenas for the attendance of
29 any witnesses or the production of any documents the Commissioner considers to be
30 relevant to the investigation, whether they are under the control of the Department, the
31 insurer, or other persons. The documents produced shall be included in the record, and
32 testimony taken by the Commissioner shall be under oath and preserved for the record.
33 Nothing in this section requires the Department to disclose any information or records
34 that would show the existence or content of any investigation or activity of any federal
35 or state criminal justice agency. In the hearing, the Commissioner shall question the
36 persons subpoenaed. Thereafter the insurer and the Department may present testimony
37 relevant to the investigation. Cross-examination shall be conducted only by the
38 Commissioner. The insurer and the Department may make closing statements and may
39 be represented by counsel of their choice.

40 (e) Upon completion of the examination report under subdivision (c)(1) of this
41 section, the Commissioner shall hold the content of the examination report as private
42 and confidential information for the 30-day period provided for written submissions or
43 rebuttals. If after 30 days after the examination report has been submitted to it, the
44 insurer examined has neither notified the Commissioner of its acceptance and approval

1 of the report nor requested to be heard on the report, the report shall then be filed as a
2 public document and shall be open to public inspection, as long as no court of
3 competent jurisdiction has stayed its publication. Nothing in the Examination Law
4 prohibits the Commissioner from disclosing the content of the examination report,
5 preliminary examination report or results, or any related matter, to an insurance
6 regulator or to law enforcement officials of this or any other state or country or of the
7 United States government at any time, as long as the person or agency receiving the
8 report or related matters agrees in writing and is authorized by law to hold it
9 confidential and in a manner consistent with this section. If the Commissioner
10 determines that further regulatory action is appropriate as a result of any examination,
11 the Commissioner may initiate such proceedings or actions as provided by law.

12 (f) All working papers, recorded information, documents, and copies thereof
13 produced by, obtained by, or disclosed to the Commissioner or any other person during
14 an examination shall be given confidential treatment and is not subject to subpoena and
15 may not be made public by the Commissioner or any other person, except to the extent
16 provided in G.S. 58-2-131(l) or subsection (e) of this section. Access may also be
17 granted to the NAIC. Such parties must agree in writing before receiving the
18 information to give it the same confidential treatment as this section requires, unless the
19 prior written consent of the insurer to which it pertains has been obtained. The
20 provisions of this section do not prohibit the Commissioner from taking any action
21 provided for, or from exercising any power conferred by, any provision of this Chapter
22 to suspend or revoke the license of any insurer.

23 **"§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.**

24 (a) No person may be appointed as an examiner by the Commissioner if that
25 person, either directly or indirectly, has a conflict of interest or is affiliated with the
26 management of or owns a pecuniary interest in any person subject to examination. This
27 section does not preclude an examiner from being:

28 (1) A policyholder or claimant under an insurance policy;

29 (2) A grantor of a mortgage or similar instrument on the examiner's
30 residence to an insurer if done under customary terms and in the
31 ordinary course of business;

32 (3) An investment owner in shares of regulated diversified investment
33 companies; or

34 (4) A settler or beneficiary of a blind trust into which any otherwise
35 nonpermissible holdings have been placed.

36 (b) Notwithstanding the requirements of G.S. 58-2-131, the Commissioner may
37 retain from time to time, on an individual basis, qualified actuaries, certified public
38 accountants, or other similar individuals who are independently practicing their
39 professions, even though they may from time to time be similarly employed or retained
40 by persons subject to examination under the Examination Law.

41 (c) Any insurer examined shall pay the proper charges incurred in the
42 examination, including the expenses and compensation of the Commissioner. The
43 charges and expenses shall be reasonable as determined by the Commissioner and in
44 accordance with guidelines established by the NAIC set forth in the NAIC Examiners'

1 Handbook. The refusal of any insurer to submit to examination, or the refusal or failure
2 of any insurer to pay the expenses of examination upon presentation by the
3 Commissioner of a bill for those expenses, is grounds for the revocation, suspension, or
4 refusal of a license. The Commissioner may make public any such revocation,
5 suspension, or refusal of license and may give reasons for that action. The
6 Commissioner shall promptly begin a civil action to recover the expenses of
7 examination against any insurer that refuses or fails to pay.

8 (d) The provisions of G.S. 58-2-160 apply to examinations conducted under the
9 Examination Law."

10 Sec. 3. G.S. 58-2-130, 58-2-135, and 58-2-140 are repealed.

11 Sec. 4. G.S. 58-2-145 reads as rewritten:

12 **"§ 58-2-145. Examination, financial statement, and records of employers self-**
13 **insuring for workers' compensation.**

14 The provisions of G.S. ~~58-2-130, 58-2-140, 58-2-131~~ through G.S. 58-2-133, 58-2-
15 150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 apply to
16 employers that furnish proof of financial responsibility to the Commissioner under G.S.
17 97-93(a)(2) and to persons that administer workers' compensation self-insurance for
18 ~~such those~~ employers."

19 Sec. 5. G.S. 58-20-30 reads as rewritten:

20 **"§ 58-20-30. Financial monitoring and evaluation of clubs.**

21 Each club shall be audited annually, at the Club's expense, by a certified public
22 accounting firm. A copy of the audit report shall be furnished to each member, and to
23 the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the
24 loss and loss adjustment expenses reserves of the Club, including estimate of losses and
25 loss adjustment expenses incurred but not reported. The provisions of ~~G.S. 58-2-130~~
26 ~~(examination of companies by the Commissioner before authority to transact business granted),~~
27 ~~G.S. 58-2-131 through G.S. 58-2-133, G.S. 58-2-150 (affidavit of compliance with law~~
28 ~~required), G.S. 58-2-150, insurance fraud), 58-2-160, G.S. 58-2-165 (annual, semiannual, or~~
29 ~~quarterly statements filed with the Commissioner), 58-2-165, G.S. 58-2-180 (punishment for~~
30 ~~false statement), 58-2-180, G.S. 58-2-185 (making and keeping business records for the~~
31 ~~Commissioner's inspection), 58-2-185, G.S. 58-2-190 (Commissioner's authority to require~~
32 ~~special reports), 58-2-190, G.S. 58-2-200 (exhibition of books, accounts and other papers to~~
33 ~~the Commissioner), 58-2-200, and G.S. 58-6-5 (Commissioner authorized to collect and pay~~
34 ~~fees and charges for examination to State Treasury) shall apply to each Club and to persons~~
35 that administer the Clubs."

36 Sec. 6. G.S. 58-23-25 reads as rewritten:

37 **"§ 58-23-25. Financial monitoring and evaluation of pools.**

38 Each pool must be audited annually at the expense of the pool by a certified public
39 accounting firm, with a copy of the report available to the governing body or chief
40 executive officer of each member of the pool and to the Commissioner. The board of
41 trustees of the pool must obtain an appropriate actuarial evaluation of the loss and loss
42 adjustment expense reserves of the pool, including an estimate of losses and loss
43 adjustment expenses incurred but not reported. The provisions of G.S. ~~58-2-130, 58-2-~~
44 ~~131 through G.S. 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-~~

1 190, 58-2-200, and 58-6-5 apply to each pool and to persons that administer pools for
2 local governments. Annual financial statements required by G.S. 58-2-165 shall be
3 filed by each pool within 60 days after the end of the pool's fiscal year."

4 Sec. 7. G.S. 58-2-165 reads as rewritten:

5 **"§ 58-2-165. Annual, semiannual, ~~or~~ monthly, or quarterly statements to be filed**
6 **with Commissioner.**

7 (a) Every insurance company shall file in the Commissioner's office, office of the
8 Commissioner of Insurance on or before the first day of March 1 in of each year, in form
9 and detail as the Commissioner of Insurance prescribes, a statement showing the business
10 standing and financial condition of ~~such~~ the company, association, or order on the
11 preceding ~~thirty-first day of December, December 31,~~ signed and sworn to by the chief
12 managing agent or officer thereof, before the Commissioner ~~of Insurance~~ or some
13 officer authorized by law to administer oaths. ~~The Commissioner of Insurance shall, in~~
14 ~~December of each year, furnish to each of the insurance companies authorized to do business in~~
15 ~~the State two or more blanks adapted for their annual statements.~~ Provided, the
16 Commissioner may, for good and sufficient cause shown by an applicant company,
17 extend the filing date of ~~such~~ the company's annual statement for such company,
18 statement, for a reasonable period of time, not to exceed 30 days. ~~Provided further,~~
19 However, the Commissioner ~~may, in his discretion, may~~ require the statement required by
20 this section to be filed semiannually or quarterly by any insurance company, association, or
21 ~~order.~~ order to file its statement semiannually or quarterly.

22 (b) The Commissioner may require statements under this section, G.S. 58-2-170,
23 G.S. 58-2-175, and G.S. 58-2-190 to be filed in a format that can be read by electronic
24 data processing equipment; and may require ~~such~~ those readable statements to be filed
25 on a monthly basis.

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

30 Sec. 8. Article 2 of Chapter 58 of the General Statutes is amended by adding
31 a new section to read:

32 **"§ 58-2-225. Regulation of reinsurance intermediaries.**

33 (a) As used in this section, 'reinsurance intermediary' means any person that acts
34 as a broker in soliciting, negotiating, or procuring the making of any reinsurance
35 contract or binder on behalf of a ceding insurer; or acts as a broker in accepting any
36 reinsurance contract or binder on behalf of an assuming insurer.

37 (b) The Commissioner may adopt rules to provide for the regulation of
38 reinsurance intermediaries. Those rules may be based on the NAIC model act that
39 provides for: licensure, required contract provisions, maintenance and production of
40 books and records, duties of insurers and reinsurers, prohibited acts, examination
41 authority, and penalties and liabilities."

42 Sec. 9. Article 3 of Chapter 58 of the General Statutes is amended by adding
43 a new section to read:

44 **"§ 58-3-155. Business transacted with insurer-controlled brokers.**

1 (a) As used in this section:

2 (1) 'Broker' means a person who, being a licensed agent, obtains insurance
3 for another party through a duly authorized agent of an insurer that is
4 licensed to do business in this State but for which the broker is not
5 authorized to act as agent.

6 (2) 'Control' or 'controlled' means the direct or indirect possession of the
7 power to direct or cause the direction of the management and policies
8 of a person, whether through the ownership of voting securities, by
9 contract other than a commercial contract for goods or
10 nonmanagement services, or otherwise, unless the power is the result
11 of an official position with or a corporate office held by the person.
12 Control is presumed to exist if any person directly or indirectly owns,
13 controls, holds with the power to vote, or holds proxies representing
14 ten percent (10%) or more of the voting securities of any other person.

15 (b) The Commissioner may determine, after furnishing all persons in interest
16 notice and opportunity to be heard and making specific findings of fact to support that
17 determination, that control exists in fact, notwithstanding the absence of a presumption
18 to that effect. The Commissioner may determine upon application that any person does
19 not or will not upon the taking of some proposed action control another person. The
20 Commissioner may prospectively revoke or modify that determination, after notice and
21 opportunity to be heard whenever in the Commissioner's judgment revocation or
22 modification is consistent with this section.

23 (c) No licensed property or casualty insurer that has control of a broker may
24 accept insurance from the broker in any transaction in which the broker, when the
25 insurance is placed, is acting as such on behalf of the insured for any compensation,
26 commission, or thing of value unless the broker, before the effective date of the
27 coverage, delivers written notice to the prospective insured disclosing the relationship
28 between the insurer and broker. The disclosure must be signed by the insured and must
29 be retained in the insurer's underwriting file until the completion and release of the
30 examination report under G.S. 58-2-131, 58-2-132, and 58-2-133 for the period in
31 which the coverage is in effect. If the insurance is placed through a subbroker that is
32 not a controlled broker, the controlling insurer shall retain in its records a signed
33 commitment from the subbroker that the subbroker is aware of the relationship between
34 the insurer and the broker and that the subbroker has notified or will notify the insured.

35 (d) This section does not affect the rights of policyholders, claimants, creditors,
36 or other third parties."

37 Sec. 10. Article 3 of Chapter 58 of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 58-3-160. Sale of company or major reorganization; license to be restricted.**

40 The Commissioner shall restrict the license by prohibiting new or renewal insurance
41 business transacted in this State by any licensed insurer that, in anticipation of a sale of
42 the insurer to new owners or a major reorganization of the business or management of
43 the insurer, transfers all of its existing insurance business to another insurer through an
44 assumption reinsurance agreement or does not write any new insurance business for

1 over one year. The restriction shall remain in force until after the insurer has filed the
2 following information with the Commissioner and the Commissioner has granted
3 approval:

- 4 (1) Biographical information in a form acceptable to the Commissioner for
5 each new owner, director, or management person;
- 6 (2) A detailed and complete plan of operation describing the kinds of
7 insurance to be written and the method in which the reorganized
8 insurer will perform its various functions;
- 9 (3) Financial projections of the anticipated operational results of the
10 reorganized insurer for the succeeding three years based on the
11 capitalization of the reorganized insurer and its plan of operation,
12 which must be prepared by a properly qualified individual, be in
13 sufficient detail for a complete analysis to be performed, and be
14 accompanied by a list of the assumptions used in making the
15 projections; and
- 16 (4) Any other information the Commissioner considers to be pertinent for
17 a proper analysis of the reorganized insurer."

18 Sec. 11. G.S. 58-4-5 reads as rewritten:

19 **"§ 58-4-5. Filing requirements.**

20 (a) Each domestic, foreign, and alien insurer that is authorized to transact
21 insurance in this State ~~shall, on or before March 1 of each year, shall~~ file with the National
22 ~~Association of Insurance Commissioners (NAIC) NAIC~~ a copy of its annual statement
23 ~~convention blank, along with such additional filings as prescribed by the Commissioner, for the~~
24 ~~preceding year.~~ financial statements required by G.S. 58-2-165, applicable rules, and
25 legal directives and bulletins issued by the Department. The statements shall, in the
26 Commissioner's discretion, be filed annually, semiannually, or quarterly, and shall be
27 filed in a form or format prescribed or permitted by the Commissioner. The
28 Commissioner may require the statements to be filed in a format that can be read by
29 electronic data processing equipment. The information filed with the NAIC shall be in the
30 same format and scope as that required by the Commissioner and shall include the signed jurat
31 page and the actuarial certification. ~~Any amendments and addenda to the annual statement~~
32 ~~filing financial statement~~ that are subsequently filed with the Commissioner shall also be
33 filed with the NAIC."

34 Sec. 12. G.S. 58-4-15 reads as rewritten:

35 **"§ 58-4-15. Revocation of certificate of authority.**

36 The Commissioner may suspend, revoke, or refuse to renew the certificate of
37 authority of any insurer failing to file its ~~annual statement~~ financial statement when due
38 or within any extension of time that the Commissioner, for good cause, may have
39 granted."

40 Sec. 13. Article 4 of Chapter 58 of the General Statutes is amended by
41 adding a new section to read:

42 **"§ 58-4-25. Insurance Regulatory Information System and similar program test**
43 **data records.**

1 Financial test ratios, data, or information generated by the NAIC Insurance
2 Regulatory Information System, any successor program, or any similar program shall be
3 disseminated by the Commissioner consistent with procedures established by the
4 NAIC."

5 Sec. 14. G.S. 58-2-220 reads as rewritten:

6 **"§ 58-2-220. Insurance Regulatory Information System and similar program test**
7 **data not public records.**

8 ~~Financial—~~Except as provided in G.S. 58-4-25, ~~financial test ratios—~~ratios, data, or
9 ~~information and other data received or—~~generated by the Commissioner pursuant to the
10 NAIC Insurance Regulatory Information System, any successor program, or any similar
11 program developed by the Commissioner, are not public records and are not subject to
12 Chapter 132 of the General Statutes or G.S. 58-2-100."

13 Sec. 15. G.S. 58-5-5 reads as rewritten:

14 **"§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine**
15 **insurance companies.**

16 Unless otherwise provided in this Article, every fire, marine, or fire and marine
17 insurance company chartered by any other state or foreign government shall make and
18 maintain deposits of securities with the Commissioner in the ~~following amounts:~~ amount
19 of twenty-five thousand dollars (\$25,000) market value.

- 20 (1) ~~Companies whose premium income derived from this State is less than~~
21 ~~fifty thousand dollars (\$50,000) per annum, ten thousand dollars~~
22 ~~(\$10,000);~~
23 (2) ~~Companies whose premium income is more than fifty thousand dollars~~
24 ~~(\$50,000) but less than one hundred thousand dollars (\$100,000) per~~
25 ~~annum, twenty thousand dollars (\$20,000);~~
26 (3) ~~Companies whose premium income is more than one hundred~~
27 ~~thousand dollars (\$100,000) per annum, twenty five thousand dollars~~
28 ~~(\$25,000);~~

29 ~~for which deposit the Commissioner shall give a receipt."~~

30 Sec. 16. G.S. 58-5-10 reads as rewritten:

31 **"§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and**
32 **casualty insurance companies.**

33 Unless otherwise provided in this ~~Article—~~Article, every fidelity, surety or casualty
34 insurance company chartered by any other state or foreign government shall make and
35 maintain deposits of securities with the Commissioner in the ~~following amounts:~~ amount
36 of fifty thousand dollars (\$50,000) market value.

- 37 (1) ~~Companies whose premium income derived from this State is less than~~
38 ~~one hundred thousand dollars (\$100,000), twenty five thousand dollars~~
39 ~~(\$25,000);~~
40 (2) ~~Companies whose premium income is in excess of one hundred~~
41 ~~thousand dollars (\$100,000), fifty thousand dollars (\$50,000);~~

42 ~~for which deposit the Commissioner shall give a receipt."~~

43 Sec. 17. G.S. 58-5-15 reads as rewritten:

44 **"§ 58-5-15. Minimum deposit required upon admission.**

1 Upon admission to do business in the State of North Carolina every foreign or alien
2 fire, marine, or fire and marine, fidelity, surety or casualty company shall deposit with
3 the Commissioner securities in the ~~minimum~~ amounts required under the provisions of
4 G.S. 58-5-5 and 58-5-10."

5 Sec. 18. G.S. 58-5-20 reads as rewritten:

6 **"§ 58-5-20. Type of deposits.**

7 The deposits required to be made under the provisions of G.S. 58-5-5, 58-5-10, and
8 58-5-50 shall be composed of:

9 (a) Interest-bearing bonds of the United States, States of America;

10 (b) Interest-bearing bonds of the State of North Carolina, or of the ~~its~~ cities or
11 counties of this State; counties; or

12 (c) Certificates of deposit issued by any solvent bank domesticated in the State of
13 North Carolina."

14 Sec. 19. G.S. 58-5-40 reads as rewritten:

15 **"§ 58-5-40. Authority to increase deposit.**

16 When, in the ~~opinion of the Commissioner,~~ Commissioner's opinion, it is necessary for
17 the protection of the public interest to increase the amount of deposits specified in G.S.
18 58-5-5, 58-5-10, ~~and 58-5-50,~~ and 58-5-55, the companies described in ~~said~~ those
19 sections shall, upon demand, make additional deposits in such sums as the
20 Commissioner may require, and ~~such~~ those additional deposits shall be held in
21 accordance with and for the purposes set out in this ~~Article.~~ Article, and shall comprise:

22 (a) Interest-bearing bonds of the United States of America;

23 (b) Interest-bearing bonds of the State of North Carolina or of its cities or
24 counties;

25 (c) Certificates of deposit issued by any solvent bank domesticated in the State of
26 North Carolina;

27 (d) Interest-bearing AA or better rated corporate bonds and classified as
28 investment grade in the latest NAIC Securities Valuation Manual; or

29 (e) Other interest-bearing bonds or notes considered to be acceptable by the
30 Commissioner on a case by case basis."

31 Sec. 20. G.S. 58-5-55(c) reads as rewritten:

32 "(c) ~~Domestic insurance companies that are licensed on or before June 28, 1989,~~
33 ~~shall have one year from that date to comply with this section.~~ Deposits fulfilling the
34 requirements of this section shall comprise:

35 (1) Interest-bearing bonds of the United States of America;

36 (2) Interest-bearing bonds of the State of North Carolina or of its cities or
37 counties; or

38 (3) Certificates of deposit issued by any solvent bank domesticated in the
39 State of North Carolina."

40 Sec. 21. G.S. 58-5-45, 58-5-85, and 58-5-125 are repealed.

41 Sec. 22. Article 7 of Chapter 58 of the General Statutes is amended by
42 adding the following new sections:

43 **"§ 58-7-21. Credit allowed a domestic ceding insurer.**

44 (a) As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-32:

- 1 (1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer
2 to an assuming insurer.
- 3 (2) 'Insurance risk' means an uncertainty regarding the ultimate amount of
4 any claim payment (underwriting risk) or an uncertainty regarding the
5 timing of such payments (timing risk), or both.
- 6 (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an
7 asset or a deduction from liability on account of reinsurance ceded only when the
8 reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this
9 subsection. If meeting the requirements of subdivisions (3) or (4) of this subsection, the
10 reinsurer must also meet the requirements of subdivision (6) of this subsection.
- 11 (1) Credit shall be allowed when the reinsurance is ceded to an assuming
12 insurer that is licensed to transact insurance or reinsurance in this
13 State.
- 14 (2) Credit shall be allowed when the reinsurance is ceded to an assuming
15 insurer that is accredited as a reinsurer in this State. An accredited
16 reinsurer is one that:
- 17 a. Files with the Commissioner evidence of its submission to this
18 State's jurisdiction;
- 19 b. Submits to this State's authority to examine its books and
20 records;
- 21 c. Is licensed to transact insurance or reinsurance in at least one
22 state, or in the case of a United States branch of an alien
23 assuming insurer is entered through and licensed to transact
24 insurance or reinsurance in at least one state;
- 25 d. Files annually with the Commissioner a copy of its annual
26 statement filed with the insurance regulator of its state of
27 domicile and a copy of its most recent audited financial
28 statement; and either
- 29 1. Maintains a policyholders' surplus in an amount that is
30 not less than twenty million dollars (\$20,000,000) and
31 whose accreditation has not been denied by the
32 Commissioner within 90 days after its submission; or
- 33 2. Maintains a policyholders' surplus in an amount less than
34 twenty million dollars (\$20,000,000) and whose
35 accreditation has been approved by the Commissioner.
- 36 No credit shall be allowed a domestic ceding
37 insurer if the assuming insurer's accreditation has
38 been revoked by the Commissioner after notice
39 and opportunity for a hearing.
- 40 (3) Credit shall be allowed when the reinsurance is ceded to an assuming
41 insurer that is domiciled and licensed in, or in the case of a United
42 States branch of an alien assuming insurer is entered through, a state
43 that uses standards regarding credit for reinsurance substantially

1 similar to those applicable under this section and the assuming insurer
2 or United States branch of an alien assuming insurer:

3 a. Maintains a policyholders' surplus in an amount not less than
4 twenty million dollars (\$20,000,000); and

5 b. Submits to the authority of this State to examine its books and
6 records.

7 However, the requirement in sub-subdivision (3)a. of this subsection
8 does not apply to reinsurance ceded and assumed under pooling
9 arrangements among insurers in the same holding company system.

10 (4) a. Credit shall be allowed when the reinsurance is ceded to an
11 assuming insurer that maintains a trust fund in a qualified United
12 States financial institution, as defined in G.S. 58-7-26(b), for the
13 payment of the valid claims of its United States policyholders and
14 ceding insurers, their assigns and successors in interest. The assuming
15 insurer shall report annually to the Commissioner information
16 substantially the same as that required to be reported on the NAIC
17 Annual Statement form by licensed insurers to enable the
18 Commissioner to determine the sufficiency of the trust fund. In the
19 case of a single assuming insurer, the trust shall consist of a trustee
20 account representing the assuming insurer's liabilities attributable to
21 business written in the United States and, in addition, the assuming
22 insurer shall maintain a trustee surplus of not less than twenty million
23 dollars (\$20,000,000). In the case of a group of individual
24 unincorporated underwriters, the trust shall consist of a trustee
25 account representing the group's liabilities attributable to business
26 written in the United States and, in addition, the group shall maintain a
27 trustee surplus of which one hundred million dollars (\$100,000,000)
28 shall be held jointly for the benefit of United States ceding insurers of
29 any member of the group; and the group shall make available to the
30 Commissioner an annual certification of the solvency of each
31 underwriter by the group's domiciliary regulator and its independent
32 certified public accountants.

33 b. In the case of a group of incorporated insurers under common
34 administration which (i) complies with the filing requirements
35 contained in the previous paragraph, (ii) has continuously
36 transacted an insurance business outside the United States for at
37 least three years immediately before making application for
38 accreditation, (iii) submits to this State's authority to examine
39 its books and records and bears the expense of the examination,
40 and (iv) has aggregate policyholders' surplus of ten billion
41 dollars (\$10,000,000,000); the trust shall be in an amount equal
42 to the group's several liabilities attributable to business ceded
43 by United States ceding insurers to any member of the group
44 under reinsurance contracts issued in the name of the group. In

1 addition, the group shall maintain a joint trustee surplus of
2 which one hundred million dollars (\$100,000,000) shall be held
3 jointly for the benefit of United States ceding insurers of any
4 member of the group as additional security for any such
5 liabilities, and each member of the group shall make available
6 to the Commissioner an annual certification of the member's
7 solvency by the member's domiciliary regulator and its
8 independent public accountant.

9 c. The trust shall be established in a form approved by the
10 Commissioner. The trust instrument shall provide that
11 contested claims shall be valid and enforceable upon the final
12 order of any court of competent jurisdiction in the United
13 States. The trust shall vest legal title to its assets in the trustees
14 of the trust for its United States policyholders and ceding
15 insurers, their assigns and successors in interest. The trust and
16 the assuming insurer shall be subject to examination as
17 determined by the Commissioner. The trust shall remain in
18 effect for as long as the assuming insurer has outstanding
19 obligations due under the reinsurance agreements subject to the
20 trust.

21 d. No later than February 28 of each year the trustees of the trust
22 shall report to the Commissioner in writing, setting forth the
23 balance of the trust and listing the trust's investments at the end
24 of the preceding year, and shall certify the date of termination
25 of the trust, if so planned, or certify that the trust shall not
26 expire before the next following December 31.

27 (5) Credit shall be allowed when the reinsurance is ceded to an assuming
28 insurer not meeting the requirements of subdivisions (1), (2), (3), or
29 (4) of this subsection, but only with respect to the insurance of risks
30 located in jurisdictions where the reinsurance is required by applicable
31 law or regulation of that jurisdiction.

32 (6) If the assuming insurer is not licensed or accredited to transact
33 insurance or reinsurance in this State, the credit permitted by
34 subdivisions (3) and (4) of this subsection shall not be allowed unless
35 the assuming insurer agrees in the reinsurance agreements:

36 a. That if the assuming insurer fails to perform its obligations
37 under the terms of the reinsurance agreement, the assuming
38 insurer, at the ceding insurer's request, shall submit to the
39 jurisdiction of any court of competent jurisdiction in any state
40 of the United States, shall comply with all requirements
41 necessary to give the court jurisdiction, and shall abide by the
42 final decision of the court or of any appellate court if there is an
43 appeal; and

1 b. To designate the Commissioner as its true and lawful attorney
2 upon whom may be served any lawful process in any action,
3 suit, or proceeding begun by or on behalf of the ceding
4 company.

5 This subdivision does not affect the obligation of the parties to a
6 reinsurance agreement to arbitrate their disputes, if such an obligation
7 is created in the agreement.

8 (c) This section applies to all reinsurance cessions made on or after January 1,
9 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
10 on or after January 1, 1992.

11 **"§ 58-7-26. Reduction from liability for reinsurance ceded by a domestic insurer to**
12 **an assuming insurer.**

13 (a) A reduction from liability for reinsurance ceded by a domestic insurer to an
14 assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an
15 amount not exceeding the liabilities carried by the ceding insurer; and such reduction
16 shall be in the amount of funds held by or on behalf of the ceding insurer, including
17 funds held in trust for the ceding insurer, under a reinsurance contract with the assuming
18 insurer as security for the payment of obligations thereunder, if the security is held in
19 the United States subject to withdrawal solely by, and under the exclusive control of, the
20 ceding insurer; or, in the case of a trust, held in a qualified United States financial
21 institution as defined in subsection (c) of this section. This security may be in the form
22 of:

23 (1) Cash;

24 (2) Securities that are listed by the Securities Valuation Office of the
25 NAIC and qualifying as admitted assets;

26 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed
27 by a qualified United States financial institution, as defined in
28 subsection (b) of this section, no later than December 31 of the year
29 for which the filing is being made, and in the possession of the ceding
30 company on or before the filing date of its annual statement. Letters of
31 credit meeting applicable standards of issuer acceptability as of the
32 dates of their issuance (or confirmation) shall, notwithstanding the
33 issuing (or confirming) institution's subsequent failure to meet
34 applicable standards of issuer acceptability, continue to be acceptable
35 as security until their expiration, extension, renewal, modification or
36 amendment, whichever occurs first; or

37 (4) Any other form of security acceptable to the Commissioner.

38 (b) For purposes of subdivision (a)(3) of this section, a 'qualified United States
39 financial institution' means an institution that:

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

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

4 (3) Has been determined by either the Commissioner or the Securities
5 Valuation Office of the NAIC to meet such standards of financial
6 condition and standing as are considered necessary and appropriate to
7 regulate the quality of financial institutions whose letters of credit will
8 be acceptable to the Commissioner.

9 (c) A 'qualified United States financial institution' means, for purposes of those
10 provisions of this section specifying those institutions that are eligible to act as a
11 fiduciary of a trust, an institution that:

12 (1) Is organized, or in the case of a United States branch or agency office
13 of a foreign banking organization licensed, under the laws of the
14 United States or any of its states and has been granted authority to
15 operate with fiduciary powers; and

16 (2) Is regulated, supervised, and examined by federal or state authorities
17 having regulatory authority over banks and trust companies.

18 (d) This section applies to all reinsurance cessions made on or after January 1,
19 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
20 on or after January 1, 1992."

21 Sec. 23. G.S. 58-7-20 and G.S. 58-7-25 are repealed.

22 Sec. 24. G.S. 58-16-5(6) reads as rewritten:

23 "(6) Satisfies the Commissioner that it is in substantial compliance with the
24 provisions of G.S. 58-7-20 through G.S. 58-7-30 G.S. 58-7-21, 58-7-26,
25 58-7-30, and 58-7-32 and Article 13 of this Chapter."

26 Sec. 25. Article 7 of Chapter 58 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 58-7-32. Life reinsurance agreements.**

29 (a) This section applies to domestic life insurers and other licensed life insurers
30 that are not subject to a substantially similar statute or administrative rule in their
31 domiciliary jurisdictions.

32 (b) No insurer shall, for reinsurance ceded, reduce any liability or establish any
33 asset in any financial statement filed with the Commissioner if, by the terms of the
34 reinsurance agreement, in substance or effect, any of the following conditions exist:

35 (1) The primary effect of the reinsurance agreement is to transfer
36 deficiency reserves or excess interest reserves to the books of the
37 reinsurer for a risk charge and the agreement does not provide for
38 significant participation by the reinsurer in one or more of the
39 following risks: mortality, morbidity, investment, or surrender benefit;

40 (2) The reserve credit taken by the ceding insurer is not in compliance
41 with insurance statutes or with rules or actuarial interpretations or
42 standards adopted by the Commissioner;

- 1 (3) The reserve credit taken by the ceding insurer is greater than the
2 underlying reserve of the ceding insurer supporting the policy
3 obligations transferred under the reinsurance agreement;
- 4 (4) The ceding insurer is required to reimburse the reinsurer for negative
5 experience under the ceding insurer of an amount equal to prior years'
6 losses upon voluntary termination of in-force reinsurance by that
7 ceding insurer shall be considered such a reimbursement to the
8 reinsurer for negative experience;
- 9 (5) The ceding insurer can be deprived of surplus at the reinsurer's option
10 or automatically upon the occurrence of some event, such as the
11 insolvency of the ceding insurer; except that termination of the
12 reinsurance agreement by the reinsurer for nonpayment of reinsurance
13 premiums shall not be considered to be such a deprivation of surplus;
- 14 (6) The ceding insurer must, at scheduled times specified or implied in the
15 agreement, terminate or automatically recapture all or part of the
16 coverage ceded;
- 17 (7) No cash payment is due from the reinsurer, throughout the lifetime of
18 the reinsurance agreement, with all settlements before the termination
19 date of the agreement made only in a reinsurance account, and no
20 funds in the account are available for the payment of benefits; or
- 21 (8) The reinsurance agreement involves the possible payment by the
22 ceding insurer to the reinsurer of amounts other than from income
23 reasonably expected from the reinsured policies.
- 24 (c) Notwithstanding subsection (b) of this section, an insurer may, with the
25 Commissioner's prior approval, take such reserve credit as the Commissioner considers
26 to be consistent with insurance statutes; or rules, actuarial interpretations, or standards
27 adopted by the Commissioner.
- 28 (d) No reinsurance agreement or amendment to any agreement may be used to
29 reduce any liability or to establish any asset in any financial statement filed with the
30 Commissioner, unless the agreement, amendment or a letter of intent has been duly
31 executed in writing by both parties no later than the 'as of date' of the financial
32 statement.
- 33 (e) In the case of a letter of intent, a reinsurance agreement, or an amendment to
34 a reinsurance agreement must be executed within a reasonable period of time, not
35 exceeding 90 days after the execution date of the letter of intent, for credit to be granted
36 for the reinsurance ceded.
- 37 (f) Insurers may continue to reduce liabilities or establish assets in financial
38 statements filed with the Commissioner for reinsurance ceded under types of
39 reinsurance agreements described in subsection (b) of this section, provided:
- 40 (1) The agreements were executed and in force before the effective date of
41 this section;
- 42 (2) No new business is ceded under the agreements after the effective date
43 of this section;

1 (3) The reduction of the liability or the asset established for the
2 reinsurance ceded is reduced to zero by December 31, 1992, or a later
3 date approved by the Commissioner as a result of an application made
4 by the ceding insurer before January 1, 1992; and

5 (4) The Commissioner is notified, within 90 days after the effective date
6 of this section, of the existence of the reinsurance agreements and all
7 corresponding credits taken in the ceding insurer's 1990 Annual
8 Statement."

9 Sec. 26. Article 7 of Chapter 58 of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 58-7-33. Minimum policyholders' surplus to assume property or casualty**
12 **reinsurance.**

13 (a) Notwithstanding any other provision of law, no domestic property or casualty
14 insurer with less than ten million dollars (\$10,000,000) in policyholders' surplus may,
15 without the Commissioner's prior written approval, assume reinsurance on any risk that
16 it is otherwise permitted to assume except where the reinsurance is:

17 (1) Required by applicable law or regulation; or

18 (2) Assumed under pooling arrangement among members of the same
19 holding company system.

20 (b) This section applies to reinsurance contracts entered into or renewed on or
21 after the effective date of this section.

22 (c) This section does not invalidate any reinsurance contract that was entered into
23 before the effective date of this section as between the parties to the contract."

24 Sec. 27. G.S. 58-7-75 is amended by adding a new subdivision to read:

25 "(11) The Commissioner may require an insurer to have and maintain a
26 larger amount of capital or surplus than prescribed in this section,
27 based upon the volume and kinds of insurance transacted by the
28 insurer and on the principles of risk-based capital as determined by the
29 NAIC or the Commissioner."

30 Sec. 28. Article 3 of Chapter 58 of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 58-3-165. Business transacted with producer-controlled property or casualty**
33 **insurers.**

34 (a) As used in this section:

35 (1) 'Accredited state' means a state in which the insurance department or
36 regulatory agency has qualified as meeting the minimum financial
37 regulatory standards promulgated and established from time to time by
38 the NAIC.

39 (2) 'Captive insurer' means an insurance company that is owned by
40 another organization and whose exclusive purpose is to insure risks of
41 the parent organization and affiliated companies. In the case of groups
42 and associations, 'captive insurer' means an insurance organization
43 that is owned by the insureds, and whose exclusive purpose is to insure
44 risks of member organizations or group members and their affiliates.

1 (3) 'Control' and its cognates mean the direct or indirect possession of the
2 power to direct or cause the direction of the management and policies
3 of a person, whether through the ownership of voting securities, by
4 contract other than a commercial contract for goods or
5 nonmanagement services, or otherwise, unless the power is the result
6 of an official position with or corporate office held by the person.
7 Control is presumed to exist if any person directly or indirectly owns,
8 controls, holds with the power to vote, or holds proxies representing
9 ten percent (10%) or more of the voting securities of any other person.

10 (4) 'Controlled insurer' means an insurer that is controlled, directly or
11 indirectly, by a producer.

12 (5) 'Controlling producer' means a producer who, directly or indirectly,
13 controls an insurer.

14 (6) 'Insurer' means any person licensed to write property or casualty
15 insurance in this State. 'Insurer' does not mean a risk retention group
16 under Article 22 of this Chapter, residual market mechanism, joint
17 underwriting authority, nor captive insurer.

18 (7) 'Producer' means an insurance broker or brokers or any other person,
19 when, for any compensation, commission, or other thing of value, that
20 person acts or aids in any manner in soliciting, negotiating, or
21 procuring the making of any insurance contract on behalf of an insured
22 other than that person. 'Producer' does not mean an exclusive agent or
23 any independent agent acting on behalf of a controlled insurer,
24 including any subagent or representative of the agent, who acts as such
25 in the solicitation of, negotiation for, or procurement or making of an
26 insurance contract, if the agent is not also acting in the capacity of an
27 insurance broker in the transaction in question.

28 (b) The Commissioner may determine, after furnishing all persons in interest
29 notice and opportunity to be heard and making specific findings of fact to support the
30 determination, that control exists in fact, notwithstanding the absence of a presumption
31 to that effect. The Commissioner may determine upon application that any person does
32 not or will not upon the taking of some proposed action control another person. The
33 Commissioner may prospectively revoke or modify that determination, after notice and
34 opportunity to be heard, whenever in the Commissioner's judgment revocation or
35 modification is consistent with this section.

36 (c) This section applies to insurers that are either domiciled in this State or
37 domiciled in a state that is not an accredited state having in effect a substantially similar
38 law. The provisions of Article 19 of this Chapter, to the extent they are not superseded
39 by this section, apply to all parties within holding company systems subject to this
40 section.

41 (d) The provisions of this section apply if, in any calendar year, the aggregate
42 amount of gross written premiums on business placed with a controlled insurer by a
43 controlling producer is equal to or greater than five percent (5%) of the admitted assets
44 of the controlled insurer, as reported in the controlled insurer's most recent annual

1 statement or its quarterly statement filed as of September 30 of the prior year. The
2 provisions of this section do not apply if:

3 (1) The controlling producer places insurance only with the controlled
4 insurer, or only with the controlled insurer and a member or members
5 of the controlled insurer's holding company system, or the controlled
6 insurer's parent, affiliate, or subsidiary and receives no compensation
7 based upon the amount of premiums written in connection with that
8 insurance; and the controlling producer accepts insurance placements
9 only from nonaffiliated subproducers, and not directly from insureds;
10 and

11 (2) The controlled insurer, except for insurance business written through a
12 residual market mechanism, accepts insurance business only from a
13 controlling producer, a producer controlled by the controlled insurer,
14 or a producer that is a subsidiary of the controlled insurer.

15 (e) A controlled insurer shall not accept business from a controlling producer and
16 a controlling producer shall not place business with a controlled insurer unless there is a
17 written contract between the producer and the insurer specifying the responsibilities of
18 each party, and unless the contract has been approved by the board of directors of the
19 insurer and contains all of the following minimum provisions:

20 (1) The insurer may terminate the contract for cause, upon written notice
21 to the producer. The insurer shall suspend the producer's authority to
22 write business during the pendency of any dispute regarding the cause
23 for the termination.

24 (2) The producer shall render accounts to the insurer detailing all material
25 transactions, including information necessary to support all
26 commissions, charges, and other fees received by, or owing to, the
27 producer.

28 (3) The producer shall remit all funds due under the contract terms to the
29 insurer on at least a monthly basis. The due date shall be fixed so that
30 premiums or installments of premiums collected shall be remitted no
31 later than 90 days after the effective date of any policy placed with the
32 insurer under this contract.

33 (4) The producer shall hold all funds collected for the insurer's account in
34 a fiduciary capacity, in one or more appropriately identified bank
35 accounts in banks that are members of the Federal Reserve System, in
36 accordance with the provisions of this Chapter as applicable. Funds of
37 a producer who is not required to be licensed in this State shall be
38 maintained in compliance with the requirements of the producer's
39 domiciliary jurisdiction.

40 (5) The producer shall maintain separately identifiable records of business
41 written for the insurer.

42 (6) The producer shall not assign the contract in whole or in part.

43 (7) The insurer shall provide the producer with its underwriting standards,
44 rules and procedures, the manuals setting forth the rates to be charged,

1 and the conditions for the acceptance or rejection of risks. The
2 producer shall adhere to the standards, rules, procedures, rates, and
3 conditions. The standards, rules, procedures, rates, and conditions
4 shall be the same as those applicable to comparable business placed
5 with the insurer by a producer other than a controlling producer.

6 (8) The rates and terms of the producer's commissions, charges, or other
7 fees and the purposes for the charges or fees. The rates of the
8 commissions, charges, and other fees shall be no greater than those
9 applicable to comparable business placed with the insurer by producers
10 other than controlling producers. For the purposes of this subdivision
11 and subdivision (7) of this subsection, 'comparable business' includes
12 the same lines of insurance, same kinds of insurance, same kinds of
13 risks, similar policy limits, and similar quality of business.

14 (9) If the contract provides that the producer, on insurance business placed
15 with the insurer, is to be compensated contingent upon the insurer's
16 profits on that business, then the compensation shall not be determined
17 and paid until at least five years after the premiums on liability
18 insurance are earned and at least one year after the premiums are
19 earned on any other insurance. In no event shall the commissions be
20 paid until the adequacy of the insurer's reserves on remaining claims
21 has been independently verified under subsection (g) of this section.

22 (10) A limit on the producer's writings in relation to the insurer's surplus
23 and total writings. The insurer may establish a different limit for each
24 line or subline of business. The insurer shall notify the producer when
25 the applicable limit is approached and shall not accept business from
26 the producer if the limit is reached. The producer shall not place
27 business with the insurer if it has been notified by the insurer that the
28 limit has been reached.

29 (11) The producer may negotiate but shall not bind reinsurance on behalf of
30 the insurer on business the producer places with the insurer; however,
31 the producer may bind facultative reinsurance contracts under
32 obligatory facultative agreements if the producer's contract with the
33 insurer contains underwriting guidelines including, for both
34 reinsurance assumed and ceded, a list of reinsurers with which the
35 automatic agreements are in effect, the coverages and amounts or
36 percentages that may be reinsured, and commission schedules.

37 (f) Every controlled insurer shall have an audit committee, consisting of
38 independent directors, of the insurer's board of directors. The audit committee shall
39 meet annually with the insurer's management, the insurer's independent certified public
40 accountants, and an independent casualty actuary or another independent loss reserve
41 specialist acceptable to the Commissioner, to review the adequacy of the insurer's loss
42 reserves.

43 (g) In addition to any other required loss reserve certification, the controlled
44 insurer shall, on or before April 1 of each year, file with the Commissioner an opinion

1 of an independent casualty actuary or of another independent loss reserve specialist
2 acceptable to the Commissioner, reporting loss ratios for each kind of insurance written
3 and attesting to the adequacy of loss reserves established for losses incurred and
4 outstanding and for incurred but not reported losses as of the end of the prior calendar
5 year on business placed by the producer.

6 (h) The controlled insurer shall report annually to the Commissioner the amount
7 of commissions paid to the controlling producer, the percentage that amount represents
8 of the net premiums written, and comparable amounts and percentages paid to
9 noncontrolling producers for placements of the same kinds of insurance.

10 (i) The controlling producer, before the effective date of any policy, shall deliver
11 written notice to the prospective insured disclosing the relationship between the
12 producer and the controlled insurer: However, if the business is placed through a
13 subproducer who is not a controlling producer, the controlling producer shall retain in
14 the controlling producer's records a signed commitment from the subproducer that the
15 subproducer is aware of the relationship between the insurer and the producer and that
16 the subproducer has or will notify the prospective insured.

17 (j) If the Commissioner believes that a controlling producer or any other person
18 has not materially complied with this section or with any rule adopted or order issued
19 under this section, after notice and opportunity to be heard, the Commissioner may
20 order the controlling producer to stop placing business with the controlled insurer. If it
21 is found that, because of the material noncompliance, the controlled insurer or any
22 policyholder of the controlled insurer has suffered any loss or damage, the
23 Commissioner may maintain a civil action or intervene in an action brought by or on
24 behalf of the insurer or policyholder for recovery of compensatory damages for the
25 benefit of the insurer or policyholder or other appropriate relief.

26 (k) If an order for liquidation or rehabilitation of the controlled insurer has been
27 entered under Article 30 of this Chapter, and the receiver appointed under that order
28 believes that the controlling producer or any other person has not materially complied
29 with this section or any rule adopted or order issued under this section, the receiver may
30 maintain a civil action for recovery of damages or other appropriate sanctions for the
31 benefit of the insurer.

32 (l) In addition to any other remedies provided in this section, whenever the
33 Commissioner believes that a person has not materially complied with this section, the
34 Commissioner may institute a proceeding under G.S. 58-2-60 or under G.S. 58-2-70. In
35 addition to the civil penalty or restitution proceedings provided for in G.S. 58-2-70, the
36 Commissioner may issue a cease and desist order against the person.

37 (m) This section does not affect the Commissioner's right to impose any other
38 penalties provided for in this Chapter nor the rights of policyholders, claimants,
39 creditors, or other third parties.

40 (n) Controlled insurers and controlling producers who are not in compliance with
41 subsection (e) of this section on October 1, 1991, have until December 1, 1991, to come
42 into compliance and shall comply with subsection (i) of this section beginning with all
43 policies written or renewed on or after December 1, 1991."

1 Sec. 29. Article 7 of Chapter 58 of the General Statutes is amended by
2 adding the following new sections to read:

3 **"§ 58-7-160. Investments unlawfully acquired.**

4 Whenever it appears by examination as authorized by law that a domestic insurer
5 has acquired any assets in violation of the law in force on the date of the acquisition, the
6 Commissioner shall disallow the amount of the assets, if wholly ineligible, or the
7 amount of the value thereof in excess of any limitation prescribed by this Chapter and
8 shall deduct that amount as a nonadmitted asset of the insurer.

9 **"§ 58-7-162. Allowable or admitted assets.**

10 In any determination of the financial condition of an insurer, there shall be allowed
11 as assets only those assets owned by an insurer and that consist of:

12 (1) Cash in the possession of the insurer, or in transit under its control, and
13 including the true balance of any deposit in a solvent United States
14 bank, savings and loan association, or trust company, and the balance
15 of any such deposit in an insolvent United States bank, savings and
16 loan association, or trust company, to the extent insured by a federal
17 agency.

18 (2) Investments, securities, properties, and loans acquired or held in
19 accordance with this Chapter, and in connection therewith the
20 following items:

21 a. Interest due or accrued on any bond or evidence of indebtedness
22 that is not in default.

23 b. Declared and unpaid dividends on stock and shares, unless that
24 amount has otherwise been allowed as an asset.

25 c. Interest due or accrued upon a collateral loan in an amount not
26 to exceed one year's interest thereon.

27 d. Interest due or accrued on deposits in solvent banks, savings
28 and loan associations, and trust companies, and interest due or
29 accrued on other assets, if the interest is, in the Commissioner's
30 judgment, a collectible asset.

31 e. Interest due or accrued on a current mortgage loan, in an
32 amount not exceeding in any event the amount, if any, of the
33 excess of the value of the property less delinquent taxes thereon
34 over the unpaid principal; but in no event shall interest accrued
35 for a period in excess of 90 days be allowed as an asset.

36 f. Rent due or accrued on real property if the rent is not in arrears
37 for more than three months, and rent more than three months in
38 arrears if the payment of the rent is adequately secured by
39 property held in the tenant's name and conveyed to the insurer
40 as collateral and the underlying collateral is admissible under
41 this Chapter.

42 g. The unaccrued portion of taxes paid before the due date on real
43 property.

- 1 (3) Premium notes, policy loans, and other policy assets and liens on
2 policies and certificates of life insurance and annuity contracts and
3 accrued interest thereon, in an amount not exceeding the legal reserve
4 and other policy liabilities carried on each individual policy.
- 5 (4) The net amount of uncollected and deferred premiums and annuity
6 considerations in the case of a life insurer.
- 7 (5) Premiums in the course of collection, other than for life insurance, not
8 more than 90 days past due, less commissions payable thereon, except
9 for premiums payable directly or indirectly by the United States
10 government or by any of its instrumentalities.
- 11 (6) All premiums not more than 90 days past due, excluding commissions
12 payable thereon, due from any person that solely or in combination
13 with the person's affiliates owes the insurer an amount that exceeds
14 five percent (5%) of the insurer's total premiums in course of
15 collection, but only if:
- 16 a. The premiums collected by the person or affiliates and not
17 remitted to the insurer are held in a trust account with a bank or
18 other depository approved by the Commissioner. The funds
19 shall be held as trust funds and may not be commingled with
20 any other funds of the person or affiliates. Disbursements from
21 the trust account may be made only to the insurer, the insured,
22 or, for the purpose of returning premiums, a person that is
23 entitled to returned premiums on behalf of the insured. A
24 written copy of the trust agreement shall be filed with and
25 approved by the Commissioner before becoming effective. The
26 Commissioner shall disapprove any trust agreement filed under
27 this sub-subdivision that does not assure the safety of the
28 premiums collected. The investment income derived from the
29 trust may be allocated as the parties consider to be proper. The
30 person or affiliates shall deposit premiums collected into the
31 trust account within 15 business days after collection; or
- 32 b. The person or affiliates shall provide to the insurer, and the
33 insurer shall maintain in its possession, an unexpired, clean,
34 irrevocable letter of credit, payable to the insurer, issued for a
35 term of no less than one year and in conformity with the
36 requirements set forth in this sub-subdivision, the amount of
37 which equals or exceeds the liability of the person or affiliates
38 to the insurer, at all times during the period that the letter of
39 credit is in effect, for premiums collected by the person or
40 affiliates. The letter of credit shall be issued under
41 arrangements satisfactory to the Commissioner and the letter
42 shall be issued by a banking institution that is a member of the
43 Federal Reserve System and that has a financial standing
44 satisfactory to the Commissioner; or

1 c. The person or affiliates shall provide to the insurer, and the
2 insurer shall maintain in its possession, evidence that the person
3 or affiliates have purchased and have currently in effect a
4 financial guaranty bond, payable to the insurer, issued for a
5 term of not less than one year and that is in conformity with the
6 requirements set forth in this sub-subdivision, the amount of
7 which equals or exceeds the liability of the person or affiliates
8 to the insurer, at all times during which the financial guaranty
9 bond is in effect, for the premiums collected by the person or
10 persons. The financial guaranty bond shall be issued under an
11 arrangement satisfactory to the Commissioner and the financial
12 guaranty bond shall be issued by an insurer that is authorized to
13 transact that business in this State, that has a financial standing
14 satisfactory to the Commissioner, and that is neither controlled
15 nor controlling in relation to either the insurer or the person or
16 affiliates for whom the bond is purchased.

17 Premiums receivable under this subdivision will not be allowed as an
18 admitted asset if a financial evaluation by the Commissioner indicates
19 that the person or affiliates are unlikely to be able to pay the premiums
20 as they become due. The financial evaluation shall be based on a
21 review of the books and records of the controlling or controlled
22 person.

23 (7) Installment premiums other than life insurance premiums to the extent
24 of the unearned premium reserve carried on the policy to which the
25 premiums apply.

26 (8) Notes and like written obligations not past due, taken for premiums
27 other than life insurance premiums, on policies permitted to be issued
28 on that basis, to the extent of the unearned premium reserves carried
29 thereon.

30 (9) The full amount of reinsurance which is recoverable by a ceding
31 insurer from a solvent reinsurer and is authorized under G.S. 58-7-21.

32 (10) Amounts receivable by an assuming insurer representing funds
33 withheld by a solvent ceding insurer under a reinsurance treaty.

34 (11) Deposits or equities recoverable from underwriting associations,
35 syndicates, and reinsurance funds, or from any suspended banking
36 institution, to the extent considered by the Commissioner to be
37 available for the payment of losses and claims and at values to be
38 determined by the Commissioner.

39 (12) Electronic and mechanical machines, including operating and system
40 software constituting a management information system, if the cost of
41 the system is at least twenty-five thousand dollars (\$25,000) but not
42 more than two percent (2%) of total admitted assets; the cost shall be
43 amortized in full over a period not to exceed seven calendar years.

- 1 (13) Other assets, not inconsistent with the provisions of this section,
2 considered by the Commissioner to be available for the payment of
3 losses and claims, at values to be determined by the Commissioner.

4 **"§ 58-7-163. Assets not allowed.**

5 In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the
6 following expressly shall not be allowed as assets in any determination of the financial
7 condition of an insurer:

- 8 (1) Goodwill, trade names, and other like intangible assets.
9 (2) Advances (other than policy loans) to officers, directors, and
10 controlling stockholders, whether secured or not, and advances to
11 employees, agents, and other persons on personal security only.
12 (3) Stock of the insurer or any material equity therein or loans secured
13 thereby, or any material proportionate interest in the stock acquired or
14 held through the ownership by the insurer of an interest in another
15 firm, corporation, or business unit.
16 (4) Furniture, fixtures, other equipment, safes, vehicles, libraries,
17 stationery, literature, and supplies, other than data processing and
18 accounting systems authorized under G.S. 58-7-162(12), except in the
19 case of title insurers the materials and plants which G.S. 58-7-182
20 expressly authorizes the insurer to invest in, and except, in the case of
21 any insurer, any personal property that the insurer is permitted to hold
22 under this Chapter, or that is acquired through foreclosure of chattel
23 mortgages acquired under G.S. 58-7-180, or that is reasonably
24 necessary for the maintenance and operation of real estate that the
25 insurer uses for a home office, branch office, and similar purposes.
26 (5) The amount, if any, by which the aggregate book value of investments
27 as carried in the ledger assets of the insurer exceeds the aggregate
28 value of the investments as determined under this Chapter.
29 (6) Bonds, notes, or other evidences of indebtedness that are secured by
30 mortgages or deeds of trust that are in default, to the extent of the cost
31 of carrying value that is in excess of the value as determined pursuant
32 to other provisions of this Chapter.
33 (7) Prepaid and deferred expenses.
34 (8) Certificates of contribution or other similar evidences of indebtedness.

35 **"§ 58-7-165. Eligible investments.**

36 (a) Insurers shall invest in or lend their funds on the security of, and shall hold as
37 invested assets, only eligible investments as prescribed in this Chapter.

38 (b) Any particular investment held by an insurer on December 31, 1991, that was
39 a legal investment when it was made, and that the insurer was legally entitled to possess
40 immediately before January 1, 1992, is an eligible investment.

41 (c) Eligibility of an investment shall be determined as of the date of its making or
42 acquisition, except as stated otherwise in this Chapter.

43 (d) Any investment limitation based upon the amount of the insurer's assets or
44 particular funds shall relate to those assets or funds shown by the insurer's annual

1 statement as of the December 31 preceding the date of acquisition of the investment by
2 the insurer, or, if applicable, as shown by the most current quarterly financial statement
3 filed by the insurer.

4 **"§ 58-7-167. General qualifications.**

5 (a) No security or investment, other than real or personal property acquired under
6 G.S. 58-7-187, is eligible for acquisition unless it is interest-bearing or interest-
7 accruing, is entitled to receive dividends if and when declared and paid, or is otherwise
8 income-producing, is not then in default in any respect, and the insurer is entitled to
9 receive for its exclusive account and benefit the interest or income accruing thereon.

10 (b) No security or investment shall be eligible for purchase at a price above its
11 market value unless it is approved by the Commissioner and is valued in accordance
12 with valuation procedures of the NAIC that have been adopted by the Commissioner.

13 (c) This Chapter does not prohibit the acquisition by an insurer of other or
14 additional securities or property if received as a dividend, as a lawful distribution of
15 assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or
16 consolidation. Any investment so acquired that is not otherwise eligible under this
17 Chapter shall be disposed of under G.S. 58-7-188 if the investment is in property or
18 securities.

19 **"§ 58-7-168. Authorization of investment.**

20 An insurer shall not make any investment or loan, other than a policy loan or annuity
21 contract loan of a life insurer, unless the investment or loan is authorized or approved by
22 the insurer's board of directors or by a committee authorized by the board and charged
23 with the supervision or making of the investment or loan. The minutes of any such
24 committee shall be recorded and regular reports of the committee shall be submitted to
25 the board of directors.

26 **"§ 58-7-170. Diversification.**

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

32 (b) Investments eligible under subsection (a), except investments acquired under
33 G.S. 58-7-183, are subject to the following limitations:

- 34 (1) The cost of investments made by insurers in stock authorized by G.S.
35 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's
36 admitted assets, provided that no more than twenty percent (20%) of
37 the insurer's admitted assets shall be invested in common stock; and
38 the cost of an investment in stock of any one corporation shall not
39 exceed three percent (3%) of the insurer's admitted assets.
40 Notwithstanding any other provision in this Chapter, the financial
41 statement carrying value of all stock investments shall be used for the
42 purpose of determining the asset value against which the percentage
43 limitations are to be applied.

1 (2) Other limitations, if any, that are expressly provided for in any
2 provision under which the investment is authorized.

3 (c) The cost of investments made by insurers in a mortgage loan authorized by
4 G.S. 58-7-179 shall not exceed the lesser of five percent (5%) of the insurer's admitted
5 assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not
6 invest in additional mortgage loans without the Commissioner's consent if the admitted
7 value of all mortgage loans held by the insurer exceeds an aggregate of sixty percent
8 (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage
9 pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five
10 percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other
11 mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the
12 admitted assets of the insurer.

13 An insurer that, as of October 1, 1991, has mortgage investments that exceed the
14 aggregate limitation specified in this subsection shall submit to the Commissioner no
15 later than January 31, 1992, a plan to bring the amount of mortgage investments into
16 compliance with the limitations by January 1, 2001.

17 (d) Without the Commissioner's prior written approval, the cost of investments in
18 bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed,
19 or guaranteed by any solvent United States institution, and that are classified as medium
20 to lower quality obligations, other than obligations of subsidiaries or affiliated
21 corporations as that term is defined in G.S. 58-7-177, shall be limited to:

22 (1) No more than twenty percent (20%) of an insurer's admitted assets;

23 (2) No more than ten percent (10%) of an insurer's admitted assets in
24 obligations that have been given a rating of 4, 5, or 6 by the Securities
25 Valuation Office of the NAIC;

26 (3) No more than three percent (3%) of an insurer's admitted assets in
27 obligations that have been given a rating of 5 or 6 by the Securities
28 Valuation Office of the NAIC;

29 (4) No more than one percent (1%) of an insurer's admitted assets in
30 obligations that have been given a rating of 6 by the Securities
31 Valuation Office of the NAIC;

32 (5) No more than ten percent (10%) of an insurer's admitted assets, if the
33 investments are in issuers from any one industry; and

34 (6) No more than two percent (2%) of an insurer's admitted assets or ten
35 percent (10%) of an insurer's capital and surplus, whichever is greater,
36 if the investment is in any one issuer.

37 (e) As used in subsections (d), (f), (g), and (h) of this section, 'medium to lower
38 quality obligations' means obligations that have been given a rating of 3, 4, 5, or 6 by
39 the Securities Valuation Office of the NAIC. As used in subsection (d) of this section,
40 'industry' means a distinct and recognized area of economic activity that consists of the
41 production, manufacture, or distribution of common goods, products, commodities, or
42 services.

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).

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 that does not meet its regulatory capital requirement if the
27 Commissioner determines that the financial solvency of the insurer is threatened by a
28 deposit in excess of insured limits.

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

32 **"§ 58-7-172. Cash and deposits.**

33 An insurer may have funds in coin or currency of the United States on hand or on
34 deposit in any solvent national or state bank, savings and loan association, or trust
35 company.

36 **"§ 58-7-173. Permitted insurer investments.**

37 An insurer may invest in:

- 38 (1) Bonds, notes, warrants, and other evidences of indebtedness that are
39 direct obligations of the U.S. Government or for which the full faith
40 and credit of the U.S. Government is pledged for the payment of
41 principal and interest.
- 42 (2) Loans insured or guaranteed as to principal and interest by the U.S.
43 Government or by any agency or instrumentality of the U.S.
44 Government to the extent of the insurance or guaranty.

- 1 (3) Student loans insured or guaranteed as to principal by the U.S.
2 Government or by any agency or instrumentality of the U.S.
3 Government to the extent of the insurance or guaranty.
- 4 (4) Bonds, notes, warrants, and other securities not in default that are the
5 direct obligations of any state or United States territory or the
6 government of Canada or any Canadian province, or for which the full
7 faith and credit of such state, government, or province has been
8 pledged for the payment of principal and interest.
- 9 (5) Bonds, notes, warrants, and other securities not in default of any
10 county, district, incorporated city, or school district in any state of the
11 United States, or the District of Columbia, or in any Canadian
12 province, that are the direct obligations of the county, district, city, or
13 school district and for payment of the principal and interest of which
14 the county, district, city, or school district has lawful authority to levy
15 taxes or make assessments.
- 16 (6) Bonds, notes, certificates of indebtedness, warranties, or other
17 evidences of indebtedness that are payable from revenues or earnings
18 specifically pledged therefor of any public toll bridge, structure, or
19 improvement owned by any state, incorporated city, or legally
20 constituted public corporation or commission, all within the United
21 States or Canada, for the payment of the principal and interest of
22 which a lawful sinking fund has been established and is being
23 maintained and if no default by the issuer in payment of principal or
24 interest has occurred on any of its bonds, notes, warrants, or other
25 securities within five years prior to the date of investment therein.
- 26 (7) Bonds, notes, certificates of indebtedness, warrants, or other evidences
27 of indebtedness that are valid obligations issued, assumed, or
28 guaranteed by the United States, any state, any county, city, district,
29 political subdivision, civil division, or public instrumentality of any
30 such government or unit thereof, or in any province of Canada; if by
31 statute or other legal requirements the obligations are payable as to
32 both principal and interest from revenues or earnings from the whole
33 or any part of any utility supplying water, gas, a sewage disposal
34 facility, electricity, or any other public service, including but not
35 limited to a toll road or toll bridge.
- 36 (8) Bonds, debentures, or other securities of the following agencies,
37 whether or not those obligations are guaranteed by the U.S.
38 Government:
- 39 a. The Federal National Mortgage Association, and stock thereof
40 when acquired in connection with the sale of mortgage loans to
41 the Association.
- 42 b. Any federal land bank, when the securities are issued under the
43 Farm Loan Act;

- 1 c. Any federal home loan bank, when the securities are issued
2 under the Home Loan Bank Act;
3 d. The Home Owners' Loan Corporation, created by the Home
4 Owners' Loan Act of 1933;
5 e. Any federal intermediate credit bank, created by the
6 Agricultural Credits Act;
7 f. The Central Bank for Cooperatives and regional banks for
8 cooperatives organized under the Farm Credit Act of 1933, or
9 by any of such banks; and any notes, bonds, debentures, or
10 other similar obligations, consolidated or otherwise, issued by
11 farm credit institutions under the Farm Credit Act of 1971;
12 g. Any other similar agency of the U.S. Government that is of
13 similar financial quality.
14 (9) Bonds, debentures, or other securities of public housing authorities,
15 issued under the Housing Act, of 1949, the Municipal Housing
16 Commission Act, or the Rural Housing Commission Act, or issued by
17 any public housing authority or agency in the United States, if the
18 bonds, debentures, or other securities are secured by a pledge of annual
19 contributions to be paid by the United States or any United States
20 agency; and the cost of investments made under this subdivision shall
21 not exceed the lesser of three percent (3%) of the insurer's admitted
22 assets or ten percent (10%) of the insurer's capital and surplus.
23 (10) Obligations issued, assumed, or guaranteed by the International Bank
24 for Reconstruction and Development, the Inter-American
25 Development Bank, the Asian Development Bank, or the African
26 Development Bank; and the cost of investments made under this
27 subdivision shall not exceed the lesser of three percent (3%) of the
28 insurer admitted assets or ten percent (10%) of the insurer's capital and
29 surplus.
30 (11) Bonds, notes, or other interest-bearing or interest-accruing obligations
31 of any solvent institution organized under the laws of the United
32 States, of any state, Canada or any Canadian province; provided such
33 instruments are rated and approved by the Securities Valuation Office
34 of the NAIC.
35 (12) Secured obligations of duly constituted churches and of church-
36 holding companies; and the cost of investments made under this
37 subdivision shall not exceed the lesser of one percent (1%) of the
38 insurer's admitted assets or five percent (5%) of the insurer's capital
39 and surplus.
40 (13) Equipment trust obligations or certificates adequately secured and
41 evidencing an interest in transportation equipment, wholly or in part
42 within the United States, and the right to receive determined portions
43 of rental, purchase, or other fixed obligatory payments for the use or
44 purchase of that transportation equipment; and the cost of investments

1 made under this subdivision shall not exceed twenty percent (20%) of
2 the insurer's admitted assets.

3 (14) Share or savings accounts of savings and loan associations or building
4 and loan associations; and the cost of investments made under this
5 subdivision shall not exceed the lesser of three percent (3%) of the
6 insurer's admitted assets or five percent (5%) of the insurer's capital
7 and surplus.

8 (15) Loans with a maturity not in excess of 12 years from the date thereof
9 that are secured by the pledge of securities eligible for investment
10 under this Chapter or by the pledge or assignment of life insurance
11 policies issued by other insurers authorized to transact insurance in this
12 State. On the date made, no such loan shall exceed in amount
13 seventy-five percent (75%) of the market value of the collateral
14 pledged, except that loans upon the pledge of U.S. Government bonds
15 and loans upon the pledge or assignment of life insurance policies shall
16 not exceed ninety-five percent (95%) of the market value of the bonds
17 or the cash surrender value of the policies pledged. The market value
18 of the collateral pledge shall at all times during the continuance of the
19 loans meet or exceed the minimum percentages herein. Loans made
20 under this section shall not be renewable beyond a period of 12 years
21 from the date of the loan.

22 (16) Stocks, common or preferred, of any corporation created or existing
23 under the laws of the United States, any U.S. territory, Canada or any
24 Canadian province, or of any state. An insurer may invest in stocks,
25 common or preferred, of any corporation created or existing under the
26 laws of any foreign country other than Canada if the stocks are listed
27 and traded on a national securities exchange in the United States or if
28 the investment in stocks of any corporation created or existing under
29 the laws of any foreign country are first approved by the
30 Commissioner. Nothing in this section applies to qualifying
31 investments made by an insurer in a foreign country under authority of
32 G.S. 58-7-178.

33 (17) Mortgage pass-through securities and derivatives thereof, including,
34 without limitation, collateral mortgage obligations backed by a pool of
35 mortgages of the kind, class, and investment quality as those eligible
36 for investment under G.S. 58-7-179, but not including investments
37 permitted under G.S. 58-7-173(2), (8), or (11).

38 **"§ 58-7-175. Policy loans.**

39 A life insurer may lend to its policyholder, upon pledge of the policy as collateral
40 security, any sum not exceeding the cash loan value of the policy; or may lend against
41 pledge or assignment of any of its supplementary contracts or other contracts or
42 obligations, as long as the loan is adequately secured by the pledge or assignment.
43 Loans so made are eligible investments of the insurer.

44 **"§ 58-7-177. Investments in subsidiaries and affiliated corporations.**

1 (a) Any insurer, either by itself or in cooperation with one or more persons, may
2 organize or acquire one or more subsidiaries, subject to the limitations of this Chapter.
3 The subsidiaries may conduct any kind of business, and their authority to do so shall not
4 be limited because they are subsidiaries of an insurer, except where in conflict with
5 Article 19 of this Chapter.

6 (b) In addition to investments in common stock, preferred stock, debt obligations,
7 and other securities permitted under this Chapter, an insurer may also invest and
8 maintain investments in common stock, preferred stock, debt obligations, and other
9 securities of one or more subsidiaries or affiliated corporations under the provisions and
10 limitations outlined in G.S. 58-19-10.

11 (c) For purposes of this section:

12 (1) 'Subsidiary' has the same meaning as in G.S. 58-19-5(7).

13 (2) 'Affiliated' has the same meaning as in G.S. 58-19-5(1).

14 (d) Debt obligations, other than mortgage loans, made under the authority of this
15 section must meet amortization requirements in accordance with the latest edition of the
16 NAIC publication entitled 'Valuation of Securities'; provided that the amortization
17 methodology is acceptable to the Commissioner.

18 (e) For purposes of this section, an insurer's investment in a subsidiary or
19 affiliated corporation shall be considered to include all sums lent to the subsidiary or
20 affiliated corporation.

21 **"§ 58-7-178. Foreign or territorial investments.**

22 An insurer authorized to transact insurance in a foreign country or any U.S. territory
23 may have funds invested in securities that may be required for that authority and for the
24 transaction of that business. Canadian securities eligible for investment under other
25 provisions of this Chapter are not subject to this section. Unless disapproved by the
26 Commissioner:

27 (1) An insurer may invest in Eurodollar certificates of deposit issued by
28 foreign branches of United States commercial banks.

29 (2) In addition to Canadian securities eligible for investment and to
30 investments in countries in which an insurer transacts insurance, an
31 insurer may invest in bonds, notes, or stocks of any foreign country or
32 alien corporation if the security meets the general requirements of G.S.
33 58-7-167 and does not exceed, in total, five percent (5%) of admitted
34 assets.

35 **"§ 58-7-179. Mortgage loans.**

36 (a) An insurer may invest any of its funds in bonds, notes, or other evidences of
37 indebtedness that are secured by first mortgages or deeds of trust upon improved real
38 property located in the United States, any U.S. territory, or Canada, or that are secured
39 by first mortgages or deeds of trust upon leasehold estates having an unexpired term of
40 not less than 30 years, inclusive of the terms that may be provided by enforceable
41 options of renewal, as long as the loan matures at least 20 years before the expiration of
42 such lease, in improved real property located in the United States, any U.S. territory, or
43 Canada. In all cases the security for the loan must be a first lien upon the real property,
44 and there must not be any condition or right of reentry or forfeiture not insured against

1 under which, in the case of real property other than leaseholds, the lien can be cut off or
2 subordinated or otherwise disturbed, or under which, in the case of leaseholds, the
3 insurer cannot continue the lease in force for the duration of the loan. Nothing herein
4 prohibits any investment because of the existence of any prior lien for ground rents,
5 taxes, assessments, or other similar charges not yet delinquent. This section does not
6 prohibit investment in mortgages or similar obligations when made under G.S. 58-7-
7 180.

8 (b) 'Improved real property' means all farmlands used for tillage, crops, or
9 pasture; timberlands; and all real property on which permanent improvements, and
10 improvements under construction or in process of construction, suitable for residential,
11 institutional, commercial, or industrial use are situated.

12 (c) No such mortgage loan or loans made or acquired by an insurer on any one
13 property shall, at the time of investment by the insurer, exceed the larger of the
14 following amounts, as applicable:

15 (1) Ninety-five percent (95%) of the value of the real property or
16 leasehold securing the real property in the case of a mortgage on a
17 dwelling primarily intended for occupancy by not more than four
18 families if they insure down to seventy-five percent (75%) with a
19 licensed mortgage insurance company, or seventy-five percent (75%)
20 of the value in the case of other real estate mortgages;

21 (2) The amount of any insurance or guaranty of the loan by the United
22 States or by an agency or instrumentality thereof; or

23 (3) The percentage-of-value limit on the amount of the loan applicable
24 under subdivision (1) of this subsection, plus the amount by which the
25 excess of the loan over the percentage-of-value limit is insured or
26 guaranteed by the United States or by any agency or instrumentality
27 thereof.

28 (d) In the case of a purchase money mortgage given to secure the purchase price
29 of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid
30 part of the purchase price and shall be valued in accordance with G.S. 58-7-195.

31 (e) Nothing in this section prohibits an insurer from renewing or extending a loan
32 for the original or a lesser amount where a shrinkage in value of the real estate securing
33 the loan would cause its value to be less than the amount otherwise required in relation
34 to the amount of the loan.

35 **§ 58-7-180. Chattel mortgages.**

36 (a) In connection with a mortgage loan on the security of real estate designed and
37 used primarily for residential purposes only, where the mortgage loan was acquired
38 under G.S. 58-7-179, an insurer may lend or invest an amount not exceeding twenty
39 percent (20%) of the amount lent on or invested in such real estate mortgage on the
40 security of a chattel mortgage to be amortized by regular periodic payments with a term
41 of not more than five years, and representing a first and prior lien, except for taxes not
42 then delinquent, on personal property constituting durable equipment owned by the
43 mortgagor and kept and used in the mortgaged premises.

1 (b) For the purposes of this section, the term 'durable equipment' includes only
2 mechanical refrigerators, air-conditioning equipment, mechanical laundering machines,
3 heating and cooking stoves and ranges, and, in addition, in the case of apartment houses
4 and hotels, room furniture and furnishings.

5 (c) Before the acquisition of a chattel mortgage under this section, items of
6 property to be included therein shall be separately appraised by a qualified appraiser and
7 the fair market value determined. No such chattel mortgage loan shall exceed in
8 amount the same ratio of loan to the value of the property as is applicable to the
9 companion loan on the real property.

10 (d) This section does not prohibit an insurer from taking liens on personal
11 property as additional security for any investment otherwise eligible under this Chapter.

12 **"§ 58-7-182. Special investments by title insurers.**

13 In addition to other investments eligible under this Chapter, a title insurer may invest
14 and have invested an amount not exceeding the greater of three hundred thousand
15 dollars (\$300,000) or fifty percent (50%) of that part of its policyholders' surplus that
16 exceeds the minimum surplus required by G.S. 58-7-75 in its abstract plant and
17 equipment, in loans secured by mortgages on abstract plants and equipment, and, with
18 the Commissioner's consent, in stocks of abstract companies.

19 **"§ 58-7-183. Special consent investments.**

20 (a) After satisfying the requirements of this Chapter, any funds of an insurer in
21 excess of its reserves and policyholders' surplus required to be maintained may be
22 invested:

23 (1) Without limitation in any investments otherwise authorized by this
24 Chapter; or

25 (2) In such other investments not specifically authorized by this Chapter
26 as long as any single interest investment does not exceed two percent
27 (2%) of admitted assets and the aggregate of the investments does not
28 exceed the lesser of five percent (5%) of the insurer's total admitted
29 assets or twenty percent (20%) of the amount by which the insurer's
30 policyholders' surplus exceeds the minimum required to be
31 maintained.

32 The limitations in subdivision (2) of this subsection may be exceeded if approved in
33 writing by the Commissioner.

34 (b) In no case shall the investments authorized under this section being held by
35 an insurer be greater than the amount by which the insurer's policyholders' surplus
36 exceeds the minimum reserves and policyholders' surplus required to be maintained.

37 (c) Notwithstanding the provisions of this section, an insurer may not invest in
38 investments prohibited by this Chapter.

39 **"§ 58-7-185. Prohibited investments and investment underwriting.**

40 (a) In addition to investments excluded under other provisions of this Chapter,
41 except with prior approval by the Commissioner, an insurer shall not directly or
42 indirectly invest in or lend its funds upon the security of:

43 (1) Issued shares of its own capital stock, except in connection with a plan
44 for purchase of the shares by the insurer's officers, employees, or

1 agents. No such stock shall, however, constitute an asset of the insurer
2 in any determination of its financial condition.

3 (2) Except with the Commissioner's consent, securities issued by any
4 corporation or enterprise, the controlling interest of which is or will
5 after acquisition by the insurer be held directly or indirectly by the
6 insurer or any combination of the insurer and the insurer's directors,
7 officers, parent corporation, subsidiaries, or controlling stockholders.
8 Investments in subsidiaries under G.S. 58-7-177 are not subject to this
9 provision.

10 (3) Any note or other evidence of indebtedness of any director, officer, or
11 controlling stockholder of the insurer, except as to policy loans
12 authorized under G.S. 58-7-175 and loans authorized under G.S. 58-7-
13 200(e).

14 (b) No insurer shall underwrite or participate in the underwriting of an offering of
15 securities or property by any other person.

16 **"§ 58-7-187. Real estate, in general.**

17 (a) An insurer shall not directly or indirectly acquire or hold real estate except as
18 authorized in this section.

19 (b) An insurer may acquire and hold:

20 (1) Land and buildings thereon used or acquired for use as its principal
21 home office and branch offices, or used in conjunction with such
22 offices, for the convenient transaction of its own business.

23 (2) Real property acquired in satisfaction in whole or in part of loans,
24 mortgages, liens, judgments, decrees, or debts previously owing to the
25 insurer, in the course of its business.

26 (3) Real property acquired in part payment of the consideration on the sale
27 of other real property owned by it, if the transaction effects a net
28 reduction in the insurer's investment in real estate.

29 (4) Real property acquired by gift or devise or through merger,
30 consolidation, or bulk reinsurance of another insurer under this
31 Chapter.

32 (5) Additional real property and equipment incident to real property, if
33 necessary or convenient for the enhancement of the marketability or
34 sale value of real property previously acquired or held by it under
35 subdivisions (2) through (4) of this subsection.

36 (c) An insurer may acquire and hold real property for investment, subject to the
37 following conditions:

38 (1) The amount shall not exceed in the aggregate the lesser of five percent
39 (5%) of the insurer's admitted assets or fifteen percent (15%) of the
40 insurer's capital and surplus.

41 (2) The amount in any one property shall not exceed one percent (1%) of
42 the insurer's admitted assets.

43 (3) The amount in unimproved land shall not exceed one-half of one
44 percent (0.5%) of the insurer's admitted assets.

1 (4) There shall be no time limit for the disposal of investment real estate.

2 (d) The amount in real property acquired and held by an insurer shall not exceed
3 fifteen percent (15%) of the insurer's admitted assets; but the Commissioner may permit
4 an insurer to invest in real property in such increased amount as the Commissioner
5 considers to be proper.

6 **"§ 58-7-188. Time limit for disposal of ineligible property and securities; effect of**
7 **failure to dispose.**

8 (a) Any property or securities lawfully acquired by an insurer that it could not
9 otherwise have invested in or lent its funds upon at the time of the acquisition shall be
10 disposed of within three years from the date of acquisition, unless within that period the
11 security has attained to the standard of eligibility; except that any security or property
12 acquired under any agreement of bulk reinsurance, merger, or consolidation may be
13 retained for a longer period if so provided in the plan for the reinsurance, merger, or
14 consolidation as approved by the Commissioner under this Chapter. Upon application
15 by the insurer and proof that forced sale of any such property or security would
16 materially injure the insurer's interests, the Commissioner may extend the disposal
17 period for an additional reasonable time.

18 (b) Any property or securities lawfully acquired and held by an insurer after
19 expiration of the period for their disposal or any extension of the period granted by the
20 Commissioner shall not be allowed as an asset of the insurer.

21 **"§ 58-7-190. Valuation of bonds and other evidences of indebtedness.**

22 (a) All bonds or fully secured indebtedness having a stated term and a rate of
23 interest that are held by an insurer, if fully secured and not in default as to principal or
24 interest, shall be valued as follows: (i) if purchased at par, at par value; (ii) if purchased
25 above or below par, on the basis of the purchase price adjusted so as to bring the value
26 to par at maturity and so as to yield in the meantime the effective rate of interest at
27 which the purchase was made or, in lieu of that method, according to an accepted
28 method of valuation approved by the Commissioner; except that the purchase price shall
29 in no case be taken at a higher figure than the actual market value at the time of
30 purchase.

31 (b) The Commissioner may, after notice and opportunity for hearing, determine
32 the method of calculating any values under this section.

33 **"§ 58-7-192. Valuation of other securities and investments.**

34 (a) All securities, investments, and evidences of debt, other than those for which
35 valuation methodologies are specifically set forth in this Chapter, that are held by an
36 insurer shall be valued at their market values, at their appraised values, or at prices
37 determined by the insurer as representing their fair market values, subject to the
38 Commissioner's approval.

39 (b) Preferred or guaranteed stocks or shares while paying full dividends may be
40 carried at a fixed value in lieu of market value, in the Commissioner's discretion and in
41 accordance with a method of valuation that the Commissioner approves.

42 (c) Stock of a subsidiary corporation of an insurer shall not be valued at an
43 amount in excess of its net value as based upon those assets only of the subsidiary that

1 would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of
2 the insurer direct.

3 (d) No valuations under this section shall be greater than any applicable valuation
4 or method contained in the latest edition of the NAIC publication entitled 'Valuations of
5 Securities', unless the Commissioner determines that another valuation method is
6 appropriate when it results in a more conservative valuation.

7 **"§ 58-7-193. Valuation of property.**

8 (a) Real property acquired pursuant to a mortgage loan or contract for sale shall
9 be valued at the net realizable value, but in no event shall the property be valued at an
10 amount greater than the unpaid principal of the defaulted loan or contract at the date of
11 the acquisition and the cost of improvements thereafter made by the insurer and any
12 amounts thereafter paid by the insurer on assessments levied for improvements in
13 connection with the property.

14 (b) Other real property held by an insurer shall not be valued at an amount in
15 excess of fair market value as determined by recent appraisal and as approved by the
16 Commissioner. If valuation is based on an appraisal more than three years old, the
17 Commissioner may call for and require a new appraisal in order to determine fair value.

18 (c) Personal property acquired pursuant to chattel mortgages made in accordance
19 with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of
20 principal on the defaulted loan at the date of acquisition, or the fair market value of the
21 property, whichever amount is less.

22 (d) If the Commissioner and an insurer do not agree on the value of real or
23 personal property of an insurer, in carrying out the Commissioner's responsibilities
24 under this section, the Commissioner may retain the services of a qualified real or
25 personal property appraiser. The insurer shall reimburse the Commissioner for the costs
26 of the services of any appraiser incurred with respect to the Commissioner's
27 responsibilities under this section.

28 **"§ 58-7-195. Valuation of purchase money mortgages.**

29 Purchase money mortgages on real property referred to in G.S. 58-7-193(a) shall
30 be valued in an amount not exceeding the greater of seventy-five percent (75%) of the
31 acquisition cost to the insurer, or seventy-five percent (75%) of the fair market value, of
32 the real property covered thereby.

33 **"§ 58-7-197. Replacing certain assets; reporting certain liabilities.**

34 (a) The Commissioner, upon determining that an insurer's asset has not been
35 valued according to this Chapter or that it does not qualify as an asset, shall require the
36 insurer to properly revalue an improperly valued asset or replace a nonadmitted asset
37 with an asset suitable to the Commissioner within 90 days after the determination.

38 (b) The Commissioner, upon determining that an insurer has failed to report
39 certain liabilities that should have been reported, shall require that the insurer report
40 those liabilities to the Commissioner within 90 days after notice to the insurer.

41 (c) When the Commissioner determines that an admitted asset held by any
42 insurer is of doubtful value or is without ascertainable value on a public exchange,
43 unless the insurer establishes a value by placing the asset upon the market and obtaining
44 a bona fide offer for the asset, the Commissioner may have the asset appraised, and the

1 appraisal shall be the true value of the asset. No asset may be carried in an insurer's
2 financial statement under G.S. 58-2-165 at an appraised value established by the insurer
3 unless the Commissioner's prior written approval is obtained.

4 (d) When any admitted asset defaults as to principal or in the payment of interest
5 or dividends after it has been purchased by an insurer, the asset shall subsequently be
6 carried at its market value or, after notice and opportunity for hearing, at a value
7 determined by the Commissioner.

8 (e) Whenever it appears to the Commissioner that an insurer has acquired any
9 asset in violation of this Chapter, the Commissioner shall disallow, in whole or in part,
10 the amount of the asset that is prohibited by this Chapter. In any determination of the
11 financial position of the insurer, that amount shall be deducted as a nonadmitted asset of
12 the insurer.

13 **"§ 58-7-198. Assets of foreign or alien insurers.**

14 The Commissioner may refuse a new or renewal license to any foreign or alien
15 insurer upon finding that its assets do not comply in substance with the investment
16 requirements and limitations imposed by this Chapter upon like domestic insurers
17 whenever authorized to do the same kinds of insurance business.

18 **"§ 58-7-200. Investment transactions.**

19 (a) The transactions specified in subsections (b) through (e) of this section are
20 expressly allowed or prohibited as provided in this section and to the extent they are not
21 in conflict with other provisions of this Chapter.

22 (b) Notwithstanding any expressed or implied prohibitions, an insurer may effect
23 or maintain bona fide hedging transactions pertaining to securities otherwise eligible for
24 investment under this section, including, but not limited to (i) financial futures
25 contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other
26 rights to require another person to purchase the securities. The contracts, options, calls,
27 puts and rights shall be traded on a securities exchange or board of trade regulated under
28 the laws of the United States. For the purposes of this subsection, 'bona fide hedging
29 transaction' means a purchase or sale of such a contract, warrant, option, call, put or
30 right, entered into for the purpose of offsetting changes in the market value of a security
31 held by the company.

32 (c) No insurer shall make any direct or indirect loan to any of its directors,
33 officers, or controlling stockholders; nor shall the insurer make any loan to any other
34 person in which the officer, director, or stockholder is substantially interested; nor shall
35 any such director, officer, or stockholder directly or indirectly accept any such loan.

36 (d) No director, officer, or controlling stockholder of any insurer shall receive
37 any money or valuable thing, either directly or indirectly or through any substantial
38 interest in any other person, for negotiating, procuring, recommending, or aiding in any
39 purchase or sale of property or loan from the insurer; or be monetarily interested either
40 as principal, corporation, agent, or beneficiary, in any such purchase, sale, or loan; and
41 no financial obligation of any such director, officer, or stockholder shall be guaranteed
42 by the insurer. 'Substantial interest in any other person' means an interest equivalent to
43 ownership or control by a director, officer, or controlling stockholder or the aggregate
44 ownership or control by all directors, officers, and controlling stockholders of the same

1 insurer of those percentages or more of the stock of the person, as defined under
2 'control' in G.S. 58-19-5(2).

3 (e) Nothing in this section prohibits:

4 (1) A director or officer of any insurer from receiving the usual salary,
5 compensation, or emoluments for services rendered in the ordinary
6 course of that person's duties as a director or officer, if the salary,
7 compensation, or emolument is authorized by vote of the board of
8 directors of the insurer;

9 (2) Any insurer in connection with the relocation of the place of
10 employment of an officer, including any relocation in connection with
11 the initial employment of the officer, from (i) making, or the officer
12 from accepting therefrom, a mortgage loan to the officer on real
13 property owned by the officer that is to serve as the officer's residence
14 or (ii) acquiring, or the officer from selling thereto, at not more than its
15 fair market value, the officer's prior residence;

16 (3) The payment to a director or officer of any such insurer who is a
17 licensed attorney-at-law of fees in connection with loans made by the
18 insurer if and when the fees are paid by the borrower and do not
19 constitute a charge against the insurer; or

20 (4) An insurer from making a loan upon a policy held therein by the
21 borrower not in excess of the policy's net value."

22 Sec. 30. G.S. 58-7-85, 58-7-90, and 58-7-100 are repealed.

23 Sec. 30.1. G.S. 58-13-5 reads as rewritten:

24 **"§ 58-13-5. Purposes.**

25 The purposes of this Article are to require insurers to maintain unencumbered assets
26 in amounts equal to reserve ~~liabilities;~~ liabilities and minimum required capital and
27 minimum required surplus; to provide preferential claims against insurers' assets in
28 favor of owners, beneficiaries, assignees, and holders of insurance policies and
29 certificates; and to prevent the pledging, hypothecation, or encumbrance of assets ~~in~~
30 ~~excess of certain amounts~~ without a prior written order of the Commissioner."

31 Sec. 30.2. G.S. 58-13-10 reads as rewritten:

32 **"§ 58-13-10. Scope.**

33 This Article applies to all domestic insurers and to all kinds of insurance written by
34 those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to
35 comply in substance with the requirements and limitations of this section. This Article
36 does not apply to variable contracts for which separate accounts are required to be
37 maintained nor to county farm mutual companies."

38 Sec. 30.3. G.S. 58-13-25(a) and (b) read as rewritten:

39 "(a) ~~Every insurer subject to this Article shall at all times have and maintain free~~
40 ~~and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall~~
41 ~~pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the~~
42 ~~amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise~~
43 ~~encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon~~
44 ~~application made to him, may issue a written order approving the pledging,~~

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

11 (b) ~~Any insurer that pledges, hypothecates, or otherwise encumbers any of its~~
12 ~~assets shall within 10 days thereafter report in writing to the Commissioner the amount~~
13 ~~and identity of the assets so pledged, hypothecated, or encumbered and the terms and~~
14 ~~conditions of the transaction. In addition, the~~ Every insurer shall file, along with its
15 statement under G.S. 58-2-165, a statement sworn to by the chief executive officer of
16 the insurer that: (i) Title to assets in an amount equal to the reserve liability and
17 minimum required capital and minimum required surplus of the insurer that are not
18 pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only
19 assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as
20 identified and reported in the sworn statement and no other assets of the insurer are
21 pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of
22 the transaction of the pledge, hypothecation, or encumbrance are as reported in ~~such the~~
23 sworn statement."

24 Sec. 31. G.S. 58-19-15(e) reads as rewritten:

25 "(e) The public hearing referred to in subsection (d) of this section shall be held
26 within 120 days after the statement required by subsection (a) of this section is filed,
27 and the Commissioner shall give at least 60-30 days notice thereof shall be given by the
28 Commissioner of the hearing to the person filing the statement, to the insurer, and to such
29 other persons as may be designated by the Commissioner. The Commissioner shall
30 make a determination as expeditiously as is reasonably practicable after the conclusion
31 of ~~such the~~ hearing. At ~~such the~~ hearing, the person filing the statement, the insurer, any
32 person to whom notice of hearing was sent, and any other person whose interest may be
33 affected ~~thereby by the hearing~~ shall have the right to present evidence, examine and
34 cross-examine witnesses, and offer oral or written arguments; and in connection
35 therewith shall be entitled to conduct discovery proceedings at any time after the
36 statement is filed with the Commissioner ~~pursuant to under~~ this section and in the same
37 manner as is presently allowed in the superior courts of this State. In connection with
38 discovery proceedings authorized by this section, the Commissioner ~~is authorized to may~~
39 issue such protective orders and other orders governing the timing and scheduling of
40 discovery proceedings as might otherwise have been issued by a superior court of this
41 State in connection with a civil proceeding. ~~In the event~~ If any party fails to make
42 reasonable and adequate response to discovery on a timely basis or fails to comply with
43 any order of the Commissioner with respect to discovery, the Commissioner on ~~his the~~
44 Commissioner's own motion or on motion of any other party or person may order that

1 the hearing be ~~postponed~~ postponed, ~~or recessed~~, shall be ~~convened~~ convened, or
2 reconvened, as the case may be, following proper completion of discovery and
3 reasonable notice to the person filing the statement, to the insurer, and to such other
4 persons as may be designated by the Commissioner."

5 Sec. 32. G.S. 58-19-15(h) reads as rewritten:

6 "(h) The provisions of this section do not apply to any offer, request, invitation,
7 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not
8 having been made or entered into for the purpose and not having the effect of changing
9 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended
10 within the purposes of this section. Nor does this section apply to any transaction that is
11 subject to the provisions of G.S. 58-7-150."

12 Sec. 33. G.S. 58-19-25(a) reads as rewritten:

13 "(a) Every insurer that is licensed to do business in this State and that is a member
14 of an insurance holding company system shall register with the Commissioner, except a
15 foreign insurer subject to registration requirements and standards adopted by statute or
16 regulation in the jurisdiction of its domicile that are substantially similar to those
17 contained in this section and G.S. 58-19-30(a). ~~Such~~ The insurer shall also file a copy of
18 its registration statement and any amendments ~~thereto~~ to the statement in each state in
19 which that insurer is authorized to do business if requested by the insurance regulator of
20 that state. Any insurer that is subject to registration under this section shall register
21 within 30 days after it becomes subject to registration, and an amendment to the
22 registration statement shall be filed by March ~~4~~ 31 of each year for any changes that
23 may have occurred during the previous calendar year; unless the Commissioner for
24 good cause shown extends the time for registration or filing, and then within ~~such~~ that
25 extended time. All registration statements shall contain a summary, on a form
26 prescribed by the Commissioner, outlining all items in the current registration statement
27 representing changes from the prior registration statement. The Commissioner may
28 require any insurer that is a member of a holding company system that is not subject to
29 registration under this section to furnish a copy of the registration statement or other
30 information filed by ~~such~~ the insurance company with the insurance regulator of its
31 domiciliary jurisdiction."

32 Sec. 34. G.S. 58-19-25(d) reads as rewritten:

33 "(d) Subject to G.S. ~~58-19-30(b), 58-19-30(c)~~, each registered insurer shall report
34 to the Commissioner all dividends and other distributions to shareholders within 15
35 business days following the declaration thereof. The Commissioner may prescribe the
36 form to be used to report that information."

37 Sec. 35. G.S. 58-19-30(b) reads as rewritten:

38 "(b) The following transactions involving a domestic insurer and any person in its
39 holding company system may not be entered into unless the insurer has notified the
40 Commissioner in writing of its intention to enter into ~~such~~ the transaction at least 30
41 days ~~prior thereto~~, before the transaction, or such shorter period as the Commissioner
42 permits, and the Commissioner has not disapproved it within ~~such~~ that period:

- 43 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
44 or investments, provided ~~such~~ the transactions equal or exceed: (i)

1 with respect to nonlife insurers, the lesser of three percent (3%) of the
2 insurer's admitted assets or twenty-five percent (25%) of surplus as
3 regards policyholders; (ii) with respect to life insurers, three percent
4 (3%) of the insurer's admitted assets; each as of the preceding 31st day
5 ~~of December 31, next preceding.~~

6 (2) Loans or extensions of credit to any person who is not affiliated, where
7 the insurer makes ~~such~~the loans or extensions of credit with the
8 agreement or understanding that the proceeds of ~~such~~the transactions,
9 in whole or in substantial part, are to be used to make loans or
10 extensions of credit to, to purchase assets of, or to make investments
11 in, any affiliate of the insurer making ~~such~~the loans or extensions of
12 credit provided ~~such~~the transactions equal or exceed: (i) with respect
13 to nonlife insurers, the lesser of three percent (3%) of the insurer's
14 admitted assets or twenty-five percent (25%) of surplus as regards
15 policyholders; (ii) with respect to life insurers, three percent (3%) of
16 the insurer's admitted assets; each as of the preceding 31st day of
17 December 31, next preceding.

18 (3) Reinsurance agreements or modifications ~~thereto~~to the agreements in
19 which the reinsurance premium or a change in the the insurer's
20 liabilities equals or exceeds five percent (5%) of the insurer's surplus
21 as regards policyholders, as of the preceding 31st day of December 31,
22 ~~next preceding,~~ including those agreements that may require as
23 consideration the transfer of assets from an insurer to a nonaffiliate, if
24 an agreement or understanding exists between the insurer and
25 nonaffiliate that any portion of ~~such~~the assets will be transferred to
26 one or more affiliates of the insurer.

27 (4) All management ~~agreements that would place control of the insurer outside~~
28 ~~of the insurance holding company system.~~ agreements, service contracts,
29 or cost-sharing arrangements wherein the annual aggregate cost to the
30 insurer would equal or exceed the amounts specified in subdivision (1)
31 of this subsection.

32 (5) ~~All service contracts or cost-sharing arrangements wherein the annual~~
33 ~~aggregate cost to the insurer would equal or exceed the amounts~~
34 ~~specified in subdivision (1) of this subsection.~~

35 (6)(5) Any material transactions, specified by rule, that the Commissioner
36 determines may adversely affect the interests of the insurer's
37 policyholders.

38 Nothing in this section authorizes or permits any transactions that, in the case of an
39 insurer, not a member of the same holding company system, would be otherwise
40 contrary to law. A domestic insurer may not enter into transactions that are part of a
41 plan or series of like transactions with persons within the holding company system if the
42 purpose of those separate transactions is to avoid the statutory threshold amount and
43 thus avoid the review that would otherwise occur. If the Commissioner determines that
44 such separate transactions were entered into over any 12-month period for ~~such~~that

1 purpose, ~~he~~ the Commissioner may exercise ~~his~~ the Commissioner's authority under
2 G.S. 58-19-50. The Commissioner, in reviewing transactions pursuant to this
3 subsection, shall consider whether the transactions comply with the standards set forth
4 in subsection (a) of this section and whether they may adversely affect the interests
5 of policyholders. The Commissioner shall be notified within 30 days after any
6 investment of a domestic insurer in any one corporation if, as a result of ~~any such~~ the
7 investment, the total investment in ~~such~~ the corporation by the insurance holding
8 company system exceeds ten percent (10%) of ~~such~~ the corporation's voting securities."

9 Sec. 36. G.S. 58-19-30(c) reads as rewritten:

10 "(c) No domestic insurer shall pay any extraordinary dividend or make any other
11 extraordinary distribution to its shareholders until (i) 30 days after the Commissioner
12 has received notice of the declaration thereof and has not within ~~such~~ that period
13 disapproved ~~such~~ the payment or (ii) the Commissioner has approved ~~such~~ the payment
14 within ~~such~~ the 30-day period.

15 For the purposes of this section, an 'extraordinary dividend' or 'extraordinary
16 distribution' includes any dividend or distribution of cash or other property, whose fair
17 market value together with that of other dividends or distributions made within the
18 preceding 12 months exceeds the ~~greater~~ lesser of (i) ten percent (10%) of ~~such~~ the
19 insurer's surplus as regards policyholders as of the preceding 31st day of December 31,
20 ~~next preceding,~~ or (ii) the net gain from operations of ~~such~~ the insurer, if ~~such~~ the insurer
21 is a life ~~insurer;~~ insurer, or the ~~greater of (i) the net income or (ii) the net investment~~ income,
22 if ~~such~~ the insurer is not a life insurer, not including realized capital gains, for the 12-
23 month period ending the preceding 31st day of December 31; next preceding; but does not
24 include pro rata distributions of any class of the insurer's own securities. In determining
25 whether a dividend or distribution is extraordinary, an insurer other than a life insurer
26 may carry forward net income from the previous two calendar years that has not already
27 been paid out as dividends. This carryforward shall be computed by taking the net
28 income from the second and third preceding calendar years, not including realized
29 capital gains, less dividends paid in the second and immediate preceding calendar years.

30 Notwithstanding any other provision of law, an insurer may declare an extraordinary
31 dividend or distribution that is conditional upon the Commissioner's ~~approval thereof;~~
32 approval, and ~~such a~~ the declaration shall confer no rights upon shareholders until (i)
33 the Commissioner has approved the payment of ~~such a~~ the dividend or
34 distribution or (ii) the Commissioner has not disapproved ~~such~~ the payment within the
35 30-day period referred to above."

36 Sec. 37. G.S. 58-19-45(c) reads as rewritten:

37 "(c) In any case where a person has acquired or is proposing to acquire any voting
38 securities in violation of this Article or any rule or order of the Commissioner under this
39 Article, the Superior Court of Wake County may, on such notice as the court considers
40 appropriate and upon the application of the insurer or the Commissioner, seize or
41 sequester any voting securities of the insurer owned directly or indirectly by ~~such~~ the
42 person, and issue ~~such an~~ order with respect thereto as may be appropriate to effectuate
43 the provisions of this Article. Notwithstanding any other provision of law, for the

1 purposes of this Article the sites of the ownership of the securities of domestic insurers
2 are in this State."

3 Sec. 38. Article 19 of Chapter 58 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 58-19-17. Foreign or alien insurer's report of change of control.**

6 (a) As used in this section, 'controlling capital stock' means enough of an
7 insurer's shares of the issued and outstanding stock, as defined in G.S. 58-19-5(2), to
8 give its owner the power to exercise a controlling influence over the management or
9 policies of the insurer.

10 (b) If there is a change in the controlling capital stock or a change of twenty-five
11 percent (25%) or more of the assets of a foreign or alien insurer, the insurer shall report
12 the change in writing to the Commissioner within 30 days after the effective date of the
13 change. The report shall be in a form prescribed by the Commissioner and shall contain
14 the name and address of the new owners of the controlling stock or assets, the nature
15 and value of the new assets, and other relevant information that the Commissioner
16 requires."

17 Sec. 39. G.S. 58-21-20(a)(2) reads as rewritten:

18 "(2) Qualifies under one of the following subdivisions:

- 19 a. Has capital and surplus or its equivalent under the laws of its
20 domiciliary jurisdiction, which equals either:
21 1. ~~this~~ This State's minimum capital and surplus requirements
22 under G.S. 58-7-75-G.S. 58-7-75, or
23 2. Fifteen million dollars (\$15,000,000),
24 whichever is greater, except that nonadmitted insurers already
25 qualified under this Article must have ten million dollars
26 (\$10,000,000) by December 31, 1991, twelve million five
27 hundred thousand dollars (\$12,500,000) by December 31, 1992,
28 and fifteen million dollars (\$15,000,000) by December 31,
29 1993. The requirements of this sub-subdivision may be
30 satisfied by an insurer possessing less than the commitment
31 capital and surplus upon an affirmative finding of acceptability
32 by the Commissioner. The finding shall be based upon such
33 factors as quality of management, capital and surplus of any
34 parent company, company underwriting profit and investment
35 income trends, and the insurer's record and reputation within the
36 industry. In no event shall the Commissioner make an
37 affirmative finding of acceptability when the insurer's capital
38 and surplus is less than four million five hundred thousand
39 dollars (\$4,500,000).

40 In addition, an alien insurer qualifies under this subdivision if
41 it maintains in the United States an irrevocable trust fund in
42 either a national bank or a member of the Federal Reserve
43 System, in an amount not less than ~~one million five hundred~~
44 ~~thousand dollars (\$1,500,000)~~ two million five hundred thousand

dollars (\$2,500,000) for the protection of all of its policyholders in the ~~United States~~ United States, and ~~such~~ the trust fund consists of cash, securities, letters of credit, or of investment of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. ~~Such~~ The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; or

- b. In the case of any Lloyd's plans or other similar unincorporated group of ~~alien~~ individual insurers, maintains a trust fund of not less than fifty million dollars (\$50,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and ~~such~~ the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and
- c. In the case of an 'insurance exchange' created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than ~~fifteen million dollars (\$15,000,000)~~ fifty million dollars (\$50,000,000) in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than ~~one million five hundred thousand dollars (\$1,500,000)~~ three million dollars (\$3,000,000). ~~In the event~~ If the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section."

Sec. 40. Article 30 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-30-12. Duty to report insurer impairment; violations; penalties.

(a) As used in this section:

- (1) 'Chief executive officer', as used in subsection (b) of this section, means the person, irrespective of title, designated by the board of directors or trustees of an insurer as the person charged with administering and implementing an insurer's policies and procedures.
- (2) 'Impaired', as used in subsections (b) and (c) of this section, means a financial condition in which the assets of an insurer are less than the sum of the insurer's minimum required capital, minimum required surplus, and all liabilities as determined in accordance with the requirements for the preparation and filing of a financial statement under G.S. 58-2-165 and under other provisions of this Chapter.

1 (3) 'Insolvent', as used in subsection (c) of this section, has the same
2 meaning as set forth in G.S. 58-30-10(13).

3 (b) Whenever an insurer is impaired, its chief executive officer shall, as soon as
4 is reasonably possible, notify the Commissioner in writing of the impairment and shall
5 at the same time notify in writing all of the members of the board of directors or trustees
6 of the insurer, if the chief executive officer knows or has reason to know of the
7 impairment. An officer, director, or trustee of an insurer shall notify the chief executive
8 officer of the impairment of the insurer if the officer, director, or trustee knows or has
9 reason to know that the insurer is impaired. Any person who knowingly violates this
10 subsection shall, upon conviction, be guilty of a misdemeanor and fined not more than
11 fifty thousand dollars (\$50,000) or imprisoned for not more than two years, or both.

12 (c) Any person who willfully:

13 (1) Conceals any property belonging to an insurer; or

14 (2) Transfers or conceals in contemplation of a delinquency proceeding
15 the person's own property or property belonging to an insurer; or

16 (3) Conceals, destroys, mutilates, alters, or makes a false entry in any
17 document that affects or relates to the property of an insurer or
18 withholds any such document from a receiver, trustee, or other officer
19 of a court entitled to its possession; or

20 (4) Gives, obtains, or receives a thing of value for acting or forbearing to
21 act in any court proceedings;

22 and any such act results in or contributes to an insurer becoming impaired or insolvent;
23 shall be guilty of a Class H felony."

24 Sec. 41. G.S. 58-30-15(c) reads as rewritten:

25 "(c) In addition to other grounds for jurisdiction provided by the laws of this State,
26 the Court has jurisdiction over a person served pursuant to Chapter 1A of the General
27 Statutes or other applicable provisions of law in an action brought by the receiver of a
28 domestic insurer or an alien insurer domiciled in this State:

29 (1) If the person served is obligated to the insurer in any way as an
30 incident to any agency or brokerage arrangement that may exist or has
31 existed between the insurer and the agent or broker, in any action on or
32 incident to the obligation; or

33 (2) If the person served is a reinsurer who has at any time entered into a
34 contract of reinsurance with an insurer against which a rehabilitation
35 or liquidation order is in effect when the action is commenced, or is an
36 agent or broker of or for the reinsurer, in any action on or incident to
37 the reinsurance contract; or

38 (3) If the person served is or has been an officer, manager, trustee,
39 organizer, promoter, or person in a position of comparable authority or
40 influence, in an insurer against which a rehabilitation or liquidation
41 order is in effect when the action is commenced, in any action
42 resulting from such a relationship with the ~~insurer~~-insurer; or

43 (4) If the person served is or was, when the delinquency proceeding was
44 begun against the insurer, holding assets in which the receiver claims

1 an interest on behalf of the insurer, in any action concerning the assets;
2 or

3 (5) If the person served is obligated to the insurer in any way whatsoever,
4 in any action on or incident to the obligation."

5 Sec. 42. Article 30 of Chapter 58 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 58-30-22. Powers of Commissioner and receiver to examine or audit books or**
8 **records.**

9 (a) As used in this section, 'person' includes an agent of the insurer; a broker,
10 ceding or assuming reinsurer, or reinsurance intermediary that has done business with
11 the insurer; or any affiliate of the insurer.

12 (b) In addition to other powers granted under this Chapter, the Commissioner in
13 any supervision proceeding under this Article and a receiver in any delinquency
14 proceeding under this Article has the power to examine or audit the books or records of
15 any person insofar as those books or records relate to the business activities of the
16 insurer that is under supervision or subject to a delinquency proceeding.

17 (c) In any examination or audit authorized under this section, the person
18 examined or audited shall reimburse the Commissioner or receiver for the cost of the
19 examination or audit."

20 Sec. 43. G.S. 58-30-60(b) reads as rewritten:

21 "(b) The Commissioner may consider any or all of the following standards to
22 determine whether the continued operation of any licensed insurer is hazardous to its
23 policyholders, creditors, or the general public:

24 (1) Adverse findings reported in financial condition and market conduct
25 examination reports;

26 (2) The NAIC Insurance Regulatory Information System and its related
27 reports;

28 (3) The ratios of commission expense, general insurance expense, policy
29 benefits, and reserve increases as to annual premium and net
30 investment income that could lead to an impairment of capital and
31 surplus;

32 (4) Whether an insurer's asset portfolio, when viewed in light of current
33 economic conditions, is not of sufficient value, liquidity, or diversity to
34 assure the insurer's ability to meet its outstanding obligations as they
35 mature;

36 (5) The ability of an assuming reinsurer to perform and whether the ceding
37 insurer's reinsurance program provides sufficient protection for the
38 insurer's remaining surplus, after taking into account the insurer's cash
39 flow and the classes of business written as well as the financial
40 condition of the assuming reinsurer;

41 (6) Whether an insurer's operating loss in the last 12-month period or any
42 shorter time, including net capital gain or loss, changes in nonadmitted
43 assets, and cash dividends paid to shareholders, is greater than fifty

- 1 percent (50%) of the insurer's remaining policyholders' surplus in
2 excess of the minimum required;
3 (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened
4 with insolvency, or delinquent in payment of its monetary or any other
5 obligation;
6 (8) Contingent liabilities, pledges, or guaranties that either individually or
7 collectively involve a total amount that in the Commissioner's opinion
8 may affect an insurer's solvency;
9 (9) Whether any controlling person of an insurer is delinquent in the
10 transmitting to or payment of net premiums to the insurer;
11 (10) The age and collectibility of receivables;
12 (11) Whether the management of an insurer, including officers, directors, or
13 any other person who directly or indirectly controls the operation of
14 the insurer, fails to possess or demonstrate the competence, fitness, or
15 reputation considered by the Commissioner to be necessary to serve
16 the insurer in that position;
17 (12) Whether the management of an insurer has failed to respond to the
18 Commissioner's inquiries about the condition of the insurer or has
19 furnished false and misleading information in response to an inquiry
20 by the Commissioner;
21 (13) Whether the management of an insurer has filed any false or
22 misleading sworn financial statement, has released a false or
23 misleading financial statement to a lending institution or to the general
24 public, or has made a false or misleading entry or omitted an entry of
25 material amount in the insurer's books;
26 (14) Whether the insurer has grown so rapidly and to such an extent that it
27 lacks adequate financial and administrative capacity to meet its
28 obligations in a timely manner; or
29 (15) Whether the insurer has experienced or will experience in the
30 foreseeable future cash flow or liquidity problems.

31 To determine an insurer's financial condition under this Article, the Commissioner
32 may: disregard any credit or amount receivable resulting from transactions with a
33 reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
34 make appropriate adjustments to asset values attributable to investments in or
35 transactions with parents, subsidiaries, or affiliates of an insurer; refuse to recognize the
36 stated value of accounts receivable if the insurer's ability to collect receivables is highly
37 speculative in view of the age of the account or the financial condition of the debtor; or
38 increase the insurer's liability in an amount equal to any contingent liability, pledge, or
39 guarantee not otherwise included if there is a substantial risk that the insurer will be
40 called upon to meet the obligation undertaken within the next 12-month period.

41 If upon examination or at any other time the Commissioner has reasonable cause to
42 believe that any domestic insurer is in such condition as to render the continuance of its
43 business hazardous to the public or to holders of its policies or certificates of insurance,

1 or if ~~such~~ the domestic insurer gives its consent, then the Commissioner shall upon ~~his~~
2 the Commissioner's determination:

3 (1) Notify the insurer of ~~his~~ that determination; and

4 (2) Furnish to the insurer a written list of the Commissioner's requirements
5 to abate ~~his~~ that determination.

6 The written list may include requirements that the insurer: reduce the total amount of
7 present and potential liability for policy benefits by reinsurance; reduce, suspend, or
8 limit the volume of insurance being accepted or renewed; reduce general insurance and
9 commission expenses by specified methods; increase its capital and surplus; suspend or
10 limit its declaration and payment of dividends to its stockholders or policyholders; file
11 reports in a form acceptable to the Commissioner concerning the market value of its
12 assets; limit or withdraw from certain investments or discontinue certain investment
13 practices to the extent the Commissioner considers to be necessary; document the
14 adequacy of premium rates in relation to the risks insured; or file, in addition to regular
15 annual financial statements, interim financial reports on the form adopted by the NAIC
16 or on such format prescribed by the Commissioner. Notwithstanding any other
17 provision of law limiting the frequency or amount of premium rate adjustments, the
18 Commissioner may include in ~~his~~ the list of requirements ~~such~~ any rate adjustments for
19 any kinds of insurance written by the insurer that the Commissioner considers necessary
20 to improve the financial condition of the insurer."

21 Sec. 44. Article 30 of Chapter 58 of the General Statutes is amended by
22 adding a new section to read:

23 "**§ 58-30-62. Administrative supervision of insurers.**

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

38 (b) This section applies to all domestic insurers and any other insurer doing
39 business in this State whose state of domicile has asked the Commissioner to apply the
40 provisions of this section to that insurer.

41 (c) An insurer may be subject to administrative supervision by the Commissioner
42 if upon examination or at any other time it appears to the Commissioner that the insurer:
43 has exceeded its powers; has failed to comply with applicable provisions of this

1 Chapter; is conducting its business in a manner that is hazardous to the public or to its
2 insureds; or consents to administrative supervision.

3 (d) If the Commissioner determines that the conditions set forth in subsection (c)
4 of this section exist, the Commissioner shall: notify the insurer of that determination;
5 furnish to the insurer a written list of the requirements to abate those conditions; and
6 notify the insurer that it is under the supervision of the Commissioner and that the
7 Commissioner is applying and effectuating the provisions of this section.

8 (e) If placed under administrative supervision, the insurer shall have 60 days, or a
9 different period of time determined by the Commissioner, to comply with the
10 requirements of the Commissioner under this section. If the Commissioner determines
11 after notice and hearing that the conditions giving rise to the supervision still exist at the
12 end of the supervision period specified in this subsection, the Commissioner may extend
13 the period; or if the Commissioner determines that none of the conditions giving rise to
14 the supervision exist, the Commissioner shall release the insurer from supervision.

15 (f) Notwithstanding any other provision of law and except as set forth in this
16 section, all proceedings, hearings, notices, correspondence, reports, records, and other
17 information in the possession of the Commissioner or the Department relating to the
18 supervision of any insurer are confidential. The Department shall have access to such
19 proceedings, hearings, notices, correspondence, reports, records, or other information as
20 permitted by the Commissioner. The Commissioner may open the proceedings or
21 hearings or disclose the notices, correspondence, reports, records, or information to a
22 department, agency or instrumentality of this or another state of the United States if the
23 Commissioner determines that the disclosure is necessary or proper for the enforcement
24 of the laws of this or another state of the United States. The Commissioner may open
25 the proceedings or hearings or make public the notices, correspondence, reports,
26 records, or other information if the Commissioner considers that it is in the best interest
27 of the insurer, its insureds or creditors, or the general public. This section does not
28 apply to hearings, notices, correspondence, reports, records, or other information
29 obtained upon the appointment of a receiver for the insurer by a court of competent
30 jurisdiction.

31 (g) During the period of supervision, the Commissioner shall serve as the
32 administrative supervisor. The Commissioner may provide that the insurer shall not do
33 any of the following during the period of supervision, without the Commissioner's prior
34 approval: dispose of, convey, or encumber any of its assets or its business in force;
35 withdraw from any of its bank accounts; lend or invest any of its funds; transfer any of
36 its property; incur any debt, obligation, or liability; merge or consolidate with another
37 company; establish new premiums or renew any policies; enter into any new
38 reinsurance contract or treaty; terminate, surrender, forfeit, convert, or lapse any
39 insurance coverage, except for nonpayment of premiums due; release, pay, or refund
40 premium deposits, accrued cash, or loan values, unearned premiums, or other reserves
41 on any insurance coverage; make any material change in management; increase salaries
42 or benefits of officers or directors or make preferential payment of bonuses, dividends,
43 or other payments considered preferential; or make any other change in its operations
44 that the Commissioner considers to be material.

1 (h) During the period of supervision the insurer may contest an action taken or
2 proposed to be taken by the Commissioner, specifying why the action being complained
3 of would not result in improving the insurer's condition.

4 (i) This section does not limit powers granted to the Commissioner by any other
5 provision of law. This section does not preclude the Commissioner from initiating
6 judicial proceedings to place an insurer in a delinquency proceeding under this Article,
7 regardless of whether the Commissioner has previously initiated administrative
8 supervision proceedings under this section or under G.S. 58-30-60 against the insurer.
9 The determination as to actions under this section is in the Commissioner's discretion.

10 (j) Notwithstanding any other provision of law, the Commissioner may meet
11 with a supervisor appointed under this section and with the attorney or other
12 representative of the supervisor, without the presence of any other person, at the time of
13 any proceeding or during the pendency of any proceeding held under the authority of
14 this section, to carry out the Commissioner's duties under this section or for the
15 supervisor to carry out the supervisor's duties under this section.

16 (k) There is no liability by, and no cause of action of any nature arises against,
17 the Commissioner for any acts or omissions by the Commissioner in the performance of
18 the Commissioner's powers and duties under this section."

19 Sec. 45. Article 30 of Chapter 58 of the General Statutes is amended by
20 adding a new subsection to read:

21 **"§ 58-30-127. Duties of agents.**

22 (a) Every person who receives notice in the form prescribed in G.S. 58-30-125
23 that an insurer that person represents as an agent is the subject of a liquidation order
24 shall, upon request of the liquidator and within 60 days after receipt of the request,
25 provide to the liquidator the information in the agent's records related to any policy
26 issued by the insurer through the agent; and if the agent is a general agent, the
27 information in the general agent's records related to any policy issued by the insurer
28 through a subagent under contract with the general agent, including the name and
29 address of the subagent.

30 (b) For the purpose of this section, a policy is issued through an agent if the agent
31 has a property interest in the expiration of the policy or if the agent has had in the
32 agent's possession a copy of the declarations of the policy at any time during the life of
33 the policy, except where the ownership of the expiration of the policy has been
34 transferred to another person.

35 (c) Any agent failing to provide information to the liquidator as required by this
36 section is to be subject to G.S. 58-2-70.

37 (d) The provisions of this section are in addition to any other duties in this
38 Chapter that are placed on agents."

39 Sec. 46. G.S. 58-30-140 is amended by adding a new subsection to read:

40 "(d) Every person receiving any property from the insurer or any benefit thereof as
41 the result of a fraudulent transfer under subsection (a) of this section is personally liable
42 therefor and is bound to account to the liquidator."

43 Sec. 47. G.S. 58-30-160 reads as rewritten:

44 **"§ 58-30-160. Setoffs and counterclaims. Setoffs.**

1 (a) Mutual debts or mutual ~~credits~~ credits, whether arising out of one or more
2 contracts between the insurer and another person in connection with any action or
3 proceeding under this Article shall be set off and the balance only shall be allowed or
4 paid, except as provided in ~~subsection (b)~~ subsections (b), (d), and (e) of this section and
5 in G.S. 58-30-175.

6 (b) No setoff or ~~counterclaim~~ shall be allowed in favor of any person where:

7 (1) The obligation of the insurer to the person would not at the date of the
8 filing of a petition for liquidation entitle the person to share as a
9 claimant in the assets of the insurer;

10 (2) The obligation of the insurer to the person was purchased by or
11 transferred to the person with a view to its being used as a setoff;

12 (3) The obligation of the person is to pay an assessment levied against the
13 members or subscribers of the insurer, or is to pay a balance upon a
14 subscription to the capital stock of the insurer, or is in any other way in
15 the nature of a capital contribution; ~~or~~

16 (4) The obligation of the person is to pay earned premiums to the ~~insurer~~
17 insurer;

18 (5) The obligation of the insurer is owed to an affiliate of the person, or to
19 any other entity or association other than the person;

20 (6) The obligation of the person is owed to an affiliate of the insurer, or to
21 any other entity or association other than the insurer;

22 (7) The obligations between the person and the insurer arise out of
23 transactions where either the person or the insurer has assumed risks
24 and obligations from the other party and then has ceded back to that
25 party substantially the same risks and obligations;

26 (8) The obligation of the person is to pay to the insurer sums held in a
27 fiduciary capacity for the insurer; or

28 (9) The person alone or together with any other member of its insurance
29 company holding system owns fifty percent (50%) or more of the
30 voting stock of the insurer.

31 (c) A setoff shall be permitted to local agents against agents' balances otherwise
32 payable to the domiciliary or ancillary receiver for the amount expended by ~~such~~ the
33 agents to replace insurance coverage of their insureds and the reasonable expenses
34 incident thereto as a result of any domestic, foreign or alien insurer being placed in
35 delinquency proceedings. Agents claiming ~~such~~ a setoff shall within 60 days of
36 replacing ~~such~~ coverage provide a verified accounting of the replacement of ~~such~~ the
37 insurance to the domiciliary receiver, the ancillary receiver, if any, and the North
38 Carolina Insurance Guaranty Association or similar organization in the state of
39 residence of the policyholder. The verified accounting shall include the name of the
40 agent, the name of the insured, the policy number, the replacement policy number, the
41 cost of the replacement policy, the amount of unearned premium under each policy as to
42 which setoff is claimed, any claimed expenses and a verification that the accounting has
43 been provided to each of the persons and entities described herein. Unearned premiums
44 set off as provided above in any amount shall be deemed paid in full by the insurer and

1 no person shall have a claim for ~~such~~ the unearned premiums against the North Carolina
2 Insurance Guaranty Association or similar organization in the state of residence of the
3 policyholder.

4 (d) The receiver shall provide persons with accounting statements identifying
5 debts which are currently due and payable. Where a person owes to the insurer
6 currently due and payable balances, against which the person asserts setoff of mutual
7 credits which may become due and payable from the insurer in the future, the person
8 shall promptly pay to the receiver the currently due and payable amount; provided that,
9 notwithstanding any other provision of this Article, the receiver shall promptly and fully
10 refund, to the extent of the person's prior payments, any mutual credits that become due
11 and payable to the person by the insurer.

12 (e) Notwithstanding any other provision of this section, a setoff of sums due on
13 obligations in the nature of those set forth in subdivision (b)(7) of this section shall be
14 allowed for those sums accruing from business written where the contracts were entered
15 into, renewed, or extended with the express written approval of the insurance regulator
16 of the state of domicile of the now insolvent insurer, when in the judgment of the
17 regulator it was necessary to provide reinsurance in order to prevent or mitigate a
18 threatened impairment or insolvency of the insurer in connection with the exercise of
19 the regulator's official responsibilities."

20 Sec. 48. Section 47 of this act becomes effective January 1, 1992, and applies
21 to all contracts entered into, renewed, extended, or amended on or after that date, and to
22 debts or credits arising from any business written or transactions occurring on or after
23 January 1, 1992, pursuant to any contract, including those in existence prior to January
24 1, 1992; and shall supersede any agreements or contractual provisions that might be
25 construed to enlarge the setoff rights of any person under any contract with the insurer.
26 For purposes of this section any change in the terms of, or consideration from, any such
27 contract shall be deemed to be an amendment.

28 Sec. 49. The title of Article 34 of Chapter 58 of the General Statutes reads as
29 rewritten:

30 "~~Managing General Agents. Agency and Management Contracts.~~"

31 Sec. 50. G.S. 58-34-1 is repealed.

32 Sec. 51. Article 34 of Chapter 58 of the General Statutes is amended by
33 adding a new section to read:

34 "**§ 58-34-2. Managing general agents.**

35 (a) As used in this Article:

36 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under
37 common control', means the direct or indirect possession of the power
38 to direct or cause the direction of the management and policies of a
39 person, whether through the ownership of voting securities, by contract
40 other than a commercial contract for goods or nonmanagement
41 services, or otherwise, unless the power is the result of an official
42 position with or corporate office held by the person.

43 (2) 'Insurer' means a domestic insurer but does not mean a reciprocal
44 regulated under Article 15 of this Chapter.

1 (3) 'Managing general agent' or 'MGA' means any person who negotiates
2 and binds ceding reinsurance contracts on behalf of an insurer or
3 manages all or part of the insurance business of an insurer (including
4 the management of a separate division, department, or underwriting
5 office) and acts as an agent for the insurer, whether known as a
6 managing general agent, manager, or other similar term, who, with or
7 without the authority, either separately or together with persons under
8 common control, produces, directly or indirectly, and underwrites an
9 amount of gross direct written premium equal to or more than five
10 percent (5%) of the policyholder surplus as reported in the last annual
11 statement of the insurer in any one quarter or year. 'MGA' does not
12 mean an employee of the insurer; an underwriting manager who,
13 pursuant to contract, manages all the insurance operations of the
14 insurer, is under common control with the insurer, is subject to Article
15 19 of this Chapter, and whose compensation is not based on the
16 volume of premiums written; or a person who, under Article 15 of this
17 Chapter, is designated and authorized by subscribers as the attorney-
18 in-fact for a reciprocal having authority to obligate them on reciprocal
19 and other insurance contracts.

20 (4) 'Qualified actuary' means a person who meets the standards of a
21 qualified actuary as specified in the NAIC Annual Statement
22 Instructions, as amended or clarified by rule, order, directive, or
23 bulletin of the Department, for the type of insurer for which the MGA
24 is establishing loss reserves.

25 (5) 'Underwrite' means the authority to accept or reject risk on behalf of
26 the insurer.

27 (b) Control is presumed to exist if any person directly or indirectly owns,
28 controls, holds with the power to vote, or holds proxies representing ten percent (10%)
29 or more of the voting securities of any other person. The Commissioner may determine,
30 after furnishing all persons in interest notice and opportunity to be heard and making
31 specific findings of fact to support the determination, that control exists in fact,
32 notwithstanding the absence of a presumption to that effect. The Commissioner may
33 determine upon application that any person does not or will not upon the taking of some
34 proposed action control another person. The Commissioner may prospectively revoke
35 or modify that determination, after the notice and opportunity to be heard, whenever, in
36 the Commissioner's judgment, revocation, or modification is consistent with this
37 Article.

38 (c) No person shall act as an MGA with respect to risks located in this State for
39 an insurer unless that person is a licensed agent in this State. No person shall act as an
40 MGA representing an insurer with respect to risks located outside of this State unless
41 that person is licensed as an agent in this State; and the license may be a nonresident
42 license. The Commissioner may require a bond in an amount acceptable to the
43 Commissioner for the protection of the insurer. The Commissioner may require the
44 MGA to maintain an errors and omissions policy.

1 (d) No person acting as an MGA shall place business with an insurer unless there
2 is in force a written contract between the MGA and the insurer that sets forth the
3 responsibilities of each party and, where both parties share responsibility for a particular
4 function, specifies the division of such responsibilities, and that contains the following
5 minimum provisions:

6 (1) The insurer may terminate the contract for cause upon written notice to
7 the MGA. The insurer may suspend the underwriting authority of the
8 MGA during the pendency of any dispute regarding the cause for
9 termination.

10 (2) The MGA will render accounts to the insurer detailing all transactions
11 and remit all funds due under the contract to the insurer on not less
12 than a monthly basis.

13 (3) All funds collected for the account of an insurer will be held by the
14 MGA in a fiduciary capacity in a bank that is a member of the Federal
15 Reserve System. This account shall be used for all payments on behalf
16 of the insurer. The MGA may retain no more than three months
17 estimated claims payments and allocated loss adjustment expenses.

18 (4) Separate records of business written by the MGA will be maintained.
19 The insurer shall have access to and right to copy all accounts related
20 to its business in a form usable by the insurer, and the Commissioner
21 shall have access to all books, bank accounts, and records of the MGA
22 in a form usable to the Commissioner. The records shall be retained
23 according to the provisions of 11 NCAC 11C.0105.

24 (5) The contract may not be assigned in whole or part by the MGA.

25 (6) Appropriate underwriting guidelines, including: the maximum annual
26 premium volume; the basis of the rates to be charged; the types of risks
27 that may be written; maximum limits of liability; applicable
28 exclusions; territorial limitations; policy cancellation provisions; and
29 the maximum policy period. The insurer shall have the right to cancel
30 or nonrenew any policy of insurance subject to applicable laws and
31 rules.

32 (7) If the contract permits the MGA to settle claims on behalf of the
33 insurer:

34 a. All claims must be reported to the MGA in a timely manner.

35 b. A copy of the claim file will be sent to the insurer at its request
36 or as soon as it becomes known that the claim: has the potential
37 to exceed an amount determined by the insurer and approved by
38 the Commissioner; involves a coverage dispute; may exceed the
39 MGA's claims settlement authority; is open for more than six
40 months; or is closed by payment of an amount set by the insurer
41 and approved by the Commissioner.

42 c. All claim files will be the joint property of the insurer and
43 MGA. However, upon an order of liquidation of the insurer the
44 files shall become the sole property of the insurer or its estate;

- 1 the MGA shall have reasonable access to and the right to copy
2 the files on a timely basis.
- 3 d. Any settlement authority granted to the MGA may be
4 terminated for cause upon the insurer's written notice to the
5 MGA or upon the termination of the contract. The insurer may
6 suspend the settlement authority during the pendency of any
7 dispute regarding the cause for termination.
- 8 (8) Where electronic claims files are in existence, the contract must
9 address the timely transmission of the data.
- 10 (9) If the contract provides for a sharing of interim profits by the MGA,
11 and the MGA has the authority to determine the amount of the interim
12 profits by establishing loss reserves, controlling claim payments, or by
13 any other manner, interim profits will not be paid to the MGA until
14 one year after they are earned for property insurance business and five
15 years after they are earned on casualty business and not until the
16 profits have been verified under subsection (m) of this section.
- 17 (10) The MGA shall not:
- 18 a. Bind reinsurance or retrocessions on behalf of the insurer,
19 except that the MGA may bind facultative reinsurance contracts
20 pursuant to obligatory facultative agreements if the contract
21 with the insurer contains reinsurance underwriting guidelines
22 including, for both reinsurance assumed and ceded, a list of
23 reinsurers with which such automatic agreements are in effect,
24 the coverages and amounts or percentages that may be
25 reinsured, and commission schedules;
- 26 b. Commit the insurer to participate in insurance or reinsurance
27 syndicates;
- 28 c. Appoint any producer without assuring that the producer is
29 lawfully licensed to transact the type of insurance for which the
30 producer is appointed;
- 31 d. Without prior approval of the insurer, pay or commit the insurer
32 to pay a claim over a specified amount, net of reinsurance,
33 which shall not exceed one percent (1%) of the insurer's
34 policyholder's surplus as of December 31 of the last completed
35 calendar year;
- 36 e. Collect any payment from a reinsurer or commit the insurer to
37 any claim settlement with a reinsurer, without the insurer's prior
38 approval. If prior approval is given, a report must be promptly
39 forwarded to the insurer;
- 40 f. Permit its subproducer to serve on the insurer's board of
41 directors;
- 42 g. Jointly employ an individual who is employed with the insurer;
43 or
- 44 h. Appoint a sub-MGA.

1 (e) An insurer shall have on file by June 1 of each year an audited financial
2 report of each MGA with which it is doing business. The report shall include the
3 opinion of an independent certified public accountant, report the financial position of
4 the MGA as of the most recent year-end and the results of its operations and cash flows,
5 and include appropriate notes to financial statements. The insurer shall provide a copy
6 of the report to the Commissioner within 15 days of receipt by the insurer.

7 (f) If an MGA establishes loss reserves, the insurer shall provide with its annual
8 statement, in addition to any other required statement of actuarial opinion, the statement
9 of a qualified actuary attesting to the adequacy of loss reserves established on business
10 produced by the MGA. The statement shall comply in all respects with the NAIC
11 Annual Statement Instructions regarding the Statement of Actuarial Opinion.

12 (g) The insurer shall periodically, at least semiannually, conduct an on-site
13 review of the underwriting and claims processing operations of the MGA. The insurer
14 shall prepare and maintain a written report on the review and make it available to the
15 Commissioner upon the Commissioner's request.

16 (h) Binding authority for all reinsurance contracts, except those contracts
17 expressly permitted under sub-subdivision (d)(10)a. of this section, or participation in
18 insurance or reinsurance syndicates, shall rest with an officer of the insurer, who shall
19 not be affiliated with the MGA.

20 (i) Within 15 days after entering into or termination of a contract with an MGA,
21 the insurer shall provide written notification of the appointment or termination to the
22 Commissioner. Notices of appointment of an MGA shall include a copy of the contract,
23 a statement of duties that the MGA is expected to perform on behalf of the insurer, the
24 kinds of insurance for which the MGA is to be authorized to act, whether any affiliation
25 exists between the insurer and the MGA and the basis for the affiliation, and any other
26 information the Commissioner may request. The Commissioner may prescribe the form
27 to be used for notification of the information required by this item.

28 (j) The Commissioner shall disapprove any such contract that:

29 (1) Does not contain the required contract provisions specified in
30 subsection (d) of this section;

31 (2) Subjects the insurer to excessive charges for expenses or commission;

32 (3) Vests in the MGA any control over the management of the affairs of
33 the insurer to the exclusion of the board of directors of the insurer;

34 (4) Is entered into with any person if the person or its officers and
35 directors are of known bad character or have been affiliated directly or
36 indirectly through ownership, control, management, reinsurance
37 transactions, or other insurance or business relationships with any
38 person known to have been involved in the improper manipulation of
39 assets, accounts, or reinsurance; or

40 (5) Is determined by the Commissioner to contain provisions that are not
41 fair and reasonable to the insurer.

42 Failure of the Commissioner to disapprove any such contract within 30 days after the
43 contract has been filed with the Commissioner constitutes the Commissioner's approval
44 of the contract. An insurer may continue to accept business from such person until the

1 Commissioner disapproves the contract. Any disapproval shall be in writing. The
2 Commissioner may, after a hearing held under G.S. 58-2-50, withdraw approval of any
3 contract the Commissioner has previously approved upon finding that the basis of the
4 original approval no longer exists or that the contract has, in actual operation, shown
5 itself to be subject to disapproval on any of the grounds in this subsection.

6 (k) An insurer shall review its books and records each quarter to determine if any
7 agent has become an MGA. If the insurer determines that an agent has become an
8 MGA, the insurer shall promptly notify the agent of that determination and the insurer
9 and agent must fully comply with the provisions of this Article within 15 days.

10 (l) An insurer shall not appoint to its board of directors an officer, director,
11 employee, subagent, or controlling shareholder of its MGAs. This subsection does not
12 apply to relationships governed by Article 19 of this Chapter or, if applicable, G.S. 58-
13 7-157.

14 (m) The acts of an MGA are considered to be the acts of the insurer on whose
15 behalf it is acting. An MGA may be examined by the Commissioner under G.S. 58-2-
16 131, 58-2-132, or 58-2-133 as if it were an insurer.

17 (n) If the Commissioner finds after a hearing conducted in accordance with G.S.
18 58-2-50 that any person has violated any provision of this Article, the Commissioner
19 may order:

20 (1) For each separate violation, a civil penalty of one thousand dollars
21 (\$1,000) to be credited to the General Fund;

22 (2) Revocation or suspension of the agent's license; or

23 (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of
24 the insurer for any losses incurred by the insurer caused by a violation
25 of this Article committed by the MGA.

26 (o) Nothing in this section affects the Commissioner's right to impose any other
27 penalties provided for in this Chapter. Nothing in this Article limits or restricts the
28 rights of policyholders, claimants, and creditors."

29 Sec. 52. G.S. 58-34-5(c) reads as rewritten:

30 "(c) The standards for approval shall be as set forth under ~~G.S. 58-34-1~~. G.S. 58-
31 34-2(d)(5)."

32 Sec. 53. G.S. 58-34-10(b) reads as rewritten:

33 "(b) There shall be exempted from the filing requirement of this section contracts
34 by groups of affiliated insurers on a pooled funds basis or service company management
35 basis, where costs to the individual member insurers are charged on an actually incurred
36 or closely estimated basis. However, these contracts must be reduced to written form.

37 ~~G.S. 58-34-5, 58-34-10, and 58-34-15 do not apply to any power of attorney or other~~
38 ~~authority authorized by G.S. 58-138."~~

39 Sec. 54. G.S. 58-34-15(a) reads as rewritten:

40 "(a) The Commissioner must disapprove any ~~such~~ management contract or service
41 agreement filed under G.S. 58-34-10 if, at any time, ~~he~~ the Commissioner finds:

42 (1) That the service or management charges are based upon criteria
43 unrelated either to the managed insurer's profits or to the reasonable

1 customary and usual charges for such services or are based on factors
2 unrelated to the value of such services to the insurer; or

3 (2) That management personnel or other employees of the insurer are to be
4 performing management functions and receiving any remuneration
5 therefor through the management or service contract in addition to the
6 compensation by way of salary received directly from the insurer for
7 their services; or

8 (3) That the contract would transfer substantial control of the insurer or
9 any of the powers vested in the board of directors, by statute, articles
10 of incorporation, or bylaws, or substantially all of the basic functions
11 of the insurance company management; or

12 (4) That the contract contains provisions that would be clearly detrimental
13 to the best interest of policyholders, stockholders, or members of the
14 insurer; or

15 (5) That the officers and directors of the management firm are of known
16 bad character or have been affiliated, directly or indirectly, through
17 ownership, control, management, reinsurance transactions, or other
18 insurance or business relations with any person ~~or persons~~ known to
19 have been involved in the improper manipulation of assets, accounts,
20 or reinsurance."

21 Sec. 55. The title of Article 62 of Chapter 58 of the General Statutes reads as
22 rewritten:

23 **~~"LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY~~**
24 **ASSOCIATION."**

25 Sec. 56. Article 62 of Chapter 58 of the General Statutes is amended by
26 adding the following new sections:

27 **"§ 58-62-2. Title.**

28 This Article shall be known and may be cited as the North Carolina Life and Health
29 Insurance Guaranty Association Act.

30 **"§ 58-62-6. Purpose.**

31 (a) The purpose of this Article is to protect, subject to certain limitations, the
32 persons specified in G.S. 58-62-21(a) against failure in the performance of contractual
33 obligations, under life and health insurance policies and annuity contracts specified in
34 G.S. 58-62-21(b), because of the delinquency of the member insurer that issued the
35 policies.

36 (b) To provide this protection, an association of insurers is created to pay benefits
37 and to continue coverages as limited herein, and members of the Association are subject
38 to assessment to provide funds to carry out the purpose of this Article.

39 **"§ 58-62-11. Construction.**

40 This Article shall be liberally construed to effect the purpose under G.S. 58-62-6,
41 which shall constitute an aid and guide to interpretation.

42 **"§ 58-62-16. Definitions.**

43 As used in this Article:

44 (1) 'Account' means any of the two accounts created under G.S. 58-62-26.

- 1 (2) 'Association' means the North Carolina Life and Health Insurance
2 Guaranty Association created under G.S. 58-62-26.
- 3 (3) 'Board' means the board of directors of the Association established
4 under G.S. 58-62-31.
- 5 (4) 'Contractual obligation' means any obligation under a policy or
6 certificate under a group policy, or part thereof, for which coverage is
7 provided under G.S. 58-62-21.
- 8 (5) 'Covered policy' means any policy within the scope of this Article
9 under G.S. 58-62-21.
- 10 (6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer;
11 and 'delinquency' means an insurer impairment or insolvency.
- 12 (7) 'Health insurance' includes accident and health insurance, accident
13 insurance, and disability insurance.
- 14 (8) 'Impaired insurer' means a member insurer that, after the effective date
15 of this Article, is not an insolvent insurer, and (i) is deemed by the
16 Commissioner to be potentially unable to fulfill its contractual
17 obligations or (ii) is placed under an order of rehabilitation or
18 conservation by a court of competent jurisdiction.
- 19 (9) 'Insolvent insurer' means a member insurer that, after the effective
20 date of this Article, is placed under an order of liquidation with a
21 finding of insolvency by a court of competent jurisdiction.
- 22 (10) 'Insurance regulator' means the official or agency of another state that
23 is responsible for the regulation of a foreign insurer.
- 24 (11) 'Member insurer' means any insurer licensed or that holds a license to
25 transact in this State any kind of insurance for which coverage is
26 provided under G.S. 58-62-21; and includes any insurer whose license
27 in this State may have been suspended, revoked, not renewed or
28 voluntarily withdrawn, but does not include an entity governed by
29 Articles 65 through 67 of this Chapter; fraternal order or fraternal
30 benefit society; mandatory State pooling plan; mutual assessment
31 company or any entity that operates on an assessment basis; insurance
32 exchange; or any entity similar to any of the foregoing.
- 33 (12) 'Moody's Corporate Bond Yield Average' means the Monthly Average
34 Corporates as published by Moody's Investors Service, Inc., or any
35 successor thereto.
- 36 (13) 'Person' includes an individual, corporation, company, partnership,
37 association, or aggregation of individuals.
- 38 (14) 'Plan' means the plan of operation established under G.S. 58-62-46.
- 39 (15) 'Policy' includes a contract of insurance and an annuity contract.
- 40 (16) 'Premiums' means amounts received in any calendar year on covered
41 policies less premiums, considerations, and deposits returned thereon,
42 and less dividends and experience credits thereon. 'Premiums' does
43 not include any amounts received for any policies or for the parts of
44 any policies for which coverage is not provided under G.S. 58-62-

1 21(b); except that assessable premium shall not be reduced on account
2 of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-
3 21(d)(2) relating to limitations with respect to any one individual, any
4 one participant, and any one contract holder.

5 (17) 'Resident' means any person who resides in this State when a member
6 insurer is determined to be a delinquent insurer and to whom a
7 contractual obligation is owed. A person may be a resident of only
8 one state, which in the case of a person other than a natural person
9 shall be its principal place of business.

10 (18) 'Unallocated annuity contract' means any annuity contract or group
11 annuity certificate that is not issued to and owned by an individual,
12 except to the extent of any annuity benefits guaranteed to an individual
13 by an insurer under the contract or certificate.

14 **"§ 58-62-21. Coverage and limitations.**

15 (a) This Article provides coverage for the policies and contracts specified in
16 subsection (b) of this section:

17 (1) To persons who, regardless of where they reside (except for
18 nonresident certificate holders under group policies), are the
19 beneficiaries, assignees, or payees of the persons covered under
20 subdivision (2) of this subsection, and

21 (2) To persons who are owners or certificate holders under the policies, or
22 in the case of unallocated annuity contracts to the persons who are the
23 contract holders, and who are residents of this State, or who are not
24 residents of this State, but only under all of the following conditions:
25 (i) the insurers that issued the policies are domiciled in this State; (ii)
26 the insurers never held a license in the states in which the persons
27 reside; (iii) the states have associations similar to the association
28 created by this Article; and (iv) the persons are not eligible for
29 coverage by the associations.

30 (b) This Article provides coverage to the persons specified in subsection (a) of
31 this section for direct, nongroup life, health, annuity, and supplemental policies, for
32 certificates under direct group policies and contracts, and for unallocated annuity
33 contracts issued by member insurers, except as limited by this Article. Annuity
34 contracts and certificates under group annuity contracts include guaranteed investment
35 contracts, deposit administration contracts, unallocated funding agreements, allocated
36 funding agreements, structured settlement agreements, lottery contracts, and any
37 immediate or deferred annuity contracts.

38 (c) This Article does not provide coverage for:

39 (1) Any part of a policy not guaranteed by the insurer, or under which the
40 risk is borne by the policyholder;

41 (2) Any policy or contract of reinsurance, unless assumption certificates
42 have been issued;

43 (3) Any part of a policy to the extent that the rate of interest on which it is
44 based:

- 1 a. Averaged over the period of four years before the date on which
2 the Association becomes obligated with respect to the policy,
3 exceeds a rate of interest determined by subtracting two
4 percentage points from Moody's Corporate Bond Yield Average
5 averaged for that same four-year period or for a lesser period if
6 the policy was issued less than four years before the
7 Association became obligated; and
- 8 b. On and after the date on which the Association becomes
9 obligated with respect to the policy, exceeds the rate of interest
10 determined by subtracting three percentage points from
11 Moody's Corporate Bond Yield Average as most recently
12 available;
- 13 (4) Any plan or program of an employer, association, or similar entity to
14 provide life, health, or annuity benefits to its employees or members to
15 the extent that the plan or program is self-funded or uninsured,
16 including benefits payable by an employer, association, or similar
17 entity under:
- 18 a. A multiple employer welfare arrangement as defined in section
19 514 of the Employee Retirement Income Security Act of 1974,
20 as amended;
- 21 b. A minimum premium group insurance plan;
- 22 c. A stop-loss group insurance plan; or
- 23 d. An administrative services only contract;
- 24 (5) Any part of a policy to the extent that it provides dividends or
25 experience-rating credits, or provides that any fees or allowances be
26 paid to any person, including the policyholder, in connection with the
27 service to or administration of the policy;
- 28 (6) Any policy issued in this State by a member insurer at a time when it
29 was not licensed to issue the policy in this State;
- 30 (7) Any unallocated annuity contract issued to an employee benefit plan
31 protected under the federal Pension Benefit Guaranty Corporation; and
- 32 (8) Any part of any unallocated annuity contract that is not issued to or in
33 connection with a specific employee, union, or association of natural
34 persons benefit plan or a government lottery.
- 35 (d) The benefits for which the Association is liable do not, in any event, exceed
36 the lesser of:
- 37 (1) The contractual obligations for which the insurer is liable or would
38 have been liable if it were not a delinquent insurer; or
- 39 (2) With respect to any one individual, regardless of the number of
40 policies, three hundred thousand dollars (\$300,000) for all benefit,
41 including cash values.
- 42 (e) In no event is the Association liable to expend more than three hundred
43 thousand dollars (\$300,000) in the aggregate with respect to any one individual under
44 this section.

1 **"§ 58-62-26. Creation of the Association.**

2 (a) There is created a nonprofit legal entity to be known as the North Carolina
3 Life and Health Insurance Guaranty Association. All member insurers shall be and
4 remain members of the Association as a condition of their authority to transact
5 insurance in this State. The Association shall perform its functions under the Plan
6 established and approved under G.S. 58-62-46 and shall exercise its powers through the
7 Board established under G.S. 58-62-31. For purposes of administration and assessment,
8 the Association shall maintain two accounts:

9 (1) The life insurance and annuity account, which includes the following
10 subaccounts:

11 a. Life insurance account;

12 b. Annuity account.

13 (2) The health insurance account.

14 (b) The Association is under the immediate supervision of the Commissioner and
15 is subject to the applicable provisions of this Chapter. Meetings or records of the
16 Association may be opened to the public upon majority vote of the Board.

17 **"§ 58-62-31. Board of directors.**

18 (a) The Board shall consist of not less than five nor more than nine member
19 insurers serving terms as established in the Plan. The members of the Board shall be
20 selected by member insurers, subject to the Commissioner's approval. Vacancies on the
21 Board shall be filled for the remaining period of the term by a majority vote of the
22 remaining Board members, subject to the Commissioner's approval. To select the initial
23 Board, and initially organize the Association, the Board's predecessor shall notify all
24 member insurers of the time and place of the organizational meeting. In determining
25 voting rights at the organizational meeting, each member insurer is entitled to one vote
26 in person or by proxy. If the Board is not selected within 60 days after notice of the
27 organizational meeting, the Commissioner may appoint the initial members.

28 (b) In approving selections or in appointing members to the Board, the
29 Commissioner shall consider, among other things, whether all member insurers are
30 fairly represented.

31 (c) Members of the Board may be reimbursed from the assets of the Association
32 for expenses they incur as members of the Board, but they shall not otherwise be
33 compensated by the Association for their services.

34 **"§ 58-62-36. Powers and duties of the Association.**

35 (a) If a member insurer is an impaired domestic insurer, the Association may,
36 subject to any conditions imposed by the Association and approved by the
37 Commissioner that do not impair the contractual obligations of the impaired insurer and
38 that are, except in cases of court-ordered conservation or rehabilitation, also approved
39 by the impaired insurer:

40 (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or
41 reinsured, any or all of the policies of the impaired insurer;

42 (2) Provide such monies, pledges, notes, guarantees, or other means as are
43 proper to carry out subdivision (1) of this subsection and assure

1 payment of the contractual obligations of the impaired insurer pending
2 action under subdivision (1) of this subsection; or

3 (3) Lend money to the impaired insurer.

4 (b) If a member insurer is an impaired insurer, whether domestic, foreign, or
5 alien, and the insurer is not paying claims in a timely manner, then subject to the
6 preconditions specified in subsection (c) of this section, the Association shall, in its
7 discretion, either:

8 (1) Take any of the actions specified in subsection (a) of this section,
9 subject to the conditions therein; or

10 (2) Provide substitute benefits in lieu of the contractual obligations of the
11 impaired insurer solely for health claims, periodic annuity benefit
12 payments, death benefits, supplemental benefits, and cash withdrawals
13 for policyowners who petition therefor under claims of emergency or
14 hardship in accordance with standards proposed by the Association
15 and approved by the Commissioner.

16 (c) The Association is subject to the requirements of subsection (b) of this
17 section only if:

18 (1) The laws of the impaired insurer's state of domicile provide that until
19 all payments of or on account of the impaired insurer's contractual
20 obligations by all guaranty associations, along with all expenses
21 thereof and interest on all the payments and expenses, have been
22 repaid to the guaranty associations or a plan of repayment by the
23 impaired insurer has been approved by the guaranty associations, the
24 delinquency proceeding shall not be dismissed; neither the impaired
25 insurer nor its assets may be returned to the control of its shareholders
26 or private management; and the impaired insurer may not solicit or
27 accept new business or have any suspended or revoked license
28 restored; and

29 (2) The impaired insurer is a domestic insurer that has been placed under
30 an order of rehabilitation by a court of competent jurisdiction in this
31 State; or the impaired insurer is a foreign or alien insurer that has been
32 prohibited from soliciting or accepting new business in this State, its
33 license has been suspended or revoked in this State, and a petition for
34 rehabilitation or liquidation has been filed in a court of competent
35 jurisdiction in its state of domicile by that state's insurance regulator.

36 (d) If a member insurer is an insolvent insurer, the Association shall, in its
37 discretion, either:

38 (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or
39 reinsured, the policies of the insolvent insurer; or

40 (2) Assure payment of the contractual obligations of the insolvent insurer;
41 and

42 (3) Provide such monies, pledges, guarantees, or other means as are
43 reasonably necessary to discharge those duties; or

- 1 (4) With respect only to life and health insurance policies, provide benefits
2 and coverages in accordance with subsection (e) of this section.
- 3 (e) When proceeding under subdivision (b)(2) or (d)(4), the Association shall,
4 with respect to only life and health insurance policies:
- 5 (1) Assure payment of benefits for premiums identical to the premiums
6 and benefits (except for terms of conversion and renewability) that
7 would have been payable under the policies of the insolvent insurer,
8 for claims incurred:
- 9 a. With respect to group policies, not later than the earlier of the
10 next renewal date under the policies or 45 days, but in no event
11 less than 30 days after the date on which the Association
12 becomes obligated with respect to the policies;
- 13 b. With respect to individual policies, not later than the earlier of
14 the next renewal date (if any) under the policies or one year, but
15 in no event less than 30 days from the date on which the
16 Association becomes obligated with respect to the policies;
- 17 (2) Make diligent efforts to provide all known insureds or group
18 policyholders with respect to group policies 30 days' notice of the
19 termination of the benefits provided; and
- 20 (3) With respect to individual policies, make available to each known
21 insured, or owner if other than the insured, and with respect to an
22 individual formerly insured under a group policy who is not eligible
23 for replacement group coverage, make available substitute coverage on
24 an individual basis in accordance with the provisions of subsection (f)
25 of this section, if the insured had a right under law or the terminated
26 policy to convert coverage to individual coverage or to continue an
27 individual policy in force until a specified age or for a specified time,
28 during which the insurer had no right unilaterally to make changes in
29 any provision of the policy or had a right only to make changes in
30 premium by class.
- 31 (f) In providing the substitute coverage required under subdivision (e)(3) of this
32 section, the Association may offer either to reissue the terminated coverage or to issue
33 an alternative policy. An alternative or reissued policy shall be offered without
34 requiring evidence of insurability, and shall not provide for any waiting period or
35 exclusion that would not have applied under the terminated policy. The Association
36 may reinsure any alternative or reissued policy.
- 37 (g) Alternative life or health insurance policies adopted by the Association are
38 subject to the Commissioner's approval. The Association may adopt alternative policies
39 of various types for future issuance without regard to any particular delinquency.
40 Alternative policies shall contain at least the minimum statutory provisions required in
41 this State and provide benefits that are not unreasonable in relation to the premium
42 charged. The Association shall set the premium in accordance with a table of rates,
43 which it shall adopt. The premium shall reflect the amount of insurance to be provided
44 and the age and class of risk of each insured, but it shall not reflect any changes in the

1 health of the insured after the original policy was last underwritten. Any alternative
2 policy issued by the Association shall provide coverage of a type similar to that of the
3 policy issued by the delinquent insurer, as determined by the Association.

4 (h) If the Association elects to reissue terminated coverage at a premium rate
5 different from that charged under the terminated life or health insurance policy, the
6 premium shall be set by the Association in accordance with the amount of insurance
7 provided and the age and class of risk, subject to the approval of the Commissioner or
8 by a court of competent jurisdiction.

9 (i) The Association's obligations with respect to coverage under any life or
10 health insurance policy of the delinquent insurer or under any reissued or alternative
11 policy cease on the date the coverage or policy is replaced by another similar policy by
12 the policyholder, the insured, or the Association.

13 (j) When proceeding under subdivision (b)(2) of this section or under subsection
14 (c) of this section with respect to any policy carrying guaranteed minimum interest
15 rates, the Association shall assure the payment or crediting of a rate of interest
16 consistent with G.S. 58-62-21(c)(3).

17 (k) Nonpayment of premiums within 31 days after the date required under the
18 terms of any guaranteed, assumed, alternative, or reissued policy or substitute coverage
19 terminates the Association's obligations under the policy or coverage under this Article
20 with respect to the policy or coverage, except with respect to any claims incurred or any
21 net cash surrender value that may be due under this Article.

22 (l) Premiums due for coverage after an entry of an order of liquidation of an
23 insolvent insurer belong to and are payable at the direction of the Association; and the
24 Association is liable for unearned premiums owed to policyowners arising after the
25 entry of the order.

26 (m) The protection provided by this Article does not apply where any similar
27 guaranty protection is provided to residents of this State by the laws of the domiciliary
28 state or jurisdiction of a delinquent foreign or alien insurer.

29 (n) In carrying out its duties under subsections (b) through (d) of this section, the
30 Association may, subject to approval by the court:

31 (1) Impose permanent policy liens in connection with any guarantee,
32 assumption, or reinsurance agreement, if the Association finds that the
33 amounts that can be assessed under this Article are less than the
34 amounts needed to assure full and prompt performance of the
35 Association's duties under this Article, or that the economic or
36 financial conditions as they affect member insurers are sufficiently
37 adverse to render the imposition of the permanent policy liens to be in
38 the public interest;

39 (2) Impose temporary moratoria or liens on payments of cash values and
40 policy loans, or any other right to withdraw funds held in conjunction
41 with policies, in addition to any contractual provisions for deferral of
42 cash or policy loan value.

43 (o) If the Association fails to act within a reasonable period of time as provided
44 in subdivision (b)(2) of this section and subsections (d) and (e) of this section, the

1 Commissioner has the powers and duties of the Association under this Article with
2 respect to delinquent insurers.

3 (p) The Association may render assistance and advice to the Commissioner, upon
4 the Commissioner's request concerning rehabilitation, payment of claims, continuance
5 of coverage, or the performance of other contractual obligations of any delinquent
6 insurer.

7 (q) The Association has standing to appear before any court in this State with
8 jurisdiction over a delinquent insurer for which the Association is or may become
9 obligated under this Article. This standing extends to all matters germane to the powers
10 and duties of the Association, including, but not limited to, proposals for reinsuring,
11 modifying, or guaranteeing the policies of the delinquent insurer and the determination
12 of the policies and contractual obligations. The Association also has the right to appear
13 or intervene before a court in another state with jurisdiction over a delinquent insurer for
14 which the Association is or may become obligated or with jurisdiction over a third party
15 against whom the Association may have rights through subrogation of the insurer's
16 policyholders.

17 (r) Any person receiving benefits under this Article is considered to have been
18 assigned the rights under, and any causes of action relating to, the covered policy to the
19 Association to the extent of the benefits received because of this Article, whether the
20 benefits are payments of or on account of contractual obligations, continuation of
21 coverage, or provision of substitute or alternative coverages. The Association may
22 require an assignment to it of such rights and cause of action by any payee,
23 policyowner, beneficiary, insured or annuitant as a condition precedent to the receipt of
24 any right or benefits conferred by this Article upon the person. The subrogation rights
25 of the Association under this subsection have the same priority against the delinquent
26 insurer's assets as that possessed by the person entitled to receive benefits under this
27 Article. In addition to other provisions of this subsection, the Association has all
28 common-law rights of subrogation and any other equitable or legal remedy that would
29 have been available to the delinquent insurer or holder of a policy with respect to the
30 policy.

31 (s) The Association may:

32 (1) Enter into contracts that are necessary or proper to carry out the
33 provisions and purposes of this Article;

34 (2) Sue or be sued, including taking any legal actions necessary or proper
35 to recover any unpaid assessments under G.S. 58-62-41 and to settle
36 claims or potential claims against it;

37 (3) Borrow money to effect the purposes of this Article; any notes or other
38 evidence of indebtedness of the Association not in default shall be
39 legal investments for domestic insurers and may be carried as admitted
40 assets;

41 (4) Employ or retain persons that are necessary to handle the financial
42 transactions of the Association, and to perform other functions that
43 become necessary or proper under this Article;

1 (5) Take legal action that may be necessary to avoid payment of improper
2 claims;

3 (6) Exercise, for the purposes of this Article and to the extent approved by
4 the Commissioner, the powers of a domestic life or health insurer, but
5 in no case may the Association issue insurance policies or annuity
6 contracts other than those issued to perform its obligations under this
7 Article.

8 (t) The Association may join an organization of one or more other state
9 associations of similar purposes, in order to further the purposes of this Article and
10 administer the powers and duties of the Association.

11 **"§ 58-62-41. Assessments.**

12 (a) To provide the funds necessary to carry out the powers and duties of the
13 Association, the Board shall assess the member insurers, separately for each account, at
14 such time and for such amounts as the Board finds necessary. Assessments are due not
15 less than 30 days after prior written notice to the member insurers and shall accrue
16 interest at eight percent (8%) per annum on and after the due date.

17 (b) There shall be two classes of assessments, as follows:

18 (1) Class A assessments shall be made for the purpose of meeting
19 administrative and legal costs and other expenses and examinations
20 conducted under the authority of G.S. 58-62-56(e). Class A
21 assessments may be made whether or not they are related to a
22 particular delinquent insurer.

23 (2) Class B assessments shall be made to the extent necessary to carry out
24 the powers and duties of the Association under G.S. 58-62-36 with
25 regard to a delinquent insurer.

26 (c) The amount of any Class A assessment shall be determined by the Board and
27 may or may not be prorated. If prorated, the Board may provide that it be credited
28 against future Class B assessments. If not prorated, the assessment shall not exceed one
29 hundred fifty dollars (\$150.00) per member insurer in any one calendar year. The
30 amount of any Class B assessment shall be allocated for assessment purposes among the
31 accounts pursuant to an allocation formula, which may be based on the premiums or
32 reserves of the delinquent insurer or any other standard considered by the Board in its
33 sole discretion to be fair and reasonable under the circumstances.

34 (d) Class B assessments against member insurers for each account and
35 subaccount shall be in the proportion that the premiums received on business in this
36 State by each assessed member insurer or policies covered by each account for the three
37 most recent calendar years for which information is available preceding the year in
38 which the insurer became delinquent, as the case may be, bears to the premiums
39 received on business in this State for those calendar years by all assessed member
40 insurers.

41 (e) Assessments for funds to meet the requirements of the Association with
42 respect to a delinquent insurer shall not be made until necessary to implement the
43 purposes of this Article. Classification of assessments under subsection (b) of this

1 section and computation of assessments under this subsection shall be made with a
2 reasonable degree of accuracy.

3 (f) The Association may abate or defer, in whole or in part, the assessment of a
4 member insurer if, in the Board's opinion, payment of the assessment would endanger
5 the member insurer's ability to fulfill its contractual obligations. If an assessment
6 against a member insurer is abated, or deferred in whole or in part, the amount by which
7 the assessment is abated or deferred may be assessed against the other member insurers
8 in a manner consistent with the basis for assessments set forth in this section,
9 recognizing that exact determinations may not always be possible.

10 (g) The total of all assessments upon a member insurer for the life and annuity
11 account and for each subaccount thereunder shall not in any one calendar year exceed
12 two percent (2%) and for the health account shall not in any one calendar year exceed
13 two percent (2%) of the insurer's average premiums received in this State on the policies
14 and contracts covered by the account during the three calendar years preceding the year
15 in which an insurer became a delinquent insurer. If the maximum assessment, together
16 with the other assets of the Association in any account, does not provide in any one year
17 in either account an amount sufficient to carry out the Association's responsibilities, the
18 necessary additional funds shall be assessed as soon thereafter as permitted by this
19 Article.

20 (h) The Board may provide in the Plan a method of allocating funds among
21 claims, whether relating to one or more delinquent insurers, when the maximum
22 assessment will be insufficient to cover anticipated claims.

23 (i) If a one percent (1%) assessment for any subaccount of the life and annuity
24 account in any one year does not provide an amount sufficient to carry out the
25 Association's responsibilities, then under subsection (d) of this section, the Board shall
26 access all subaccounts of the life and annuity account for the necessary additional
27 amount, subject to the maximum stated in subsection (g) of this section.

28 (j) The Board may, by an equitable method as established in the Plan, refund to
29 member insurers, in proportion to the contribution of each insurer to that account, the
30 amount by which the assets of the account exceed the amount the Board finds is
31 necessary to carry out during the coming year the obligations of the Association with
32 regard to that account, including assets accruing from assignment, subrogation, net
33 realized gains, and income from investments. A reasonable amount may be retained in
34 any account to provide funds for the continuing expenses of the Association and for
35 future losses.

36 (k) It is proper for any member insurer, in determining its premium rates and
37 policyowner dividends as to any kind of insurance within the scope of this Article, to
38 consider the amount reasonably necessary to meet its assessment obligations under this
39 Article.

40 (l) The Association shall issue to each insurer paying an assessment under this
41 Article, other than a Class A assessment, a certificate of contribution, in a form
42 prescribed by the Commissioner, for the amount of the assessment so paid. All
43 outstanding certificates shall be of equal dignity and priority without reference to
44 amounts or dates of issue. A certificate of contribution may be shown by the insurer in

1 its financial statement as an asset in the form and for the amount, if any, and period of
2 time as the Commissioner approves.

3 **"§ 58-62-46. Plan of operation.**

4 (a) The Association shall submit to the Commissioner a Plan and any
5 amendments necessary or suitable to assure the fair, reasonable, and equitable
6 administration of the Association. The Plan and any amendments shall become
7 effective upon the Commissioner's written approval or unless the Commissioner has not
8 disapproved it within 30 days.

9 (b) If the Association fails to submit a suitable Plan within 120 days after the
10 effective date of this Article or if at any time thereafter the Association fails to submit
11 suitable amendments to the Plan, the Commissioner shall, after notice and hearing,
12 adopt rules that are necessary or advisable to carry out the provisions of this Article.
13 The rules shall continue in force until modified by the Commissioner or superseded by a
14 Plan submitted by the Association and approved by the Commissioner.

15 (c) All member insurers shall comply with the Plan.

16 (d) The Plan shall, in addition to other requirements specified in this Article,
17 establish:

- 18 (1) Procedures for handling the assets of the Association;
- 19 (2) The amount and method of reimbursing members of the Board under
20 G.S. 58-62-31;
- 21 (3) Regular places and times for meetings, including telephone conference
22 calls, of the Board;
- 23 (4) Procedures for records to be kept of all financial transactions of the
24 Association, its agents, and the Board;
- 25 (5) The procedures whereby selections for the Board will be made and
26 submitted to the Commissioner;
- 27 (6) Any additional procedures for assessments under G.S. 58-62-41;
- 28 (7) Additional provisions necessary or proper for the execution of the
29 powers and duties of the Association.

30 (e) The Plan may provide that any or all powers and duties of the Association,
31 except those under G.S. 58-62-36(r) and G.S. 58-62-41, may be delegated to a
32 corporation, association, or other organization that performs or will perform functions
33 similar to those of the Association, or its equivalent, in two or more states. Such a
34 corporation, association, or organization shall be reimbursed for any payments made on
35 behalf of the Association and shall be paid for its performance of any function of the
36 Association. A delegation under this subsection is effective only with the approval of
37 both the Board and the Commissioner, and may be made only to a corporation,
38 association, or organization that extends protection not substantially less favorable and
39 effective than that provided by this Article.

40 **"§ 58-62-51. Duties and powers of the Commissioner.**

41 (a) In addition to other duties and powers specified in this Article, the
42 Commissioner shall:

- 1 (1) Upon request of the Board, provide the Association with a statement of
2 the premiums in this State and any other appropriate states for each
3 member insurer;
- 4 (2) When an impairment is declared and the amount of the impairment is
5 determined, serve a demand upon the impaired insurer to make good
6 the impairment within a reasonable time; notice to the impaired insurer
7 shall constitute notice to its shareholders, if any; the failure of the
8 insurer to comply promptly with the demand does not excuse the
9 Association from the performance of its powers and duties under this
10 Article; and
- 11 (3) In any liquidation or rehabilitation proceeding involving a domestic
12 insurer, be appointed as the liquidator or rehabilitator as provided in
13 Article 30 of this Chapter.

14 (b) The Commissioner may suspend or revoke, after notice and hearing, the
15 license to transact insurance in this State of any member insurer that fails to pay an
16 assessment when due or fails to comply with the Plan. As an alternative the
17 Commissioner may levy a forfeiture on any member insurer that fails to pay an
18 assessment when due. The forfeiture shall not exceed five percent (5%) of the unpaid
19 assessment per month, but no forfeiture shall be less than one hundred dollars (\$100.00)
20 per month.

21 (c) Any action of the Board or the Association may be appealed to the
22 Commissioner by any member insurer if the appeal is taken within 60 days of the final
23 action being appealed. If a member company is appealing an assessment, the amount
24 assessed shall be paid to the Association and available to meet Association obligations
25 during the pendency of an appeal. If the appeal on the assessment is upheld, the amount
26 paid in error or excess shall be returned to the member company. No later than 20 days
27 before each hearing, the appellant shall file with the Commissioner or the
28 Commissioner's designated hearing officer and shall serve on the appellee a written
29 statement of the appellant's case and any evidence the appellant intends to offer at the
30 hearing. No later than five days before the hearing, the appellee shall file with the
31 Commissioner or the Commissioner's designated hearing officer and shall serve on the
32 appellant a written statement of the appellee's case and any evidence the appellee
33 intends to offer at the hearing. Each hearing shall be recorded and transcribed. The cost
34 of the recording and transcribing shall be borne equally by the appellant and appellee;
35 however, upon any final adjudication the prevailing party shall be reimbursed for that
36 party's share of the costs by the other party. Each party shall, on a date determined by
37 the Commissioner or the Commissioner's designated hearing officer, but not sooner than
38 15 days after delivery of the completed transcript to the party, submit to the
39 Commissioner or the Commissioner's designated hearing officer and serve on the other
40 party, a proposed order. The Commissioner or the Commissioner's designated hearing
41 officer shall then issue an order. Any final action or order of the Commissioner or the
42 Commissioner's designated hearing officer is subject to judicial review under G.S. 58-2-
43 75.

1 (d) The liquidator, rehabilitator, or conservator of any impaired insurer may
2 notify all interested persons of the effect of this Article.

3 **"§ 58-62-56. Prevention of delinquencies.**

4 (a) To aid in the detection and prevention of insurer delinquencies, it is the
5 Commissioner's duty to:

6 (1) Notify insurance regulators when revoking or suspending the license
7 of a member insurer, or making any formal order that the insurer
8 restrict its premium writing, obtain additional contributions to surplus,
9 withdraw from this State, reinsure all or any part of its business, or
10 increase capital, surplus, or any other account for the security of
11 policyholders or creditors. That notice shall be sent electronically
12 through the NAIC headquarters and mailed to all insurance regulators
13 within 30 days following the action taken or the date on which the
14 action occurs.

15 (2) Report to the Board when the Commissioner has taken any of the
16 actions in subdivision (1) of this subsection or has received a report
17 from another insurance regulator indicating that any such action has
18 been taken in another state. The report to the Board shall contain all
19 significant details of the action taken or the report received from
20 another insurance regulator.

21 (3) Report to the Board when the Commissioner has reasonable cause to
22 believe from any examination, whether completed or in process, of any
23 member insurer that the insurer may be delinquent.

24 (4) Furnish the Board with the NAIC Insurance Regulatory Information
25 System financial test ratios and a listing of companies that are not
26 included in the ratios developed by the NAIC; and the Board may use
27 that data in carrying out its duties and responsibilities under this
28 section. The data shall be kept confidential by the Board until it is
29 made public by the Commissioner or another lawful authority.

30 (b) The Commissioner may seek the advice and recommendations of the Board
31 concerning any matter affecting the Commissioner's duties and responsibilities
32 regarding the financial condition of member insurers and other entities seeking
33 admission to transact insurance business in this State.

34 (c) The Board may, upon majority vote, make reports and recommendations to
35 the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation,
36 or conservation of any member insurer or germane to the solvency of any company
37 seeking to do an insurance business in this State. The reports and recommendations are
38 not public records.

39 (d) The Board shall, upon majority vote, notify the Commissioner of any
40 information indicating that any member insurer may be delinquent.

41 (e) The Board may, upon majority vote, request that the Commissioner order an
42 examination of any member insurer that the Board in good faith believes may be
43 delinquent. Within 30 days of the receipt of the request, the Commissioner shall begin
44 the examination. The examination may be conducted as an NAIC examination or may

1 be conducted by persons the Commissioner designates. The cost of the examination
2 shall be paid by the Association; and the examination report shall be treated as are other
3 examination reports. In no event shall the examination report be released to the Board
4 before its release to the public; but this does not preclude the Commissioner from
5 complying with subsection (a) of this section. The Commissioner shall notify the Board
6 when the examination is completed. The request for an examination shall be kept on
7 file by the Commissioner, but shall not be open to public inspection before the release
8 of the examination report to the public.

9 (f) The Board may, upon majority vote, make recommendations to the
10 Commissioner for the detection and prevention of insurer delinquencies.

11 (g) The Board shall, at the conclusion of any insurer insolvency in which the
12 Association was obligated to pay covered claims, prepare a report to the Commissioner
13 containing any information that it has in its possession bearing on the history and causes
14 of the insolvency. The Board shall cooperate with the boards of directors of guaranty
15 associations in other states in preparing a report on the history and causes of insolvency
16 of a particular insurer, and the Board may adopt by reference any report prepared by
17 such other associations.

18 **"§ 58-62-61. Miscellaneous provisions.**

19 (a) Nothing in this Article reduces the liability for unpaid assessments of the
20 insureds of a delinquent insurer operating under an insurance plan with assessment
21 liability.

22 (b) Records shall be kept of all negotiations and meetings in which the
23 Association or its representatives are involved and in which the activities of the
24 Association in carrying out its powers and duties under G.S. 58-62-36 are discussed.
25 Records of those negotiations or meetings shall be made public only upon the
26 termination of a liquidation, rehabilitation, or conservation proceeding involving the
27 delinquent insurer, upon the termination of the delinquency of the insurer, or upon the
28 order of a court of competent jurisdiction. Nothing in this subsection limits the duty of
29 the Association to render a report of its activities under G.S. 58-62-66.

30 (c) For the purpose of carrying out its obligations under this Article, the
31 Association is a creditor of the delinquent insurer to the extent of assets attributable to
32 covered policies reduced by any amounts to which the Association is entitled as
33 subrogee under G.S. 58-62-36(r). Assets of the delinquent insurer attributable to
34 covered policies shall be used to continue all covered policies and pay all contractual
35 obligations of the delinquent insurer as required by this Article. Assets attributable to
36 covered policies, as used in this subsection, are that proportion of the assets that the
37 reserves that should have been established for the policies bear to the reserves that
38 should have been established for all policies of insurance written by the delinquent
39 insurer.

40 (d) Before the termination of any liquidation, rehabilitation, or conservation
41 proceeding, the court may take into consideration the contributions of the respective
42 parties, including the Association, the shareholders, and policyowners of the insolvent
43 insurer, and any other party with a bona fide interest, in making an equitable distribution
44 of the ownership rights of the insolvent insurer. In making such a determination,

1 consideration shall be given to the welfare of the policyholders of the continuing or
2 successor insurer.

3 (e) No distribution to stockholders, if any, of a delinquent insurer shall be made
4 until and unless the Association has fully recovered the total amount of its valid claims
5 with interest thereon for funds expended in carrying out its powers and duties under
6 G.S. 58-62-36 with respect to the insurer.

7 (f) If an order for liquidation or rehabilitation of an insurer domiciled in this
8 State has been entered, the receiver appointed under the order has a right to recover on
9 behalf of the insurer, from any affiliate that controlled it, the amount of distributions,
10 other than stock dividends paid by the insurer on its capital stock, made at any time
11 during the five years preceding the petition for liquidation or rehabilitation subject to
12 the limitations of subsections (g) through (i) of this section.

13 (g) No such distribution is recoverable if the insurer shows that when paid the
14 distribution was lawful and reasonable, and that the insurer did not know and could not
15 reasonably have known that the distribution might adversely affect the insurer's ability
16 to fulfill its contractual obligations.

17 (h) Any person who was an affiliate that controlled the insurer when the
18 distributions were paid is liable up to the amount of distributions it received. Any
19 person who was an affiliate that controlled the insurer when the distributions were
20 declared is liable up to the amount of distributions it would have received if they had
21 been paid immediately. If two or more persons are liable with respect to the same
22 distributions, they are jointly and severally liable.

23 (i) The maximum amount recoverable under this subsection is the amount
24 needed in excess of all other available assets of the insolvent insurer to pay the insolvent
25 insurer's contractual obligations.

26 (j) If any person liable under subsection (h) of this section is insolvent, all of its
27 affiliates that controlled it when the distribution was paid are jointly and severally liable
28 for any resulting deficiency in the amount recovered from the insolvent affiliate.

29 **"§ 58-62-66. Examination of the Association; annual report.**

30 The Association is subject to examination and regulation by the Commissioner. The
31 Board shall submit to the Commissioner each year, not later than 120 days after the
32 Association's fiscal year, a financial report in a form approved by the Commissioner and
33 a report of its activities during the preceding fiscal year.

34 **"§ 58-62-76. Immunity.**

35 There is no liability by, and no cause of action of any nature arises against, any
36 member insurer or its agents or employees, the Association or its agents or employees,
37 members of the Board, the Commissioner or the Commissioner's representatives, or
38 insurance regulators or their representatives, for any act or omission by them in the
39 performance of their powers and duties under this Article. This immunity extends to the
40 participation in any organization of one or more other state associations of similar
41 purposes and to any such organization and its agents or employees.

42 **"§ 58-62-81. Stay of proceedings; reopening default judgments.**

43 All proceedings in which the insolvent insurer is a party in any court in this State
44 shall be stayed 60 days from the date an order of liquidation, rehabilitation, or

1 conservation is final to permit proper legal action by the Association on any matters
2 germane to its powers or duties. As to a judgment under any decision, order, verdict or
3 finding based on default, the Association may apply to have the judgment set aside by
4 the same court that made the judgment and may defend against such suit on the merits.

5 **"§ 58-62-86. Prohibited advertisement of Article in insurance sales; notice to**
6 **policyholders.**

7 (a) No person shall make, publish, disseminate, circulate, or place before the
8 public, or cause directly or indirectly to be made, published, disseminated, circulated, or
9 placed before the public, in any newspaper, magazine, or other publication, or in the
10 form of a notice, circular, pamphlet, letter, or poster, or over any radio station or
11 television station, or in any other way, any oral or written advertisement, announcement,
12 or statement that uses the existence of the Association or this Article for the purpose of
13 sale or solicitation of or inducement to purchase any kind of insurance covered by this
14 Article. However, this subsection does not apply to the Association or any other person
15 who does not sell or solicit insurance.

16 (b) Within 180 days after the effective date of this Article, the Association shall
17 prepare a summary document that describes the general purposes and current limitations
18 of this Article and that complies with subsection (c) of this section. This document shall
19 be submitted to the Commissioner for the Commissioner's approval. Sixty days after
20 receiving approval, no insurer may deliver a policy described in G.S. 58-62-21(b) to any
21 person unless the document is delivered to that person before or at the time of delivery
22 of the policy, unless subsection (d) of this section applies. The document shall also be
23 available upon request by a policyholder. The distribution, delivery, contents, or
24 interpretation of this document does not mean that either the policy or the policyholder
25 would be covered in the event of the delinquency of a member insurer. The document
26 shall be revised by the Association as amendments to this Article require. Failure to
27 receive this document does not give any person greater rights than those stated in this
28 Article.

29 (c) The document prepared under subsection (b) of this section shall contain a
30 clear and conspicuous disclaimer on its face. The Commissioner shall prescribe the
31 form and content of the disclaimer. The disclaimer shall:

- 32 (1) State the name and addresses of the Association and Department;
- 33 (2) Prominently warn the policyholder that the Association may not cover
34 the policy or, if coverage is available, it will be subject to substantial
35 limitations and exclusions and conditioned on continued residence in
36 this State;
- 37 (3) State that the insurer and its agents are prohibited by law from using
38 the existence of the Association for the purpose of sale or solicitation
39 of or inducement to purchase any kind of insurance;
- 40 (4) Emphasize that the applicant or policyholder should not rely on
41 coverage under the Association when selecting an insurer; and
- 42 (5) Provide other information as directed by the Commissioner.

43 (d) No insurer or agent may deliver a policy described in G.S. 58-62-21(b) and
44 excluded under G.S. 58-62-21(c) from coverage under this Article unless the insurer or

1 agent, before or at the time of delivery, gives the policyholder a separate written notice
2 that clearly and conspicuously discloses that the policy is not covered by the
3 Association. The Commissioner shall prescribe the form and content of the notice."

4 Sec. 57. G.S. 58-62-1, 58-62-5, 58-62-10, 58-62-15, 58-62-20, 58-62-25, 58-
5 62-30, 58-62-35, 58-62-40, 58-62-45, 58-62-50, 58-62-55, 58-62-60, 58-62-65, 58-62-
6 70, 58-62-80, 58-62-85, and 58-62-90 are repealed.

7 Sec. 58. The Commissioner and the Commissioner's staff shall maintain
8 close relations with the insurance regulators of other states and shall actively participate
9 in the activities and affairs of the National Association of Insurance Commissioners, the
10 National Conference of Insurance Legislators, and other organizations or successor
11 organizations insofar as it will, in the Commissioner's judgment, enhance the purposes
12 of the regulation of insurance. The actual and necessary travel and related expenses
13 incurred by the Commissioner and members of the Commissioner's staff in attending
14 meetings of such organizations, their committees, subcommittees, hearings, and other
15 official activities, as well as the general expenses of participation in such organizations
16 shall be a charge on available funds and the appropriation of the Department.

17 Sec. 59. Sections 56 and 57 of this act do not apply to any insurer that is in a
18 delinquency proceeding, as defined in G.S. 58-30-10(5), in this State or any other state
19 on the effective date of Sections 56 and 57 of this act.

20 Sec. 60. Sections 9 and 49 through 54 of this act become effective September
21 1, 1991. Sections 28 and 40 of this act become effective October 1, 1991. Sections 29
22 and 30 of this act become effective January 1, 1992. The remainder of this act is
23 effective upon ratification.