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(Public)

Sponsors:

Referred to:

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-131(f) reads as rewritten:

"(f) Instead of examining any foreign or alien insurer licensed in this State, the Commissioner may accept an examination report on that insurer prepared by the insurer's domiciliary insurance regulator until January 1, 1994. Thereafter, reports may only be accepted if regulator. In making a determination to accept the domiciliary insurance regulator's report, the Commissioner may consider whether (i) the insurance regulator

1 was at the time of the examination accredited under NAIC Financial Regulation  
2 Standards and Accreditation Program, or (ii) the examination is performed under the  
3 supervision of an NAIC-accredited insurance regulator or with the participation of one or  
4 more examiners who are employed by the regulator and who, after a review of the  
5 examination work papers and report, state under oath that the examination was performed  
6 in a manner consistent with the standards and procedures required by the regulator."

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

9 **"§ 58-2-171. Qualifications of actuaries.**

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

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

17 **"§ 58-3-90. Revocation—Revocation, suspension, or restriction of license of foreign**  
18 **company; publication of notice.**

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

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

39 Sec. 3.1. G.S. 58-3-170 reads as rewritten:

40 **"§ 58-3-170. Requirements for maternity coverage.**

41 (a) Every entity providing a health benefit plan that provides maternity coverage  
42 in this State shall provide benefits for the necessary care and treatment related to  
43 maternity that are no less favorable than benefits for physical illness generally.

1 (b) A health benefit plan that provides maternity coverage shall provide coverage for  
2 inpatient care for a mother and her newly-born child for a minimum of forty-eight (48)  
3 hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by  
4 caesarean section.

5 (b) (c) As used in this section, 'health benefit plans' means accident and health  
6 insurance policies or certificates; nonprofit hospital or medical service corporation  
7 contracts; health, hospital, or medical service corporation plan contracts; health  
8 maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA  
9 or plans provided by other benefit arrangements, to the extent permitted by ERISA."

10 Sec. 4. G.S. 58-7-30 reads as rewritten:

11 "**§ 58-7-30. Insolvency of ceding insurer; ~~exceptions.~~ exceptions; written reinsurance**  
12 **agreements.**

13 (a) No credit shall be allowed, as an admitted asset or as a deduction from liability,  
14 to any ceding insurer for reinsurance, unless the reinsurance is payable by the assuming  
15 insurer, on the basis of claims allowed against the ceding insurer under the contract or  
16 contracts reinsured without diminution because of the insolvency of the ceding insurer,  
17 directly to the ceding insurer or to its domiciliary receiver except (1) where the contract  
18 specifically provides for another payee of the reinsurance in the event of the insolvency  
19 of the ceding insurer or (2) where the assuming insurer, with the consent of the direct  
20 insured or insureds, has assumed the policy obligations of the ceding insurer as direct  
21 obligations of the assuming insurer to the payees under the policies and in substitution of  
22 the obligations of the ceding insurer to the payees.

23 (b) No credit shall be allowed, as an admitted asset or as a deduction from liability,  
24 to any ceding insurer for reinsurance, unless the reinsurance is documented by a policy,  
25 certificate, treaty, or other form of agreement that is properly executed by an authorized  
26 officer of the assuming insurer. If the reinsurance is ceded through an underwriting  
27 manager or agent, the manager or agent shall provide to the domestic ceding insurer  
28 evidence of the manager or agent's authority to assume reinsurance for and on behalf of  
29 the assuming insurer. The evidence shall consist of either an acceptable letter of  
30 authority executed by an authorized officer of the assuming insurer or a copy of the  
31 actual agency agreement between the underwriting manager or agent and the assuming  
32 insurer; and the evidence shall be specific as to the classes of business within the  
33 authority and as to the term of the authority. If there is any conflict between this  
34 subsection and Article 9 of this Chapter, the provisions of Article 9 govern."

35 Sec. 5. G. S. 58-12-30 reads as rewritten:

36 "**§ 58-12-30. Hearings.**

37 Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based  
38 capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-  
39 based capital plan or revised risk-based capital plan is unsatisfactory, and the notification  
40 constitutes a regulatory action level event with respect to the insurer; or (iii) notification  
41 to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based  
42 capital plan or revised risk-based capital plan and that the failure has a substantial adverse  
43 effect on the ability of the insurer to eliminate the company action level event with

1 respect to the insurer in accordance with its risk-based capital plan or revised risk-based  
2 capital plan; or (iv) notification to an insurer by the Commissioner of a ~~Corrective Order~~  
3 corrective order with respect to the insurer, the insurer has a right to a confidential  
4 hearing, at which the insurer may challenge any determination or action by the  
5 Commissioner. The insurer shall notify the Commissioner of its request for a hearing  
6 within five days after the notification by the Commissioner under this section. Upon  
7 receipt of the insurer's request for a hearing, the Commissioner shall set a date for the  
8 ~~hearing, which hearing;~~ the date shall be no less than 10 days nor more than 30 days after  
9 the date of the insurer's request."

10 Sec. 6. G.S. 58-16-5(3) is repealed.

11 Sec. 7. Article 16 of Chapter 58 of the General Statutes is amended by adding  
12 a new section to read:

13 **"§ 58-16-6. Conditions of continued licensure.**

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

18 Sec. 8. G.S. 58-16-30 reads as rewritten:

19 **"§ 58-16-30. Service of legal process upon Commissioner.**

20 As an alternative to service of legal process under ~~the provisions of Rule 4 of the Rules~~  
21 ~~of Civil Procedure, G.S. 1A-1, Rule 4,~~ the service of such process upon any insurance  
22 company or any foreign or alien entity licensed or admitted and authorized to do business  
23 in this State under the provisions of Articles 1 through 64 of this Chapter may be made by  
24 the sheriff or any other person delivering and leaving a copy of such the process in the  
25 office of the Commissioner with a deputy or any other person duly appointed by the  
26 Commissioner for such purpose that purpose; or acceptance of service of such the process  
27 may be made by the Commissioner or such a duly appointed deputy. deputy or person.  
28 Service may also be made by mailing a copy of the summons and of the complaint,  
29 registered or certified mail, return receipt requested, addressed to the Commissioner. As  
30 a condition precedent to a valid service of process under this section, the party obtaining  
31 such service shall pay to the Commissioner at the time of service or acceptance of service  
32 the sum of ten dollars (\$10.00), which such the party shall recover as part of the taxable  
33 costs if he the party prevails in his the action."

34 Sec. 9. G.S. 58-19-5(2) reads as rewritten:

35 "(2) 'Control', including the terms 'controlling', 'controlled by', and 'under  
36 common control with', means the direct or indirect possession of the  
37 power to direct or cause the direction of the management and policies of  
38 a person, whether through the ownership of voting securities, by  
39 contract other than a commercial contract for goods or nonmanagement  
40 services, or otherwise, ~~unless the power is the result of an official position~~  
41 ~~with or corporate office held by the person. otherwise.~~ Control is presumed  
42 to exist if any person directly or indirectly owns, controls, holds with  
43 the power to vote, or holds proxies representing, ten percent (10%) or

1 more of the voting securities of any other person. This presumption  
2 may be rebutted by a showing made in the manner provided by G.S. 58-  
3 19-25(j) that control does not exist in fact. The Commissioner may  
4 determine, after furnishing all persons in interest notice and opportunity  
5 to be heard and making specific findings of fact to support such  
6 determination, that control exists in fact, notwithstanding the absence of  
7 a presumption to that effect."

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

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

14 Sec. 11. G.S. 58-19-15(a) reads as rewritten:

15 "(a) No person other than the issuer shall make a tender offer for or a request or  
16 invitation for tenders of, or enter into any agreement to exchange securities, or seek to  
17 acquire, or acquire, in the open market or otherwise, any voting security of a domestic  
18 insurer, if, after the consummation thereof, ~~such the~~ person would, directly or indirectly  
19 (or by conversion or by exercise of any right to acquire), be in control of ~~such the~~ insurer,  
20 and no person shall enter into an agreement to merge with or otherwise to acquire control  
21 of a domestic insurer or any person controlling a domestic insurer unless ~~such the~~ offer,  
22 request, invitation, agreement, or acquisition is conditioned upon the approval of the  
23 Commissioner ~~pursuant to~~ under this section. No such merger or other acquisition of  
24 control ~~shall be~~ is effective until a statement containing the information required by this  
25 section has been filed with the Commissioner and all other provisions of this section have  
26 been complied with and the merger or acquisition of control has been approved by the  
27 Commissioner ~~pursuant to~~ under this section. The statement containing the information  
28 required by this section shall also be filed with the domestic insurer ~~at the time when it is~~  
29 filed with the Commissioner.

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

35 Sec. 12. G.S. 58-19-15 is further amended by adding two new subsections to  
36 read:

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

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

5       Sec. 13. G.S. 58-30-180(b)(1) reads as rewritten:

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

10       Sec. 14. G.S. 58-30-220 reads as rewritten:

11 **"§ 58-30-220. Priority of distribution.**

12       The priority of distribution of claims from the insurer's estate shall be in accordance  
13 with the order in which each class of claims is set forth in this section. Every claim in  
14 each class shall be paid in full or adequate funds shall be retained for payment before the  
15 members of the next class receive any payment. No subcategories shall be established  
16 within the categories in a class. The order of distribution of claims shall be:

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

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

28       ~~(3)~~ Claims or portions of claims for benefits under policies and for losses  
29 incurred, including claims of third parties under liability policies; claims  
30 for unearned premiums; claims for funds or consideration held under  
31 funding agreements, as defined in G.S. 58-7-16; claims under life  
32 insurance and annuity policies, whether for death proceeds, annuity  
33 proceeds, or investment values; and claims of domestic and foreign  
34 guaranty associations; associations, including claims for the reasonable  
35 administrative expenses of domestic and foreign guaranty associations;  
36 but excluding claims of insurance pools, underwriting associations, or  
37 those arising out of reinsurance agreements, claims of other insurers for  
38 subrogation, and claims of insurers for payments and settlements under  
39 uninsured and underinsured motorist coverages.

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

42       (4) ~~Claims for unearned premiums.~~ Compensation actually owing to  
43 employees other than officers of the insurer for services rendered within

1           three months before the commencement of a delinquency proceeding  
2           against the insurer under this Article, but not exceeding one thousand  
3           dollars (\$1,000) for each employee. In the discretion of the  
4           Commissioner, this compensation may be paid as soon as practicable  
5           after the proceeding has been commenced. This priority is in lieu of any  
6           other similar priority that may be authorized by law as to wages or  
7           compensation of those employees.

- 8           (5) Claims of general creditors, including claims of insurance pools,  
9           underwriting associations, or those arising out of reinsurance  
10           agreements; claims of other insurers for subrogation; and claims of  
11           insurers for payments and settlements under uninsured and underinsured  
12           motorist coverages."

13           Sec. 15. Article 31 of Chapter 58 of the General Statutes is amended by  
14           adding a new section to read:

15           "**§ 58-31-52. State motor vehicle safety program.**

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

28           (b) The Commissioner shall develop and adopt a State motor vehicle safety  
29           program to assure that State-owned motor vehicles are operated and maintained in a safe  
30           manner.

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

- 32           (1) Basic criteria concerning qualifications, screening, and education of  
33           drivers.  
34           (2) Required and prohibited driving practices.  
35           (3) Safety maintenance requirements.  
36           (4) Accident reporting and review procedures.

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

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

3 Sec. 16. G.S. 58-33-25(e) reads as rewritten:

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

6 (1), (2) Repealed by Session Laws 1989, c. 485, s. 19.

7 (3) Credit Life, Accident and ~~Health~~ Health.

8 (4) Credit, as specified in ~~G.S. 58-7-15(17)~~ G.S. 58-7-15(17).

9 (5) Travel Accident and ~~Baggage~~ Baggage.

10 (6) Motor ~~Club~~ Club.

11 (7) Dental ~~Services~~ Services.

12 (8) Credit Property Insurance and Single Interest Automobile Physical  
13 Damage Insurance when either is made in connection with a ~~loan~~ loan.

14 (9) Bail bonds executed or countersigned by surety bondsmen under Article  
15 71 of this ~~Chapter~~ Chapter.

16 (10) Credit unemployment.

17 (11) Vehicle service agreements and mechanical breakdown insurance.

18 (12) Prearrangement insurance, as defined in G.S. 58-60-35(a)(2), when  
19 offered or sold by a preneed sales licensee licensed under Article 13D of  
20 Chapter 90 of the General Statutes."

21 Sec. 17. Article 33 of Chapter 58 of the General Statutes is amended by  
22 adding a new section to read:

23 **"§ 58-33-132. Qualifications of instructors.**

24 (a) The Commissioner may adopt rules to establish requisite qualifications for and  
25 issuance, renewal, summary suspension, and termination of provider, presenter, and  
26 instructor authority for prelicensing and continuing insurance education courses. During  
27 any suspension, the instructor shall not engage in any instruction of prelicensing or  
28 continuing insurance education courses prior to an administrative review. No person  
29 shall provide, present, or instruct any course unless that person has been qualified and  
30 possesses a certificate of authority from the Commissioner.

31 (b) The Commissioner may summarily suspend or terminate the authority of an  
32 instructor, course provider, or presenter if the course presentation:

33 (1) Is determined to be inaccurate; or

34 (2) Receives an evaluation of poor from any Department monitor and a  
35 majority of attendees responding to Department questionnaires about  
36 the presentation."

37 Sec. 18. G.S. 58-36-1(5) reads as rewritten:

38 "(5) a. It is the duty of every insurer that writes workers' compensation  
39 insurance in this State and is a member of the Bureau, as defined in this  
40 section and G.S. 58-36-5 to insure and accept any workers'  
41 compensation insurance risk that has been certified to be 'difficult to  
42 place' by any fire and casualty insurance agent who is licensed in this  
43 State. When any such risk is called to the attention of the Bureau by



1 receipt of an application with an estimated or deposit premium payment  
2 and it appears that the risk is in good faith entitled to such coverage, the  
3 Bureau will bind coverage for 30 days and will designate a member who  
4 must issue a standard workers' compensation policy of insurance that  
5 contains the usual and customary provisions found in those policies.  
6 Multiple coordinated policies, as defined by the Bureau and approved  
7 by the Commissioner, may be used for the issuance of coverage under  
8 this subdivision for risks involved in employee leasing agreements.  
9 Coverage will be bound at 12:01 A.M. on the first day following the  
10 postmark time and date on the envelope in which the application is  
11 mailed including the estimated annual or deposit premium, or the  
12 expiration of existing coverage, whichever is later. If there should be no  
13 postmark, coverage will be effective 12:01 A.M. on the date of receipt  
14 by the Bureau unless a later date is requested. Those applications hand  
15 delivered to the Bureau will be effective as of 12:01 A.M. of the date  
16 following receipt by the Bureau unless a later date is requested. ~~The~~  
17 ~~designated carrier may request of the Bureau certification of the State~~  
18 ~~Department of Labor that the insured is complying with the laws, rules, and~~  
19 ~~regulations of that Department. The certification must be finished within 30~~  
20 ~~days by the State Department of Labor unless extension of time is granted by~~  
21 ~~agreement between the Bureau and the State Department of Labor. The~~  
22 Bureau will make and adopt such rules as are necessary to carry this  
23 section into effect, subject to final approval of the Commissioner. As a  
24 prerequisite to the transaction of workers' compensation insurance in  
25 this State, every member of the Bureau that writes such insurance must  
26 file with the Bureau written authority permitting the Bureau to act in its  
27 behalf, as provided in this section, and an agreement to accept risks that  
28 are assigned to the member by the Bureau, as provided in this section.

29 b. ~~Upon notice of cancellation or the decision to decline to write or~~  
30 ~~renew a policy of workers' compensation insurance for an~~  
31 ~~employer, the carrier or its agents shall supply the employer with~~  
32 ~~a form, supplied by the Bureau, by which the employer may~~  
33 ~~request the Bureau to list the employer and pertinent information~~  
34 ~~about it among a compendium of such information on The~~  
35 ~~Bureau shall maintain a compendium of employers refused~~  
36 ~~voluntary coverage, which shall be made available by the Bureau~~  
37 ~~to all ~~insurers~~ insurers, licensed agents, and self-insureds'~~  
38 ~~administrators doing business in this State. It shall be stored and~~  
39 ~~indexed to allow access to information by industry, primary~~  
40 ~~classifications of employees, geography, experience~~  
41 ~~modification, and in any other manner the Bureau determines is~~  
42 ~~commercially useful to facilitate voluntary coverage of listed~~  
43 ~~employers. The Bureau shall be immune from civil liability for~~

1                    erroneous information released by the Bureau pursuant to this  
2                    section, provided that the Bureau acted in good faith and without  
3                    malicious or willful intent to harm in releasing the erroneous  
4                    information."

5                    Sec. 19. G.S. 58-36-25 reads as rewritten:

6                    **"§ 58-36-25. Appeal of Commissioner's order.**

7                    (a) Any order or decision of the Commissioner shall be subject to judicial review  
8 as provided in Article 2 of this Chapter.

9                    (b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and  
10 no longer effective by order of the Commissioner issued under G.S. 58-36-20, the  
11 members of the Bureau, in accordance with rules and regulations established and adopted  
12 by the governing committee, shall have the option to continue to use such rate for the  
13 interim period pending judicial review of such order, provided each such member shall  
14 place in escrow account the purportedly unfairly discriminatory or excessive portion of  
15 the premium collected during such interim period. Upon a final determination by the  
16 Court, or upon a consent agreement or consent order between the Bureau and the  
17 Commissioner, the Commissioner shall order the escrowed funds to be distributed  
18 appropriately, appropriately, except that individual refunds that are five dollars (\$5.00) or less  
19 shall not be required. If refunds are to be made to policyholders, the Commissioner shall  
20 order that the members of the Bureau refund the difference between the total premium  
21 per policy using the rate levels finally determined and the total premium per policy  
22 collected during the interim period pending judicial review, except that refund amounts  
23 that are five dollars (\$5.00) or less per policy shall not be required. The court may also  
24 require that purportedly excess premiums resulting from an adjustment of premiums  
25 ordered pursuant to G.S. 58-36-20(b) be placed in such escrow account pending judicial  
26 review. If refunds made to policyholders are ordered under this subsection, the amounts  
27 refunded shall bear interest at the rate determined under this subsection. That rate shall be  
28 the average of the prime rates of the four largest banking institutions domiciled in this State, plus  
29 three percent (3%), as of the effective date of the filing, to be computed by the Commissioner.  
30 That rate, to be computed by the Bureau, shall be the average of the prime rates on the  
31 effective date of the filing and each anniversary of that date occurring prior to the date of  
32 the Commissioner's order requiring refunds, with the prime rate on each of the dates  
33 being the average of the prime rates of the four largest banking institutions domiciled in  
34 this State as of that date, plus three percent (3%)."

35                    Sec. 20. G.S. 58-36-30(b) reads as rewritten:

36                    "(b) A rate in excess of that promulgated by the Bureau may be charged on any  
37 specific risk provided such higher rate is charged with the approval of the Commissioner  
38 and with the knowledge and written consent of the insured. This subsection may be used  
39 to provide motor vehicle liability coverage limits above those required under Article 9A  
40 of Chapter 20 of the General Statutes and above those cedable to the Facility under  
41 Article 37 of this Chapter to persons whose personal excess liability insurance policies  
42 require that they maintain specific higher liability coverage limits. All data filed with the

1 Commissioner under this subsection are proprietary and confidential and are not public  
2 records under G.S. 132-1 or G.S. 58-2-100."

3 Sec. 21. G.S. 58-36-30(c) reads as rewritten:

4 "(c) Any deviation with respect to workers' compensation and employers' liability  
5 insurance written in connection therewith as filed under subsection (a) of this section  
6 shall apply uniformly to all classifications. Any approved rate under subsection (b) of  
7 this section with respect to workers' compensation and employers' liability insurance  
8 written in connection therewith shall be furnished to the Bureau."

9 Sec. 22. G.S. 58-36-85(e) reads as rewritten:

10 "(e) Administrative Review. – When the Department receives a written request to  
11 review a termination, it must investigate and determine the reason for the termination.  
12 The Department shall ~~enter an order for~~ issue a letter requiring one of the following upon  
13 completing its review:

- 14 (1) Approval of the termination, if it finds the termination complies with the  
15 law.
- 16 (2) Renewal or reinstatement of the policy, if it finds the termination does  
17 not comply with the law.
- 18 (3) Renewal or reinstatement of the policy and payment by the insurer of  
19 the costs of the Department's review, not to exceed one thousand dollars  
20 (\$1,000), if it finds the termination does not comply with the law and  
21 the insurer willfully violated this section.

22 The Department shall mail ~~a copy of the order~~ the letter to the insured and the insurer.  
23 An insured or an insurer who disagrees with the determination of the Department in the  
24 letter may file a petition for a contested case under Article 3A of Chapter 150B of the  
25 General Statutes and the rules adopted by the Commissioner to implement that Article.  
26 The petition must be filed within 30 days after receiving the copy of the ~~order~~ letter."

27 Sec. 23. G.S. 58-37-30(b) reads as rewritten:

28 "(b) It shall be the responsibility of the agent to write the coverage applied for at  
29 what he believes to be the appropriate rate level. If coverage is written at the Facility rate  
30 level and the company elects not to cede, the policy shall be rated at ~~the voluntary rate~~  
31 ~~level~~ a rate under Article 36 of this Chapter. Coverage written at the voluntary rate level  
32 which a rate under Article 36 of this Chapter that is not acceptable to the company must  
33 either be placed with another company or rated at the Facility rate level by the agent."

34 Sec. 24. G.S. 58-37-40(e) reads as rewritten:

35 "(e) Upon approval of the Commissioner of the plan so submitted or promulgation  
36 of a plan deemed approved by the Commissioner, all insurance companies licensed to  
37 write motor vehicle insurance in this State or any component thereof as a prerequisite to  
38 further engaging in writing ~~such the~~ insurance shall formally subscribe to and participate  
39 in the plan so approved.

40 The plan of operation shall provide for, among other matters, (i) the establishment of  
41 necessary facilities, ~~facilities~~; (ii) the management of the Facility, ~~Facility~~; (iii) the  
42 preliminary assessment of all members for initial expenses necessary to commence  
43 operations, ~~operations~~; (iv) the assessment of members if necessary to defray losses and

1 ~~expenses, expenses;~~ (v) the distribution of gains to defray losses incurred since the  
2 ~~effective date hereof and then to persons reinsured by the Facility, the recoupment of losses~~  
3 ~~sustained by the Facility, September 1, 1977;~~ (vi) the distribution of gains by credit or  
4 reduction of recoupment or allocation surcharges to policies subject to recoupment or  
5 allocation surcharges pursuant to this Article (the Facility may apportion the distribution  
6 of gains among the coverages eligible for cession pursuant to this Article); (vii) the  
7 recoupment or allocation of losses sustained by the Facility since September 1, 1977,  
8 pursuant to this Article, which losses may be recouped by equitable pro rata assessment  
9 of member ~~companies, companies;~~ (viii) the standard amount (one hundred percent  
10 (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a  
11 member company may cede to the Facility, Facility; and (ix) the procedure by which  
12 reinsurance shall be accepted by the Facility; and Facility. The plan shall further provide  
13 that:

- 14 (1) Members of the Board of Governors shall receive reimbursement from  
15 the Facility for their actual and necessary expenses incurred on Facility  
16 business, en route to perform Facility business, and while returning  
17 from Facility business plus a per diem allowance of twenty-five dollars  
18 (\$25.00) a day which may be waived.
- 19 (2) In order to obtain a transfer of business to the Facility effective when  
20 the binder or policy or renewal thereof first becomes effective, the  
21 company must within 30 days of the binding or policy effective date  
22 notify the Facility of the identification of the insured, the coverage and  
23 limits afforded, classification data, and premium. The Facility shall  
24 accept risks at other times on receipt of necessary information, but such  
25 acceptance shall not be retroactive. The Facility shall accept renewal  
26 business after the member on underwriting review elects to again cede  
27 the business."

28 Sec. 25. G.S. 58-40-10(2) reads as rewritten:

- 29 "(2) 'Nonfleet' motor vehicle means a motor vehicle not eligible for  
30 classification as a fleet vehicle for the reason that the motor vehicle ~~is is:~~  
31 a. ~~one~~ One of four or less ~~fewer~~ motor vehicles owned or hired  
32 under a long-term contract by ~~the a~~ policy named ~~insured. insured;~~  
33 or  
34 b. One of five or more private passenger motor vehicles owned or  
35 hired under a long-term contract:  
36 1. By an individual who is a policy named insured;  
37 2. Jointly by two or more individuals who are policy named  
38 insureds and are residents in the same household; or  
39 3. Jointly by two or more individuals who are policy named  
40 insureds and are related by blood, marriage, or adoption."

41 Sec. 26. G.S. 58-42-55 reads as rewritten:

42 "**§ 58-42-55. Expiration.**

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

1           Sec. 27. G.S. 58-44-10 is repealed.

2           Sec. 28. G.S. 58-45-35(b) reads as rewritten:

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

12           Sec. 29. Article 50 of Chapter 58 of the General Statutes is amended by  
13 adding a new section to read:

14 **"§ 58-50-149. Limit on cessions to the Reinsurance Pool.**

15           In addition to any individual or group previously reinsured in accordance with G.S.  
16 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or delivered for  
17 original issue by a reinsuring carrier on or after October 1, 1995, if the health benefit plan  
18 provides coverage to a small employer with no more than 25 eligible employees,  
19 including self-employed individuals."

20           Sec. 30. G.S. 58-53-60 reads as rewritten:

21 **"§ 58-53-60. Premium.**

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

26           (b) All insurers licensed to do business in this State, who issue conversion ~~policies~~  
27 policies or group conversion trust certificates under this Part, ~~shall~~ have the right to  
28 increase that element of the premium that applies to hospital room and board benefit  
29 increases provided for in G.S. 58-53-95(5) by an amount proportionate to the increase  
30 promulgated by the Commissioner. Such premium increases shall be filed with the  
31 Commissioner.

32           (c) All premium rates and adjustments to premium rates for converted ~~policies~~  
33 policies or group conversion trust certificates shall be reasonable and must be filed with  
34 and approved by the Commissioner prior to use. A premium rate shall be deemed to be  
35 reasonable if ~~it can be demonstrated by the insurer~~ demonstrates that the premium charged  
36 is expected to produce an incurred loss ratio to earned premiums of not less than sixty  
37 percent (60%) for all ~~individual policies or group conversion trust certificates~~ providing  
38 similar benefits offered and issued by the insurer. If an insurer experiences an incurred  
39 loss ratio of greater than eighty percent (80%) for all such policies, it shall be deemed  
40 reasonable for that insurer to increase premium rates to a level that will produce a  
41 prospective incurred loss ratio of no greater than eighty percent (80%), and the insurer  
42 shall file such new rates with the Commissioner not more often than once a year."

1       Sec. 31. (a)       Article 58 of Chapter 58 of the General Statutes is further amended  
2 by adding the following new sections to read:

3 **"§ 58-58-22. Individual policy standard provisions.**

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

- 7       (1)       Grace period. – A provision that the insured is entitled to a grace period  
8 of 31 days for the payment of any premium due except the first, during  
9 which grace period the death benefit coverage shall continue in force.  
10 The policy may provide that if a claim arises under the policy during the  
11 grace period, the amount of any premium due or overdue may be  
12 deducted from any amount payable under the policy in settlement.
- 13       (2)       Incontestability. – A provision that the validity of the policy shall not be  
14 contested, except for nonpayment of premium, once it has been in force  
15 for two years after its date of issue; and that no statement made by any  
16 person insured under the policy about that person's insurability shall be  
17 used during the person's lifetime to contest the validity of the policy  
18 after the insurance has been in force for two years.
- 19       (3)       Misstatement of age or gender. – A provision specifying an equitable  
20 adjustment of premiums or benefits, or both, to be made if the age or  
21 gender of the person insured has been misstated; the provision to  
22 contain a clear statement of the method of adjustment to be used.
- 23       (4)       Suicide. – A provision that may not limit payment of benefits for a  
24 period more than two years after the date of issue of the policy because  
25 of suicide and that provides for at least the return of premiums paid on  
26 the policy if there is suicide during the two-year period.
- 27       (5)       Reinstatement. – A provision that, unless the policy has been  
28 surrendered for its cash surrender value, or its cash surrender value has  
29 been exhausted, the policy will be reinstated at any time within five  
30 years after the date of premium default upon written application  
31 therefor, the production of evidence of insurability satisfactory to the  
32 insurer, the payment of all overdue premiums, and the payment of  
33 reinstatement of any other indebtedness to the insurer upon the policy,  
34 all with interest at the rate specified.

35 **"§ 58-58-23. Standard provisions for annuity and pure endowment contracts.**

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

- 40       (1)       Grace period. – A provision for a grace period of not less than 31 days  
41 within which any stipulated payment to the insurer falling due after the  
42 first payment may be made. During the grace period, the contract shall  
43 continue in full force. If a claim arises under the contract because of

1 death before the expiration of the grace period and before the overdue  
2 payment to the insurer is made, the amount of the payments, with  
3 interest on any overdue payments, may be deducted from any amount  
4 payable under the contract.

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

11 (3) Misstatements of age or gender. – A provision that if the age or gender  
12 of any person upon whose life the contract is made has been misstated,  
13 the amount payable or benefits accruing under the contract shall be such  
14 as the stipulated payment or payments to the insurer would have been  
15 according to the correct age or gender; and if the insurer makes an  
16 overpayment because of the misstatement, that amount with interest at  
17 the rate specified in the contract may be charged against any current or  
18 subsequent payment by the insurer under the contract.

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

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

28 **"§ 58-58-42. Viatical settlements.**

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

30 (1) 'Broker' means a person who, for consideration and on behalf of  
31 another, offers or advertises the availability of viatical settlements,  
32 introduces viators to providers, or offers or attempts to negotiate viatical  
33 settlement contracts between a viator and one or more providers; it does  
34 not mean an attorney, accountant, or financial planner retained to  
35 represent a viator and whose compensation is not paid by a provider.

36 (2) 'Policy' means an individual life insurance policy or a certificate under a  
37 group life insurance policy.

38 (3) 'Provider' means a person who enters into a viatical settlement contract  
39 with a viator. 'Provider' does not mean:

40 a. A licensed lending institution that takes an assignment of a  
41 policy as collateral for a loan.

42 b. The issuer of a policy providing accelerated benefits under 11  
43 NCAC 12.1200.

1           c.       A natural person who enters into no more than one agreement in  
2                   a calendar year for the transfer of a policy for any value less than  
3                   the expected death benefit.

4           (4)   'Viatical settlement contract' or 'contract' means a written agreement  
5                   entered into between a provider and a viator that establishes the terms  
6                   under which the provider will pay consideration that is less than the  
7                   expected death benefit of the viator's policy in return for the viator's  
8                   assignment, transfer, sale, devise, or bequest of the death benefit or  
9                   ownership of the policy to the provider.

10          (5)   'Viator' means the owner or holder of a policy who has a catastrophic or  
11                   life-threatening illness or condition and who enters into a viatical  
12                   settlement contract.

13          (b)   Registration. – No person may act as a provider or enter into or solicit a  
14               contract without first registering with the Commissioner. The applicant shall register on  
15               a form prescribed by the Commissioner. The Commissioner may require the applicant to  
16               disclose fully the identity of all stockholders, partners, officers, and employees. The  
17               Commissioner may refuse registration of any partnership, corporation, or other business  
18               entity if not satisfied that any officer, employee, stockholder, or partner who may  
19               materially influence the applicant's conduct meets the standards of this section.  
20               Registration of a partnership, corporation, or other business entity authorizes all  
21               members, officers, and designated employees to act as providers under the registration;  
22               all of those persons must be named in the application and any supplements to the  
23               application. Before any registration is complete, the Commissioner shall investigate each  
24               applicant and may register the applicant if the Commissioner finds that the applicant:

25               (1)   Has provided a detailed plan of operation.

26               (2)   Is competent and trustworthy and intends to act in good faith in the  
27                   capacity involved by the license applied for.

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

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

33               No registration is complete for any nonresident applicant unless a written designation of  
34               an agent for service of process is filed and maintained with the Commissioner or the  
35               applicant has filed with the Commissioner the applicant's written irrevocable consent that  
36               any action against the applicant may be commenced against the applicant by service of  
37               process on the Commissioner.

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

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

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



1           (3)    The provider demonstrates a pattern of unreasonable payments to policy  
2           owners;

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

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

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

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

16          (f)    Examination. – The Commissioner may, when the Commissioner deems it to  
17          be reasonably necessary to protect the public interest, examine the business and affairs of  
18          any provider or applicant for registration. The Commissioner may order any provider or  
19          applicant to produce records, books, files, or other information that is necessary to  
20          ascertain whether or not the provider or applicant is acting or has acted in violation of this  
21          section or otherwise contrary to the public interest. The provider or applicant shall pay  
22          the expenses incurred in conducting an examination. Names and individual identification  
23          data for all viators are confidential and shall not be disclosed by the Commissioner. The  
24          provider shall maintain records of all transactions of contracts and make the records  
25          available to the Commissioner for inspection during reasonable business hours.

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

28               (1)    Options other than the contract for a person with a catastrophic or life-  
29               threatening illness, including, but not limited to, accelerated benefits  
30               offered by the issuer of the policy.

31               (2)    The fact that some or all of the contract consideration may be taxable,  
32               and that assistance should be sought from a personal tax advisor.

33               (3)    The fact that the contract consideration could be subject to the claims of  
34               creditors.

35               (4)    The fact that receipt of the contract consideration may adversely affect  
36               the viator's eligibility for Medicaid or other government benefits or  
37               entitlements; and that advice should be obtained from the appropriate  
38               government agencies.

39               (5)    The viator's right to rescind a contract within 30 days after the date it is  
40               executed by all parties or within 15 days after the receipt of the contract  
41               consideration by the viator, whichever is less, as provided in subsection  
42               (h) of this section.

1           (6) The date by which the contract consideration will be available to the  
2           viator and the source of the consideration.

3           (h) General Rules. – A provider entering into a contract with a viator shall first  
4 obtain:

5           (1) A written statement from a licensed attending physician that the viator is  
6 of sound mind and under no constraint or undue influence.

7           (2) A witnessed document in which the viator (i) consents to the contract,  
8 (ii) acknowledges the catastrophic or life-threatening illness, (iii)  
9 represents that the viator has a full and complete understanding of the  
10 contract, (iv) represents that the viator has a full and complete  
11 understanding of the benefits of the policy, and (v) releases the medical  
12 records and acknowledges that the contract has been entered into freely  
13 and voluntarily.

14 All medical information solicited or obtained by any provider is subject to all State laws  
15 relating to confidentiality of medical information. All contracts entered into in this State  
16 shall contain an unconditional refund provision for at least 30 days after the date of the  
17 contract, or 15 days after the receipt of the viatical settlement proceeds, whichever is less.

18           (i) Contract Consideration. – Immediately upon receipt from the viator of  
19 documents to effect the transfer of the policy, the provider shall direct the contract  
20 consideration to an escrow or trust account managed by a trustee or escrow agent in a  
21 bank approved by the Commissioner, pending acknowledgment of the transfer by the  
22 issuer of the policy. The trustee or escrow agent shall transfer the proceeds that are due  
23 to the viator immediately upon receipt of acknowledgment of the transfer from the  
24 insurer. Failure to tender the contract consideration by the date disclosed to the viator  
25 renders the contract null and void.

26           (j) Authority to Adopt Standards. – The Commissioner may:

27           (1) Adopt rules to implement this section.

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

32           (3) Establish appropriate registration and other regulatory requirements for  
33 brokers.

34           (4) Require a bond.

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

37           Sec. 32. G.S. 58-60-35 reads as rewritten:

38 **"§ 58-60-35. Disclosure of prearrangement insurance policy provisions.**

39           (a) As used in this section:

40           (1) 'Prearrangement' means any contract, agreement, or mutual  
41 understanding, or any series or combination of contracts, agreements or  
42 mutual understandings, whether funded by trust deposits or  
43 prearrangement insurance policies, or any combination thereof, which

1 has for a purpose the furnishing or performance of specific funeral  
2 services, or the furnishing or delivery of specific personal property,  
3 merchandise, or services of any nature in connection with the final  
4 disposition of a dead human body, to be furnished or delivered at a time  
5 determinable by the death of the person whose body is to be disposed  
6 of, but does not mean the furnishing of a cemetery lot, crypt, niche,  
7 mausoleum, grave marker or monument.

8 (2) 'Prearrangement insurance policy' means a life insurance policy, annuity  
9 contract, or other insurance contract, or any series of contracts or  
10 agreements in any form or manner, issued on a group or individual basis  
11 by an insurance company authorized by law to do business in this State,  
12 which, whether by assignment or otherwise, has for ~~a~~its sole purpose  
13 the funding of a specific preneed funeral contract or a specific  
14 insurance-funded funeral or burial prearrangement, the insured being the  
15 person for whose service the funds were paid.

16 (b) The following information shall be adequately disclosed by the insurance agent  
17 or limited representative at the time an application is made, prior to accepting the  
18 applicant's initial premium, for a prearrangement insurance policy:

- 19 (1) The fact that a prearrangement insurance policy is involved or being  
20 used to fund a prearrangement;
- 21 (2) The nature of the relationship among the insurance agent or ~~agents,~~  
22 limited representative, the provider of the funeral or cemetery  
23 merchandise or services, the administrator, and any other person;
- 24 (3) The relationship of the prearrangement insurance policy to the funding  
25 of the prearrangement and the nature and existence of any guarantees  
26 relating to the prearrangement;
- 27 (4) The effect on the prearrangement of (i) any changes in the  
28 prearrangement insurance policy, including but not limited to, changes  
29 in the assignment, beneficiary designation, or use of the policy  
30 proceeds; (ii) any penalties to be incurred by the insured as a result of  
31 failure to make premium payments; and (iii) any penalties to be incurred  
32 or monies to be received as a result of cancellation or surrender of the  
33 prearrangement insurance policy;
- 34 (5) All relevant information concerning what occurs and whether any  
35 entitlements or obligations arise if there is a difference between the  
36 policy proceeds and the amount actually needed to fund the  
37 prearrangement; and
- 38 (6) Any penalties or restrictions, including geographic restrictions or the  
39 inability of the provider to perform, on the delivery of merchandise,  
40 services, or the prearrangement guarantee."

41 Sec. 33. G.S. 58-81-1 is repealed.

42 Sec. 33.1. G.S. 20-109.1(a), as rewritten by Chapter 50 of the Session Laws of  
43 1995, reads as rewritten:

1       "(a) Option to Keep Title. – When a vehicle is damaged to the extent that it  
2 becomes a salvage vehicle and the owner submits a claim for the damages to ~~the insurer of~~  
3 ~~the vehicle, an insurer,~~ the insurer must determine whether the owner wants to keep the  
4 vehicle after payment of the claim. If the owner does not want to keep the vehicle after  
5 payment of the claim, the procedures in subsection (b) of this section apply. If the owner  
6 wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of  
7 this section apply."

8           Sec. 34. G.S. 95-111.12(a) reads as rewritten:

9       "(a) No owner shall operate a device subject to the provisions of this Article, unless  
10 at the time, there is in existence a contract of insurance providing coverage of not less  
11 than one million dollars (\$1,000,000) per occurrence against liability for injury to persons  
12 or property arising out of the operation or use of such device or there is in existence a  
13 contract of insurance providing coverage of not less than five hundred thousand dollars  
14 (\$500,000) per occurrence against liability for injury to persons or property arising out of  
15 the operation or use of the amusement devices if the annual gross volume of the devices  
16 does not exceed two hundred seventy-five thousand dollars (\$275,000); provided  
17 waterslides shall not be required to be insured as ~~herein provided~~ in this subsection for an  
18 amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The  
19 insurance contract to be provided must be by any insurer or surety that is acceptable to  
20 the North Carolina Insurance Commissioner and authorized to transact business in this  
21 State; provided, however, that insurance for waterslides may be purchased under Article  
22 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).

23       In lieu of a contract for insurance or surety, a waterslide owner may alternately  
24 comply with this subsection by furnishing to the Commissioner satisfactory proof of  
25 financial ability to directly pay one hundred thousand dollars (\$100,000) per occurrence  
26 in liability for injury to persons or property arising out of the operation or use of the  
27 waterslide. The Commissioner may require the deposit of a security, indemnity, bond, or  
28 irrevocable letter of credit to secure the payment of any liability incurred. The  
29 Commissioner may consult with the Commissioner of Insurance, the Commissioner of  
30 Banks, the Secretary of Commerce, or the State Treasurer in order to determine if any  
31 security, indemnity, bond, or irrevocable letter of credit filed under this subsection is  
32 acceptable proof of financial responsibility."

33           Sec. 35. G.S. 97-2(2) reads as rewritten:

34       "(2) Employee. – The term 'employee' means every person engaged in an  
35 employment under any appointment or contract of hire or  
36 apprenticeship, express or implied, oral or written, including aliens, and  
37 also minors, whether lawfully or unlawfully employed, but excluding  
38 persons whose employment is both casual and not in the course of the  
39 trade, business, profession or occupation of his employer, and as  
40 relating to those so employed by the State, the term 'employee' shall  
41 include all officers and employees of the State, including such as are  
42 elected by the people, or by the General Assembly, or appointed by the  
43 Governor to serve on a per diem, part-time or fee basis, either with or

1 without the confirmation of the Senate; as relating to municipal  
2 corporations and political subdivisions of the State, the term 'employee'  
3 shall include all officers and employees thereof, including such as are  
4 elected by the people. The term 'employee' shall include members of the  
5 North Carolina national guard, except when called into the service of  
6 the United States, and members of the North Carolina State guard, and  
7 members of these organizations shall be entitled to compensation for  
8 injuries arising out of and in the course of the performance of their  
9 duties at drill, in camp, or on special duty under orders of the Governor.  
10 The term 'employee' shall include deputy sheriffs and all persons acting  
11 in the capacity of deputy sheriffs, whether appointed by the sheriff or by  
12 the governing body of the county and whether serving on a fee basis or  
13 on a salary basis, or whether deputy sheriffs serving upon a full-time  
14 basis or a part-time basis, and including deputy sheriffs appointed to  
15 serve in an emergency, but as to those so appointed, only during the  
16 continuation of the emergency. The sheriff shall furnish to the board of  
17 county commissioners a complete list of all deputy sheriffs named or  
18 appointed by him immediately after their appointment, and notify the  
19 board of commissioners of any changes made therein promptly after  
20 such changes are made. Any reference to an employee who has been  
21 injured shall, when the employee is dead, include also his legal  
22 representative, dependents, and other persons to whom compensation  
23 may be payable: Provided, further, that any employee as herein defined  
24 of a municipality, county, or of the State of North Carolina while  
25 engaged in the discharge of his official duty outside the jurisdictional or  
26 territorial limits of the municipality, county, or the State of North  
27 Carolina and while acting pursuant to authorization or instruction from  
28 any superior officer, shall have the same rights under this Article as if  
29 such duty or activity were performed within the territorial boundary  
30 limits of his employer.

31 Every executive officer elected or appointed and empowered in  
32 accordance with the charter and bylaws of a corporation shall be  
33 considered as an employee of such corporation under this Article.

34 Any such executive officer of a corporation may, notwithstanding  
35 any other provision of this Article, be exempt from the coverage of the  
36 corporation's insurance contract by such corporation specifically  
37 excluding such executive officer in such contract of insurance and the  
38 exclusion to remove such executive officer from the coverage shall  
39 continue for the period such contract of insurance is in effect, and  
40 during such period such executive officers thus exempted from the  
41 coverage of the insurance contract shall not be employees of such  
42 corporation under this Article.

1 All county agricultural extension service employees who do not  
2 receive official federal appointments as employees of the United States  
3 Department of Agriculture and who are field faculty members with  
4 professional rank as designated in the memorandum of understanding  
5 between the North Carolina Agricultural Extension Service, North  
6 Carolina State University, A & T State University and the boards of  
7 county commissioners shall be deemed to be employees of the State of  
8 North Carolina. All other county agricultural extension service  
9 employees paid from State or county funds shall be deemed to be  
10 employees of the county board of commissioners in the county in which  
11 the employee is employed for purposes of workers' compensation.

12 The term employee shall also include members of the Civil Air  
13 Patrol currently certified pursuant to G.S. 143B-491(a) when  
14 performing duties in the course and scope of a State approved mission  
15 pursuant to Article 11 of Chapter 143B.

16 Employee shall not include any person performing voluntary service  
17 as a ski patrolman who receives no compensation for such services other  
18 than meals or lodging or the use of ski tow or ski lift facilities or any  
19 combination thereof.

20 Any sole proprietor or partner of a business or any member of a  
21 limited liability company ~~whose employees are eligible for benefits under~~  
22 ~~this Article~~ may elect to be included as an employee under the workers'  
23 compensation coverage of such business if he is actively engaged in the  
24 operation of the business and if the insurer is notified of his election to  
25 be so included. Any such sole proprietor or partner or member of a  
26 limited liability company shall, upon such election, be entitled to  
27 employee benefits and be subject to employee responsibilities  
28 prescribed in this Article."

29 Sec. 36. G.S. 97-19 reads as rewritten:

30 **"§ 97-19. Liability of principal contractors; certificate that subcontractor has**  
31 **complied with law; right to recover compensation of those who would**  
32 **have been liable; order of liability.**

33 Any principal contractor, intermediate contractor, or subcontractor who shall sublet  
34 any contract for the performance of any work without requiring from such subcontractor  
35 or obtaining from the Industrial Commission a certificate, issued by a workers'  
36 compensation insurance carrier, or a certificate of compliance issued by the Department  
37 of Insurance to a self-insured subcontractor, stating that such subcontractor has complied  
38 with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has  
39 regularly in service fewer than three employees in the same business within this State, to  
40 the same extent as such subcontractor would be if he were subject to the provisions of  
41 this Article for the payment of compensation and other benefits under this Article on  
42 account of the injury or death of any such subcontractor, any principal or partner of such  
43 subcontractor or any employee of such subcontractor due to an accident arising out of and

1 in the course of the performance of the work covered by such subcontract. If the principal  
2 contractor, intermediate contractor or subcontractor shall obtain such certificate at the  
3 time of subletting such contract to subcontractor, he shall not thereafter be held liable to  
4 any such subcontractor, any principal or partner of such subcontractor, or any employee  
5 of such subcontractor for compensation or other benefits under this Article. ~~If the~~  
6 ~~subcontractor has no employees and waives in writing his right to coverage under this section,~~  
7 ~~the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not~~  
8 ~~thereafter be held liable for compensation or other benefits under this Article to said~~  
9 ~~subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-~~  
10 ~~93.~~

11 Any principal contractor, intermediate contractor, or subcontractor paying  
12 compensation or other benefits under this Article, under the foregoing provisions of this  
13 section, may recover the amount so paid from any person, persons, or corporation who  
14 independently of such provision, would have been liable for the payment thereof.

15 Every claim filed with the Industrial Commission under this section shall be instituted  
16 against all parties liable for payment, and said Commission, in its award, shall fix the  
17 order in which said parties shall be exhausted, beginning with the immediate employer.

18 The principal or owner may insure any or all of his contractors and their employees in  
19 a blanket policy, and when so insured such contractor's employees will be entitled to  
20 compensation benefits regardless of whether the relationship of employer and employee  
21 exists between the principal and the contractor."

22 Sec. 37. Reserved.

23 Sec. 38. Section 208(d) of Chapter 757 of the 1985 Session Laws, as amended  
24 by Section 1 of Chapter 480 of the 1991 Session Laws, is repealed.

25 Sec. 39. (a) Article 11 of Chapter 131E of the General Statutes (G.S. 131E-210  
26 through G.S. 131E-213) is repealed.

27 (b) Chapter 131E of the General Statutes is amended by adding the following new  
28 Article to read:

29 **"ARTICLE 11A.**

30 **"MEDICAL CARE DATA.**

31 **"§ 131E-214. Title and purpose.**

32 (a) This Article is the Medical Care Data Act.

33 (b) The General Assembly finds that, as a result of rising medical care costs and  
34 the concern expressed by medical care providers, medical care consumers, third-party  
35 payors, and health care planners involved with planning for the provision of medical care,  
36 there is an urgent and continuing need to understand patterns and trends in the use and  
37 cost of medical care services in this State. The purposes of this Article are as follows:

38 (1) To ensure that there is an information base containing medical care data  
39 from throughout the State that can be used to improve the appropriate  
40 and efficient use of medical care services and maintain an acceptable  
41 quality of health care services in this State.

42 (2) To ensure that the necessary medical care data is available to university  
43 researchers, State public policymakers, and all other interested persons

1           to improve the decision-making process regarding access, identified  
2           needs, patterns of medical care, charges, and use of appropriate medical  
3           care services.

- 4           (3) To ensure that a data processor receiving data under this Article protects  
5           patient confidentiality.

6           These purposes are to be accomplished by requiring that all hospitals and freestanding  
7           ambulatory surgical facilities submit information necessary for a review and comparison  
8           of charges, utilization patterns, and quality of medical services to a data processor that  
9           maintains a statewide database of medical care data and that makes medical care data  
10           available to interested persons, including medical care providers, third-party payors,  
11           medical care consumers, and health care planners.

12           **"§ 131E-214.1. Definitions.**

13           As used in this Article:

- 14           (1) 'Division' means the Division of Facility Services of the Department of  
15           Human Resources.

- 16           (2) 'Freestanding ambulatory surgical facility' means a facility licensed  
17           under Part D of Article 6 of this Chapter.

- 18           (3) 'Hospital' means a facility licensed under Article 5 of this Chapter or  
19           Article 2 of Chapter 122C of the General Statutes, but does not include  
20           the following:

21           a. A facility with all of its beds designated for medical type 'LTC'  
22           (long-term care).

23           b. A facility with the majority of its beds designated for medical  
24           type 'PSY-3' (mental retardation).

25           c. A facility operated by the North Carolina Department of  
26           Correction.

- 27           (4) 'Patient data' means data that includes a patient's age, sex, zip code,  
28           third-party coverage, principal and other diagnosis, date of admission,  
29           procedure and discharge date, principal and other procedures, total  
30           charges and components of the total charges, attending physician  
31           identification number, and hospital or freestanding ambulatory surgical  
32           facility identification number.

- 33           (5) 'Patient identifying information' means the name, address, social  
34           security number, or similar information by which the identity of a  
35           patient can be determined with reasonable accuracy and speed either  
36           directly or by reference to other publicly available information. The  
37           term does not include a number assigned to a patient by a health care  
38           provider if that number does not consist of or contain numbers,  
39           including social security or drivers license numbers, that could be used  
40           to identify a patient with reasonable accuracy and speed from sources  
41           external to the health care provider.

- 42           (6) 'Statewide data processor' means a data processor certified by the  
43           Division as capable of complying with the requirements of G.S. 131E-



1           214.4. The Division may deny, suspend, or revoke a certificate, in  
2           accordance with Chapter 150B of the General Statutes, if the statewide  
3           data processor does not comply with or is not capable of complying  
4           with the requirements of G.S. 131E-214.4. The Division is authorized  
5           to promulgate rules concerning the receipt, consideration, and limitation  
6           of a certificate applied for or issued under this Article.

7           **"§ 131E-214.2. Data submission required.**

8           Except as prohibited by federal law or regulation, each hospital and freestanding  
9           ambulatory surgical facility shall submit patient data to a statewide data processor within  
10          60 calendar days after the close of each calendar quarter for patients that were discharged  
11          or died during that quarter.

12          **"§ 131E-214.3. Patient data not public records.**

13          (a) The following are not public records under Chapter 132 of the General  
14          Statutes:

15                (1) Patient data furnished to and maintained by a statewide data processor  
16                pursuant to this Article.

17                (2) Compilations of patient data prepared for release or dissemination by a  
18                statewide data processor pursuant to this Article.

19                (3) Patient data furnished by a statewide data processor to the State.

20          (b) Compilations of data under subdivision (a)(3) of this section, prepared for  
21          release or dissemination by the State, are public records.

22          (c) The State shall not allow proprietary information, including patient data, that it  
23          receives from a statewide data processor to be used by a person for commercial purposes.  
24          The State shall require the person requesting this information to certify that it will not use  
25          the information for commercial purposes.

26          (d) A person is immune from liability for actions arising from the required  
27          submission of data under this Article.

28          **"§ 131E-214.4. Statewide data processor.**

29                (a) A statewide data processor shall perform the following duties:

30                    (1) Make available annually to the Division, at no charge, a report that  
31                    includes a comparison of the 35 most frequently reported charges of  
32                    hospitals and freestanding ambulatory surgical facilities. The report is a  
33                    public record and shall be made available to the public in accordance  
34                    with Chapter 132 of the General Statutes. Publication or broadcast by  
35                    the news media shall not constitute a resale or use of the data for  
36                    commercial purposes.

37                    (2) Receive patient data from hospitals and freestanding ambulatory  
38                    surgical facilities throughout this State.

39                    (3) Compile and maintain a uniform set of data from the patient data  
40                    submitted.

41                    (4) Analyze the patient data.

1           (5)    Compile reports from the patient data and make the reports available  
2           upon request to interested persons at a reasonable charge determined by  
3           the data processor.  
4           (6)    Ensure that adequate measures are taken to provide system security for  
5           all data and information received from hospitals and freestanding  
6           ambulatory surgical facilities pursuant to this Article.  
7           (7)    Protect the confidentiality of patient records and comply with applicable  
8           laws and regulations concerning patient confidentiality, including the  
9           confidentiality of patient-identifying information. The data processor  
10           shall not disclose patient-identifying information unless (i) the  
11           information was originally submitted by the party requesting disclosure  
12           or (ii) the State Health Director requests specific individual records for  
13           the purpose of protecting and promoting the public health under Chapter  
14           130A of the General Statutes, and the disclosure is not otherwise  
15           prohibited by federal law or regulation. Such records shall be made  
16           available to the State Health Director at a reasonable charge. Such  
17           records made available to the State Health Director are not public  
18           records; the State Health Director shall maintain their confidentiality  
19           and shall not make the records available notwithstanding G.S. 130A-  
20           374(a)(2).

21           (b)    The Department of Human Resources may take adverse action against a  
22           hospital under G.S. 131E-78 or G.S. 122C-24 or against a freestanding ambulatory  
23           surgical center under G.S. 131E-148 for a violation of this Article."

24           (c)    G.S. 58-68A-10(5)i. reads as rewritten:

25                    "i.    Jointly with the Commission and ~~the North Carolina Medical~~  
26                    ~~Database Commission,~~ a statewide data processor certified under  
27                    Article 11A of Chapter 131E of the General Statutes, collect data  
28                    from all community health plans and sponsor research into health  
29                    outcomes and practice guidelines."

30           (d)    G.S. 120-123(45) is repealed.

31           (e)    This section does not require a person, corporation, or other entity not  
32           previously required to report data to the Medical Database Commission to report data  
33           under this section. This section does not require a person, corporation, or other entity to  
34           be a statewide data processor.

35           (f)    G.S. 58-6-25(a), as amended by Section 3 of Chapter 360 of the 1995  
36           Session Laws, reads as rewritten:

37           " (a)    Charge Levied. – There is levied on each insurance company an annual charge  
38           ~~to defray the cost of regulating the insurance industry. for the purposes stated in subsection~~  
39           (d) of this section. As used in this section, the term 'insurance company' means a  
40           company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8,  
41           except that the term does not include a hospital, medical, or dental service corporation  
42           regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does  
43           not include a company regulated under Article 67 of this Chapter. The charge levied in

1 this section is in addition to all other fees and taxes. The charge shall be at a percentage  
2 rate of the company's premium tax liability for the taxable year. In determining an  
3 insurance company's premium tax liability for a taxable year, additional taxes imposed by  
4 G.S. 105-228.8 shall be disregarded.

5 (g) G.S. 58-6-25(d), as amended by Section 3 of Chapter 360 of the 1995  
6 Session Laws, reads as rewritten:

7 "(d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State  
8 treasury, under the control of the Office of State Budget and Management. The proceeds  
9 of the charge levied in this section and all fees collected under Articles 69 through 71 of  
10 this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be  
11 credited to the Fund. The Fund shall be placed in an interest-bearing account and any  
12 interest or other income derived from the Fund shall be credited to the Fund. Moneys in  
13 the Fund may be spent only pursuant to appropriation by the General Assembly and in  
14 accordance with the line item budget enacted by the General Assembly. The Fund is  
15 subject to the provisions of the Executive Budget Act, except that no unexpended surplus  
16 of the Fund shall revert to the General Fund. All money credited to the Fund shall be  
17 used to reimburse the General Fund for money appropriated to State agencies to pay the  
18 expenses incurred in regulating the insurance ~~industry.~~industry, in certifying statewide  
19 data processors under Article 11A of Chapter 131E of the General Statutes, and in  
20 purchasing reports of patient data from statewide data processors certified under that  
21 Article."

22 (h) Of the amount appropriated in Chapter 324 of the 1995 Session Laws to  
23 the Department of Insurance for the Medical Database Commission, the sum of one  
24 hundred fifty thousand dollars (\$150,000) is transferred for fiscal year 1995-96 from the  
25 Department of Insurance to the Department of Human Resources, Division of Facility  
26 Services, to be used to certify statewide data processors under Article 11A of Chapter  
27 131E of the General Statutes and to purchase reports from statewide data processors  
28 certified under that Article. The remainder of the amount appropriated for the Medical  
29 Database Commission for that fiscal year that has neither been expended nor encumbered  
30 as of September 30, 1995, shall revert to the General Fund.

31 (i) The provisions of this section are severable. If the court declares a portion  
32 of this section unconstitutional or invalid, the remainder of the section is valid.

33 Sec. 40. Reserved.

34 Sec. 41. If any section or provision of this act is declared unconstitutional or  
35 invalid by the courts, it does not affect the validity of the act as a whole or any part other  
36 than the part so declared to be unconstitutional or invalid.

37 Sec. 42. Sections 4, 7, 13, 14, 20, 23, 25, 27, 28, 29, 30, 31, and 36 and all of  
38 Section 39 except subsections (f) and (g) of that section become effective October 1,  
39 1995. Section 33.1 is effective July 1, 1995. Section 3.1 becomes effective October 1,  
40 1995, and applies to health benefit plans issued, renewed, or amended on or after that  
41 date. Section 26 is effective June 30, 1995. The remainder of this act is effective upon  
42 ratification. Section 34 expires December 31, 1997.