

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 660\*  
Committee Substitute Favorable 4/18/05

Short Title: Insurance Financial Changes.-AB

(Public)

Sponsors:

Referred to:

March 16, 2005

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

4 The General Assembly of North Carolina enacts:

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

6 "§ 58-2-150. Oath required for compliance with law.

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

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

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

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

21 "§ 58-5-50. Deposits of foreign life insurance companies.

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

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

2   "**§ 58-5-90. Deposits held in trust by Commissioner or Treasurer.**

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

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

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

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

34   "**§ 58-6-15. Annual license continuation fee definition; requirements.**

35       For purposes of this Chapter only, "annual license continuation ~~fee means~~" fee  
36 means the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the  
37 license is in effect after the company's year of initial licensing. The annual license  
38 continuation fee must be submitted annually on or before the first day of March ~~on a~~  
39 ~~form to be supplied by the Commissioner each year~~ for as long as the license is to  
40 remain in effect. If the Commissioner is satisfied that the company has met all  
41 requirements of law and appears to be financially solvent, the Commissioner shall not  
42 revoke or suspend the license of the company, and the company shall be authorized to  
43 do business in this State, subject to all other applicable provisions of the insurance laws

1 of this State. Nothing contained in this section shall be interpreted as applying to  
2 licenses issued to individual representatives of insurance companies."

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

5 **"§ 58-7-46. Notification to Commissioner for president or chief executive officer**  
6 **changes.**

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

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

14 **"§ 58-7-170. Diversification.**

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

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

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

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

1 (c) The cost of investments made by an insurer in mortgage loans authorized by  
2 G.S. 58-7-179 with any one person, or in ~~mortgage pass-through securities and~~  
3 ~~derivatives of mortgage pass-through mortgage-backed~~ securities authorized by  
4 G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral ~~package, pool,~~ shall  
5 not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not  
6 invest in additional mortgage loans or ~~mortgage pass-through securities and derivatives~~  
7 ~~of mortgage pass-through mortgage-backed~~ securities without the Commissioner's  
8 consent if the admitted value of all those investments held by the insurer exceeds an  
9 aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the  
10 aggregate sixty percent (60%) limitation, the admitted value of all ~~mortgage~~  
11 ~~pass-through securities and derivatives of mortgage pass-through mortgage-backed~~  
12 securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of  
13 the admitted assets of the insurer. The admitted value of other mortgage loans permitted  
14 by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the  
15 insurer. ~~Mortgage pass-through Mortgage-backed~~ securities authorized by  
16 G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral ~~package pool~~  
17 limitation and the sixty percent (60%) aggregate limitation. No later than January 31,  
18 1999, an insurer that has mortgage investments that exceed the limitations specified in  
19 this subsection shall submit to the Commissioner a plan to bring the amount of  
20 mortgage investments into compliance with the specified limitations by January 1,  
21 2004.

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

- 26 (1) No more than twenty percent (20%) of an insurer's admitted assets;
- 27 (2) No more than ten percent (10%) of an insurer's admitted assets in  
28 obligations ~~that have been given a rating of designated a 4, 5, or 6 by~~  
29 ~~the Securities Valuation Office of the NAIC; in accordance with the~~  
30 Purposes and Procedures Manual of the NAIC Securities Valuation  
31 Office;
- 32 (3) No more than three percent (3%) of an insurer's admitted assets in  
33 obligations ~~that have been given a rating of designated a 5 or 6 by the~~  
34 ~~Securities Valuation Office of the NAIC; in accordance with the~~  
35 Purposes and Procedures Manual of the NAIC Securities Valuation  
36 Office; and
- 37 (4) No more than one percent (1%) of an insurer's admitted assets in  
38 obligations ~~that have been given a rating of designated a 6 by the~~  
39 ~~Securities Valuation Office of the NAIC. in accordance with the~~  
40 Purposes and Procedures Manual of the NAIC Securities Valuation  
41 Office.
- 42 (5), (6). Repealed by Session Laws 1993, c. 452, s. 11.

43 (e) As used in subsections (d), (f), (g), and (h) of this section, "medium to lower  
44 quality obligations" means obligations ~~that have been given a rating of designated a 3,~~

1 4, 5, or 6 by the Securities Valuation Office of the NAIC. in accordance with the  
2 Purposes and Procedures Manual of the NAIC Securities Valuation Office.

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

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

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

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

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

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

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

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

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

43 "(17) ~~Mortgage pass-through securities and derivatives thereof, that have~~  
44 ~~been rated as investment grade by the Securities Valuation Office of~~

1           ~~the NAIC~~ Mortgage-backed securities that are designated a 1 or 2 in  
2           accordance with the Purposes and Procedures Manual of the NAIC  
3           Securities Valuation Office including, without limitation, collateral  
4           mortgage obligations backed by a pool of mortgages of the kind, class,  
5           and investment quality as those eligible for investment under  
6           G.S. 58-7-179."

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

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

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

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

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

21          "**§ 58-10-140. Report of policyholder's position.**

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

26          **SECTION 13.** G.S. 58-16-6 reads as rewritten:

27          "**§ 58-16-6. Conditions of continued licensure.**

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

33          **SECTION 14.** G.S. 58-19-30(b)(1) reads as rewritten:

34          "(1) Sales, purchases, exchanges, loans or extensions of credit, ~~guarantees,~~  
35          or investments, provided the transactions equal or exceed: (i) with  
36          respect to nonlife insurers, the lesser of three percent (3%) of the  
37          insurer's admitted assets or twenty-five percent (25%) of surplus as  
38          regards policyholders; (ii) with respect to life insurers, three percent  
39          (3%) of the insurer's admitted assets; each as of the preceding  
40          December 31."

41          **SECTION 15.** G.S. 58-47-140 reads as rewritten:

42          "**§ 58-47-140. Other provisions of this Chapter.**

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

1 G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161,  
2 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120,  
3 ~~58-3-125~~, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19,  
4 30, 33, 34, and 63 of this Chapter apply to groups."

5 **SECTION 16.** G.S. 58-56-2(5)l. reads as rewritten:

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

13 **SECTION 17.** G.S. 58-65-2 reads as rewritten:

14 **"§ 58-65-2. Other laws applicable to service corporations.**

15 The following provisions of this Chapter are applicable to service corporations that  
16 are subject to this Article:

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

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

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

21 G.S. 58-2-160. Reporting and investigation of insurance and reinsurance  
22 fraud and the financial condition of licensees; immunity from  
23 liability.

24 G.S. 58-2-162. Embezzlement by insurance agents, brokers, or  
25 administrators.

26 G.S. 58-2-185. Record of business kept by companies and agents;  
27 Commissioner may inspect.

28 G.S. 58-2-190. Commissioner may require special reports.

29 G.S. 58-2-195. Commissioner may require records, reports, etc., for agencies,  
30 agents, and others.

31 G.S. 58-2-200. Books and papers required to be exhibited.

32 G.S. 58-3-50. Companies must do business in own name; emblems,  
33 insignias, etc.

34 G.S. 58-3-100(c),(e). Insurance company licensing provisions.

35 G.S. 58-3-115. Twisting with respect to insurance policies; penalties.

36 G.S. 58-7-46. Notification to Commissioner for president or chief executive  
37 officer changes.

38 G.S. 58-50-35. Notice of nonpayment of premium required before forfeiture.

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

41 **SECTION 18.** G.S. 58-67-25 reads as rewritten:

42 **"§ 58-67-25. Deposits.**

43 (a) The Commissioner shall require a minimum deposit of five hundred thousand  
44 dollars (\$500,000) for all full service medical health maintenance organizations or such

1 higher amount as he deems necessary for the protection of enrollees. ~~The minimum~~  
 2 ~~deposit for a full service medical health maintenance organization authorized to operate~~  
 3 ~~on July 17, 1987, and having a deposit of less than five hundred thousand dollars~~  
 4 ~~(\$500,000) shall be as follows:~~

5 (1) ~~\$250,000 by December 31, 1987~~

6 (2) ~~\$500,000 by December 31, 1988.~~

7 ~~Any health maintenance organization not authorized to do business on July 17, 1987,~~  
 8 ~~must comply with the minimum initial deposit of five hundred thousand dollars~~  
 9 ~~(\$500,000).~~

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

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

15 **SECTION 19.** G.S. 58-67-115(b)(2) reads as rewritten:

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

28 **SECTION 20.** G.S. 58-67-171 reads as rewritten:

29 **"§ 58-67-171. Other laws applicable to HMOs.**

30 The following provisions of this Chapter are applicable to HMOs that are subject to  
 31 this Article:

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

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

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

36 G.S. 58-2-160. Reporting and investigation of insurance and reinsurance  
 37 fraud and the financial condition of licensees; immunity from  
 38 liability.

39 G.S. 58-2-162. Embezzlement by insurance agents, brokers, or  
 40 administrators.

41 G.S. 58-2-185. Record of business kept by companies and agents;  
 42 Commissioner may inspect.

43 G.S. 58-2-190. Commissioner may require special reports.



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

18 **SECTION 21.** G.S. 58-2-215(b)(1) reads as rewritten:

19 "(1) For the purpose of retaining outside actuarial and economic  
 20 consultants, legal counsel, and court reporting services in the review  
 21 and analysis of rate ~~filings, filings and any other insurance regulatory~~  
 22 matters, in conducting all hearings, and through any final  
 23 adjudication."

24 **SECTION 22.** G.S. 58-12-40 reads as rewritten:

25 **"§ 58-12-40. Supplemental provisions; rules; exemptions.**

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

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

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

- 39 (1) Writes direct business only in this State.
- 40 (2) Writes direct annual premiums of ~~one thousand dollars (\$1,000)~~ two
- 41 million dollars (\$2,000,000) or less.
- 42 (3) Assumes no reinsurance in excess of five percent (5%) of direct
- 43 written premiums.

1 (d) The Commissioner may, in the Commissioner's discretion, exempt from the  
2 application of this Article:

3 (1) Any domestic town or county mutual insurance company organized  
4 under G.S. 58-7-75(5)d.

5 (2) Any domestic life or health insurer that:

6 a. Has no direct or assumed annual premiums; and

7 b. Has no direct or assumed policyholder obligations.

8 (3) Any domestic health maintenance organization that:

9 a. Writes only direct business in this State;

10 b. Assumes no reinsurance in excess of five percent (5%) of direct  
11 written premiums; and

12 c. Writes direct annual premiums for a comprehensive medical  
13 business of two million dollars (\$2,000,000) or less, or is a  
14 single service health maintenance organization that covers less  
15 than 2,000 lives."

16 **SECTION 23.** G.S. 58-67-10 reads as rewritten:

17 **"§ 58-67-10. Establishment of health maintenance organizations.**

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

26 (b) (1) It is specifically the intention of this section to permit such persons as  
27 were providing health services on a prepaid basis on July 1, 1977, or  
28 receiving federal funds under Section 254(c) of Title 42, U.S. Code, as  
29 a community health center, to continue to operate in the manner which  
30 they have heretofore operated.

31 (2) Notwithstanding anything contained in this Article to the contrary, any  
32 person can provide health services on a fee for service basis to  
33 individuals who are not enrollees of the organization, and to enrollees  
34 for services not covered by the contract, provided that the volume of  
35 services in this manner shall not be such as to affect the ability of the  
36 health maintenance organization to provide on an adequate and timely  
37 basis those services to its enrolled members which it has contracted to  
38 furnish under the enrollment contract.

39 (3) This Article shall not apply to any employee benefit plan to the extent  
40 that the Federal Employee Retirement Income Security Act of 1974  
41 preempts State regulation thereof.

42 (3a) This Article does not apply to any prepaid health service or capitation  
43 arrangement implemented or administered by the Department of  
44 Health and Human Services or its representatives, pursuant to 42

1 U.S.C. § 1396n or Chapter 108A of the General Statutes, a provider  
2 sponsored organization or other organization certified, qualified, or  
3 otherwise approved by the Division of Medical Assistance of the  
4 Department of Health and Human Services pursuant to Article 17 of  
5 Chapter 131E of the General Statutes, or to any provider of health care  
6 services participating in such a prepaid health service or capitation  
7 arrangement. Article; provided, however, that to the extent this Article  
8 applies to any such person acting as a subcontractor to a Health  
9 Maintenance Organization licensed in this State, that person shall be  
10 considered a single service Health Maintenance Organization for the  
11 purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-110.

12 (4) Except as provided in paragraphs (1), (2), (3), and (3a) of this  
13 subsection, the persons to whom these paragraphs are applicable shall  
14 be required to comply with all provisions contained in this Article.

15 (c) Each application for a ~~certificate of authority license~~ shall be verified by an  
16 officer or authorized representative of the applicant, shall be in a form prescribed by the  
17 Commissioner, and shall be set forth or be accompanied by the following:

18 (1) A copy of the basic organizational document, if any, of the applicant  
19 such as the articles of incorporation, articles of association, partnership  
20 agreement, trust agreement, or other applicable documents, and all  
21 amendments ~~thereto~~; thereto. Any proposed articles of incorporation  
22 for the formation of a domestic health maintenance organization shall  
23 be filed with the Commissioner. The Commissioner shall examine the  
24 proposed articles. If the Commissioner finds that the proposed articles  
25 meet the requirements of the insurance laws of this State and otherwise  
26 determines that the articles should be approved, the Commissioner  
27 shall place a certificate of approval on the articles and submit the  
28 approved articles to the Secretary of State;

29 (2) A copy of the bylaws, rules and regulations, or similar document, if  
30 any, regulating the conduct of the internal affairs of the applicant;

31 (3) A list of the names, addresses, and official positions of persons who  
32 are to be responsible for the conduct of the affairs of the applicant,  
33 including all members of the board of directors, board of trustees,  
34 executive committee, or other governing board or committee, the  
35 principal officers in the case of a corporation, and the partners or  
36 members in the case of a partnership or association;

37 (4) A copy of any contract form made or to be made between any class of  
38 providers and the HMO and a copy of any contract form made or to be  
39 made between third party administrators, marketing consultants, or  
40 persons listed in subdivision (3) of this subsection and the HMO;

41 (5) A statement generally describing the health maintenance organization,  
42 its health care plan or plans, facilities, and personnel;

43 (6) A copy of the form of evidence of coverage to be issued to the  
44 enrollees;

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

1 network, the addition or deletion of Medicare risk or Medicaid risk  
2 arrangements and the addition or deletion of employer groups that  
3 exceed ten percent (10%) of the health maintenance organization's  
4 book of business or such other information as the Commissioner may  
5 require. Such information shall be filed with the Commissioner within  
6 15 days after implementation of the reported changes. Every HMO  
7 shall file with the Commissioner all subsequent changes in the  
8 information or forms that are required by this Article to be filed with  
9 the Commissioner.

10 (1a) Any proposed change to the articles of incorporation shall be filed with  
11 the Commissioner. The Commissioner shall examine the proposed  
12 change to the articles. If the Commissioner determines that the  
13 proposed change should be approved, the Commissioner shall place a  
14 certificate of approval on the change and submit the approved change  
15 to the Secretary of State.

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

19 **SECTION 24.** G.S. 58-15-30 reads as rewritten:

20 "**§ 58-15-30. License, surplus, and deposit requirements.**

21 (a) No reciprocal shall engage in any insurance transaction in this State until it  
22 has obtained a license to do so in accordance with the applicable provisions of Articles  
23 1 through 64 of this Chapter. ~~Such~~ The license shall expire on the last day of June of  
24 ~~each year.~~ continue in full force and effect, subject to timely payment of an annual  
25 license continuation fee in accordance with G.S. 58-6-7 and subject to any other  
26 applicable provision of the insurance laws of this State.

27 (b) No domestic or foreign reciprocal shall be licensed in this State unless it has a  
28 surplus to policyholders of at least eight hundred thousand dollars (\$800,000); and no  
29 alien reciprocal shall be licensed unless it has a trusted surplus of at least eight hundred  
30 thousand dollars (\$800,000).

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

37 **SECTION 25.** G.S. 58-13-20 reads as rewritten:

38 "**§ 58-13-20. Exception.**

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

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

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

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

- 19 (1) Is organized or, in the case of a United States office of a foreign  
20 banking organization, licensed under the laws of the United States or  
21 any of its states;
- 22 (2) Is regulated, supervised, and examined by United States federal or  
23 state authorities having regulatory authority over banks and trust  
24 companies; and
- 25 (3) Has been determined by either the Commissioner or the Securities  
26 Valuation Office of the NAIC to meet the standards of financial  
27 condition and standing considered necessary and appropriate to  
28 regulate the quality of financial institutions who serve as trustees."

29 **SECTION 26.** G.S. 58-8-20(e) reads as rewritten:

30 "(e) Guaranty capital may be reduced or retired by vote of the policyholders of the  
31 company and the assent of the Commissioner, if the net assets of the company above its  
32 reserve and all other claims and obligations, exclusive of guaranty capital, for two years  
33 immediately preceding and including the date of its last annual statement, is not less  
34 than twenty-five percent (25%) of the guaranty capital. ~~Due Written~~ notice of ~~such the~~  
35 proposed action on the part of the company must be mailed to each policyholder of the  
36 company not less than 30 days before the meeting when the action may be taken, and  
37 must also be advertised in two papers of general circulation, approved by the  
38 Commissioner, not less than three times a week for a period of not less than four weeks  
39 before ~~such the~~ meeting. The written notification to policyholders shall include a proxy  
40 statement to allow policyholders to vote on the proposed action without personal  
41 attendance at the meeting, and the Commissioner shall approve both the written  
42 notification and the proxy statement. An affirmative vote of at least two-thirds of the  
43 policy holders voting in person or by proxy is required to adopt the proposed action."

44 **SECTION 27.** This act becomes effective October 1, 2005.