

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 327
SENATE BILL 289

AN ACT TO PROVIDE FOR THE INTEGRITY OF DOMESTIC INSURANCE
COMPANY ASSETS FOR THE PROTECTION OF POLICYHOLDERS.

The General Assembly of North Carolina enacts:

Section 1. Subchapter IX of Chapter 58 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Asset Protection Act.

"§ 58-410. **Title.**—This Article shall be known and may be cited as the 'Asset Protection Act'.

"§ 58-411. **Purposes.**—The purposes of this Article are to require insurers to maintain unencumbered assets in amounts equal to reserve liabilities; to provide preferential claims against insurers' assets in favor of owners, beneficiaries, assignees, and holders of insurance policies and certificates; and to prevent the pledging, hypothecation, or encumbrance of assets in excess of certain amounts without a prior written order of the Commissioner.

"§ 58-412. **Scope.**—This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under this Chapter and General Statutes Chapter 57. This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to county farm mutual companies.

"§ 58-413. **Definitions.**—As used in this Article:

(1) 'Assets' means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.

(2) 'Claimants' means any owners, beneficiaries, assignees, certificate holders, or third party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.

(3) 'Reserve assets' means those assets of an insurer that are authorized investments for policy reserves in accordance with this Chapter and G.S. 57-8.

(4) 'Reserve liabilities' means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with this Chapter and G.S. 57-8.

"§ 58-414. **Exception.**—(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those reserve liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance

agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

- (1) The ceding insurer and the reinsurer are both licensed to transact business in this State;
- (2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the reserve liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in a trust account for that purpose and under those conditions with a State or national bank domiciled in this State.

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

"§ 58-415. Prohibition of hypothecation.—(a) Every insurer subject to this Article shall at all times have and maintain free and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon application made to him, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a finding that the pledging, hypothecation, or encumbrance will not adversely affect the solvency of the insurer.

(b) Any insurer that pledges, hypothecates, or otherwise encumbers any of its assets shall within 10 days thereafter report in writing to the Commissioner the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of the transaction. In addition, the insurer shall file, along with its statement under G.S. 58-21, a statement sworn to by the chief executive officer of the insurer that: (i) Title to assets in an amount equal to the reserve liability of the insurer that are not pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of the transaction of the pledge, hypothecation, or encumbrance are as reported in such sworn statement.

(c) Any person that accepts a pledge, hypothecation, or encumbrance of any asset of an insurer, as security for a debt or other obligation of the insurer, not in accordance with this Article, is deemed to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of claimants: Provided, that said lien does not apply to the assets of an insurer in a delinquency proceeding under Article 17A of this

Chapter if the Commissioner or the court, whichever is appropriate, approves the pledge, hypothecation, or encumbrance of the assets.

(d) In the event of the liquidation of any insurer subject to this Article, claimants of the insurer shall have a prior and preferential claim against all assets of the insurer except those that have been pledged, hypothecated, or encumbered in accordance with this Article. Subject to G.S. 58-155.15(a), all claimants have equal status; and their prior and preferential claims are superior to any claim or cause of action against the insurer by any other person."

Sec. 2. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 6th day of June, 1985.