GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 452
HOUSE BILL 622

AN ACT TO IMPROVE THE LAWS RELATING TO NORTH CAROLINA'S MONITORING OF INSURANCE COMPANY FINANCES AND THE PRESERVATION OF INSURANCE COMPANY SOLVENCY, TO MAINTAIN NORTH CAROLINA'S ACCREDITATION BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND TO ESTABLISH A FEE FOR THE ACCREDITATION AND RENEWAL OF ACCREDITATION OF REINSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-71. Unearned premium reserves.**

(a) Every insurance company, other than a life or real estate title insurance company, shall maintain reserves equal to the unearned portions of the gross premiums charged on unexpired or unterminated risks and policies.

(b) No deductions may be made from the gross premiums in force except for original premiums canceled on risks terminated or reduced before expiration, or except for premiums paid or credited for risks reinsured with other solvent assuming insurers authorized to transact business in this State.

(c) Premiums charged for bulk or portfolio reinsurance assumed from other insurers shall be included as premiums in force on the basis of the original premiums and original terms of the policies of the ceding insurer.

(d) Reinsurance ceded to an authorized assuming insurer may be deducted on the basis of original premiums and original terms, except in the case of excess loss or catastrophe reinsurance, which may be deducted only on the basis of actual reinsurance premiums and actual reinsurance terms.

(e) The reserve for unearned premiums shall be computed on an actual basis or may be computed on the monthly pro rata fractional basis if in the opinion of the Commissioner this method produces an adequate reserve.

(f) With respect to marine insurance, premiums on trip risks not terminated shall be deemed unearned; and the Commissioner may require a reserve to be carried thereon equal to one hundred percent (100%) of the premiums on trip risks written during the month ended as of the statement date.

(g) The Commissioner may adopt rules for the unearned premium reserve computation for premiums covering indefinite terms."

Sec. 2. G.S. 58-3-75 reads as rewritten:

"**§ 58-3-75. Loss and loss expense reserves of fire and marine insurance companies.**

In any determination of the financial condition of any fire or marine or fire and marine insurance company authorized to do business in this State, such company shall be charged, in addition to its unearned premium liability as prescribed in G.S. 58-3-70, with a liability for loss reserves in an amount equal to the aggregate of the estimated amounts payable on all outstanding claims reported to it which arose out of any contract of insurance or reinsurance made by it, and in addition thereto an amount fairly estimated as necessary to provide for unreported losses incurred on or prior to the date of such determination, as defined in G.S. 58-3-81(a), and including, both as to reported and unreported claims, an amount estimated as necessary to provide for the expense of adjusting such claims, and there shall be deducted, in determining such liability for loss reserves, the amount of reinsurance recoverable by such company, in respect to such claims, from assuming insurers in accordance with G.S. 58-7-21. Such loss and loss expense reserves shall be calculated in accordance with any method adopted or approved by the NAIC, unless the Commissioner determines that another more conservative method is appropriate."

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

"**§ 58-3-81. Loss and loss expense reserves of casualty insurance and surety companies.**

(a) In determining the financial condition of any casualty insurance or surety company and in any financial statement or report of any such company, there shall be included in the liabilities of such company loss reserves and loss expense reserves at least equal to the amounts required under the provisions of this section, and the amount of such reserves shall be diminished by an allowance or credit for reinsurance recoverable from assuming insurers in accordance with G.S. 58-7-21. The date as of which such determination, statement, or report is made is hereinafter referred to as the date of determination.

(b) For all outstanding losses and loss expenses, the reserves shall include the following:

(1) The aggregate estimated amounts due or to become due on account of all known losses and claims and loss expenses incurred but not paid, including the estimated liability on any notice received by the company of the occurrence of any event which may result in a loss; and

(2) The aggregate amounts of liability for all losses and loss expenses incurred but on which no notice has been received, estimated in accordance with the company's prior experience, if any, otherwise in accordance with the experience of similar companies under similar contracts of insurance. The estimated liabilities for such losses under all its bonds, policies, or contracts of fidelity insurance, shall be not less than ten percent (10%) of the net premiums in force thereon, and the estimated liabilities for all such losses under all its surety contracts

shall be not less than five percent (5%) of the net premium in force thereon.

(c) Except as provided in subsection (e) of this section, the minimum reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employers' liability insurance, where the losses were incurred during the three years immediately preceding the date of determination, shall be calculated in accordance with any method adopted or approved by the NAIC and shall be not less than the aggregate of the estimated unpaid losses and loss expenses for claims incurred computed in accordance with subsection (b) of this section.

(d) The minimum reserves for outstanding losses and loss expenses under policies of workers' compensation insurance, except as provided in subsection (e) of this section, shall be computed as follows:

(1) For all such compensation policies where losses were incurred more than three years prior to the date of determination, such reserves shall be the sum of the present values, at three and one-half percent (3 1/2%) interest per annum, of the determined and estimated unpaid losses computed on an individual case basis plus the estimated unpaid loss expenses computed in accordance with subsection (b) of this section.

(2) Where losses were incurred during the three years immediately preceding the date of determination, such reserves shall be the sum of the reserves for each year, which shall be calculated in accordance with any method adopted or approved by the NAIC and shall be not less than the sum of the present values, at three and one-half percent (3 1/2%) interest per annum, of the determined and estimated unpaid losses computed on an individual case basis plus the estimated unpaid loss expenses computed in accordance with subsection (b) of this section.

(e) Whenever in the judgment of the Commissioner the loss and loss expense reserves of any casualty or surety company doing business in this State calculated in accordance with the foregoing provisions are inadequate or excessive, he may prescribe any other basis that will produce adequate and reasonable reserves.

(f) Every casualty insurance and every surety company doing business in this State shall keep a complete and itemized record showing all losses and claims on which it has received notices, including all notices received by it of the occurrence of any event that may result in a loss."

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

"**§ 58-7-31. Life and health reinsurance agreements.**

(a) This section applies to every domestic life and accident and health insurer, to every other licensed life and accident and health insurer that is not subject to a substantially similar statute or administrative rule in its domiciliary state, and to every licensed property and casualty insurer with respect to its accident and health business. This section does not apply to assumption reinsurance, yearly renewable term

reinsurance, nor to certain nonproportional reinsurance, such as stop loss or catastrophe reinsurance.

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

(1) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall, using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

(2) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest, and adjustments on funds withheld, and tax reimbursements, are not a deprivation of surplus or assets.

(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement; except that neither offsetting experience refunds against current and prior years' losses under the reinsurance agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the reinsurance agreement upon voluntary termination of in-force reinsurance by the ceding insurer are a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk under the reinsurance agreement.

(4) The ceding insurer must, at specific points in time scheduled in the reinsurance agreement, terminate or automatically recapture all or part of the reinsurance ceded.

(5) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. No ceding company shall pay reinsurance premiums or other fees or charges to a reinsurer that are greater than the direct premiums collected by the ceding company.

(6) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a

representative sampling of products or type of business, the risks that are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk Categories:

a.= Morbidity.

b.= Mortality.

c.= Lapse. (This is the risk that a policy will voluntarily terminate before the recoupment of a statutory surplus strain experienced at issue of the policy.)

d.= Credit Quality (C1). (This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.)

e.= Reinvestment (C3). (This is the risk that interest rates will fall and funds reinvested [coupon payments or monies received upon asset maturity or call] will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.)

f.= Disintermediation (C3). (This is the risk that interest rates will rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.)

+ = Significant

0 = Insignificant

RISK CATEGORY

	a	b	c	d	e	f
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+

Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium (dump-in premiums allowed)	0	+	+	+	+	+

*LTC = Long-Term Care Insurance

*LTD = Long-Term Disability Insurance

(7) a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision (7)b. of this section either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner that legally segregates, by contract or contractual provisions, the underlying assets.)

b. Notwithstanding the requirements of subdivision (7)a. of this section, the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of those assets:

- Health Insurance - LTC/LTD
- Traditional Non-Par Permanent
- Traditional Par Permanent
- Adjustable Premium Permanent
- Indeterminate Premium Permanent
- Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula that reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2\,(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income.

CG is capital gains less capital losses.

X is the current year cash and invested assets plus investment income due and accrued less borrowed money.

Y is the same as X but for the prior year.

(8) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days after the settlement date.

(9) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(10) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(11) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(c) Notwithstanding subsection (a) of this section, an insurer may, with the prior approval of the Commissioner, take such reserve credit or establish such asset as the Commissioner deems to be consistent with the insurance laws or rules of this State, including actuarial interpretations or standards adopted by the Commissioner.

(d) (1) Reinsurance agreements entered into after October 1, 1993, that involve the reinsurance of business issued prior to the effective date of the reinsurance agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within 30 days after its date of execution. Each filing shall include data detailing the final impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this statute and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the Commissioner. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this statute.

(2) Any increase in surplus net of federal income tax resulting from arrangements described in subdivision (d)(1) of this section shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the 'Reinsurance Ceded' line, page 4 of the Annual Statement as earnings emerge from the business reinsured.

(e) No reinsurance agreement or amendment to any reinsurance agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the Commissioner, unless the reinsurance agreement, amendment, or a binding letter of intent has been duly executed by both parties no later than the 'as of date' of the financial statement.

(f) In the case of a letter of intent, a reinsurance agreement, or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not

exceeding 90 days after the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(g) The reinsurance agreement shall contain provisions that provide that:

(1) The reinsurance agreement shall constitute the entire reinsurance agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the reinsurance agreement; and

(2) Any change or modification to the reinsurance agreement shall be null and void unless made by amendment to the reinsurance agreement and signed by both parties.

(h) Insurers subject to this section shall reduce to zero by December 31, 1994, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this statute that, under the provisions of this section, would not be entitled to recognition of such reserve credits or assets; provided, however, that such reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding October 1, 1993."

Sec. 5. G.S. 58-7-50 reads as rewritten:

"**§ 58-7-50. Maintenance and removal of records and assets.**

(a) Every domestic insurer ~~that has~~ shall maintain its home or principal office in ~~a location outside~~ this State ~~shall nevertheless maintain an office or offices in this State~~ and keep therein ~~for such period as the Commissioner may by regulation require~~ complete records of its assets, transactions, and affairs, specifically including:

(1) Financial records;

(2) Corporate records;

(3) Reinsurance ~~document;~~ documents;

(4) ~~Access to all~~ All accounting ~~transactions and access in this State, upon demand by the Commissioner, to all original accounting documents;~~ transactions;

(5) Claim files; and

(6) Payment of claims, in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(b) Every domestic insurer ~~that has its home or principal office in a location outside this State~~ shall have and maintain its assets in this State, except as to:

(1) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State; and

(2) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices, regional home offices, and operations offices, located outside this State as referred to in G.S. 58-7-55.

(c) The removal from this State of all or a ~~material~~ part of the records or assets of a domestic insurer ~~that has its home or principal office outside this State~~ except pursuant to a plan of merger or consolidation approved by the Commissioner ~~under~~ or for such reasonable purposes and periods of time as may be approved by the Commissioner in

writing in advance of such removal, or concealment of such records or assets or ~~material~~ part thereof from the Commissioner is prohibited. Any person who, without the prior approval of the Commissioner, removes or attempts to remove such records or assets or ~~such material~~ part thereof from the office or offices in which they are required to be kept and maintained under subsection (a) of this section or who conceals or attempts to conceal such records from the Commissioner, in violation of this subsection, shall be guilty of a Class J felony. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or ~~material~~ part thereof outside this State, beyond the period therefor specified in the consent of the Commissioner under which consent the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the Commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of Article 30 of this Chapter.

(d) Every domestic insurer that has its home or principal office in a location outside this State on October 1, 1993, shall petition the Commissioner for approval to continue to operate in that manner. The Commissioner, in determining whether to approve or disapprove the petition, shall consider the exceptions of G.S. 58-7-55, as well as any other factors that might affect the Commissioner's ability to regulate the insurer, or that might affect the insurer's ability to service or protect its policyholders."

Sec. 6. G.S. 58-7-115 reads as rewritten:

"**§ 58-7-115. Increase of capital stock.**

Any company organized under the provisions of Articles 1 through 64 of this Chapter may issue pro rata to its stockholders certificates of any portion of its ~~actual net~~ surplus ~~over and above the minimum required by law it deems fit to divide,~~ which shall be considered an increase of its capital to the amount of such certificates. As used in this section, 'surplus' means earned surplus; provided, however, issuance of certificates out of paid-in and contributed surplus will be permitted on a case-by-case basis, with the prior approval of the Commissioner. The issuance of those certificates shall not lower the total surplus of the insurer to an amount less than that required to be maintained by G.S. 58-7-75. The company may, at a meeting called for the purpose, vote to increase the amount and number of shares of its capital stock, and to issue certificates therefor when paid for in full. In whichever method the increase is made, the company shall, within 30 days after the issue of such certificates, submit to the Commissioner a certificate setting forth the amount of the increase and the facts of the transaction, signed and sworn to by its president and secretary and a majority of its directors. If the Commissioner finds that the facts conform to the law, he shall endorse his approval thereof; and upon filing such certificate so endorsed with the Secretary of State, and the payment of a fee of five dollars ($5.00) for filing the same, the company may transact business upon the capital as increased, and the Commissioner shall issue his certificate to that effect."

Sec. 7. G.S. 58-7-150(a) reads as rewritten:

"(a) ~~Subject to the provisions of G.S. 58-10-1 and 58-10-5, relating to the mutualization of stock insurers, a~~ A domestic insurer may ~~merge or~~ consolidate with another insurer, subject to the following conditions:

(1) The plan of ~~merger or~~ consolidation must be submitted to and be approved by the Commissioner in advance of the ~~merger or~~ consolidation.

(2) The Commissioner shall not approve any such plan unless, after a hearing, he finds that it is fair, equitable to policyholders, consistent with law, and will not conflict with the public interest. If the Commissioner fails to approve the plan, he shall state his reasons for such failure in his order made on such hearing.

(3) No director, officer, member or subscriber of any such insurer, except as is expressly provided by the plan of ~~merger or~~ consolidation, shall receive any fee, commission, other compensation or valuable consideration whatever, for in any manner aiding, promoting or assisting in the ~~merger or~~ consolidation.

(4) Any ~~merger or~~ consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this State relating to business corporations, except that the ~~merger or~~ consolidation of a domestic mutual insurer may be effected by vote of two thirds of the members voting thereon pursuant to such notice and procedure as the Commissioner may prescribe."

Sec. 8. G.S. 58-7-162 reads as rewritten:

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

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

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

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

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

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

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

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

e. Interest due or accrued on a current mortgage loan, in an amount not exceeding in any event the amount, if any, of the

excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.

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

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

(3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for nonsingle premium life insurance, not more than 90 days past due, less commissions payable thereon, except for premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) All premiums not more than 90 days past due, excluding commissions payable thereon, due from any person that solely or in combination with the person's affiliates owes the insurer an amount that exceeds five percent (5%) of the insurer's total premiums in course of collection, but only if:

a. The premiums collected by the person or affiliates and not remitted to the insurer are held in a trust account with a bank or other depository approved by the Commissioner. The funds shall be held as trust funds and may not be commingled with any other funds of the person or affiliates. Disbursements from the trust account may be made only to the insurer, the insured, or, for the purpose of returning premiums, a person that is entitled to returned premiums on behalf of the insured. A written copy of the trust agreement shall be filed with and approved by the Commissioner before becoming effective. The Commissioner shall disapprove any trust agreement filed under this sub-subdivision that does not assure the safety of the premiums collected. The investment income derived from the trust may be allocated as the parties consider to be proper. The person or affiliates shall deposit premiums collected into the trust account within 15 business days after collection; or

b. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, an unexpired, clean, irrevocable letter of credit, payable to the insurer, issued for a term of no less than one year and in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during the period that the letter of credit is in effect, for premiums collected by the person or affiliates. The letter of credit shall be issued under arrangements satisfactory to the Commissioner and the letter shall be issued by a banking institution that is a member of the Federal Reserve System and that has a financial standing satisfactory to the Commissioner; or

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

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

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

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

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

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

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

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

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

Sec. 9. G.S. 58-7-163 reads as rewritten:

"**§ 58-7-163. Assets not allowed.**

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

(1) Goodwill, trade names, and other like intangible assets.

(2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents, and other persons on personal security only.

(3) Stock of the insurer or any material equity therein or loans secured thereby, or any material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit.

(4) Furniture, fixtures, other equipment, safes, vehicles, libraries, stationery, literature, and supplies, other than data processing and accounting systems authorized under G.S. 58-7-162(12), except in the case of title insurers the materials and plants which G.S. 58-7-182 expressly authorizes the insurer to invest in, and except, in the case of any insurer, any personal property that the insurer is permitted to hold under this Chapter, or that is acquired through foreclosure of chattel mortgages acquired under G.S. 58-7-180, or that is reasonably necessary for the maintenance and operation of real estate that the insurer uses for a home office, branch office, and similar purposes.

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this Chapter.

(6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost

of carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter.

(7) Prepaid and deferred expenses.

(8) Certificates of contribution or other similar evidences of indebtedness.

(9) Any asset that is encumbered in any manner unless the asset is authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

Sec. 10. G.S. 58-7-170(c) reads as rewritten:

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

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

Sec. 11. G.S. 58-7-170(d) reads as rewritten:

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

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

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

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

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

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

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

Sec. 12. G.S. 58-7-170(e) reads as rewritten:

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

Sec. 13. G.S. 58-7-170(j) reads as rewritten:

"(j) The Commissioner may limit the extent of an insurer's deposits with any financial institution ~~that does not meet its regulatory capital requirement~~ if the Commissioner determines that the financial solvency of the insurer is threatened by a deposit in excess of insured limits."

Sec. 14. G.S. 58-7-173 reads as rewritten:

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

An insurer may invest in:

(1) Bonds, notes, warrants, and other evidences of indebtedness that are direct obligations of the U.S. Government or for which the full faith and credit of the U.S. Government is pledged for the payment of principal and interest.

(2) Loans insured or guaranteed as to principal and interest by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.

(3) Student loans insured or guaranteed as to principal by the U.S. Government or by any agency or instrumentality of the U.S. Government to the extent of the insurance or guaranty.

(4) Bonds, notes, warrants, and other securities not in default that are the direct obligations of any state or United States territory or the government of Canada or any Canadian province, or for which the full faith and credit of such state, government, or province has been pledged for the payment of principal and interest.

(5) Bonds, notes, warrants, and other securities not in default of any county, district, incorporated city, or school district in any state of the United States, or the District of Columbia, or in any Canadian province, that are the direct obligations of the county, district, city, or school district and for payment of the principal and interest of which the county, district, city, or school district has lawful authority to levy taxes or make assessments.

(6) Bonds, notes, certificates of indebtedness, warranties, or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor of any public toll bridge, structure, or improvement owned by any state, incorporated city, or legally

constituted public corporation or commission, all within the United States or Canada, for the payment of the principal and interest of which a lawful sinking fund has been established and is being maintained and if no default by the issuer in payment of principal or interest has occurred on any of its bonds, notes, warrants, or other securities within five years prior to the date of investment therein.

(7) Bonds, notes, certificates of indebtedness, warrants, or other evidences of indebtedness that are valid obligations issued, assumed, or guaranteed by the United States, any state, any county, city, district, political subdivision, civil division, or public instrumentality of any such government or unit therof, or in any province of Canada; if by statute or other legal requirements the obligations are payable as to both principal and interest from revenues or earnings from the whole or any part of any utility supplying water, gas, a sewage disposal facility, electricity, or any other public service, including but not limited to a toll road or toll bridge.

(8) Bonds, debentures, or other securities of the following agencies, whether or not those obligations are guaranteed by the U.S. Government:

a. The Federal National Mortgage Association, and stock thereof when acquired in connection with the sale of mortgage loans to the Association.

b. Any federal land bank, when the securities are issued under the Farm Loan Act;

c. Any federal home loan bank, when the securities are issued under the Home Loan Bank Act;

d. The Home Owners' Loan Corporation, created by the Home Owners' Loan Act of 1933;

e. Any federal intermediate credit bank, created by the Agricultural Credits Act;

f. The Central Bank for Cooperatives and regional banks for cooperatives organized under the Farm Credit Act of 1933, or by any of such banks; and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions under the Farm Credit Act of 1971;

g. Any other similar agency of the U.S. Government that is of similar financial quality.

(9) Bonds, debentures, or other securities of public housing authorities, issued under the Housing Act, of 1949, the Municipal Housing Commission Act, or the Rural Housing Commission Act, or issued by any public housing authority or agency in the United States, if the bonds, debentures, or other securities are secured by a pledge of annual contributions to be paid by the United States or any United States agency; and the cost of investments made under this subdivision shall

not exceed the lesser of three percent (3%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus.

(10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank; and the cost of investments made under this subdivision shall not exceed the lesser of three percent (3%) of the insurer admitted assets or ten percent (10%) of the insurer's capital and surplus.

(11) Bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent institution organized under the laws of the United States, of any state, Canada or any Canadian province; provided such instruments are rated and ~~approved~~ valued by the Securities Valuation Office of the NAIC. The cost of investments made under this subdivision in issuers from any one industry shall not exceed ten percent (10%) of an insurer's admitted assets, and the cost of investments made in any one issuer shall not exceed three percent (3%) of an insurer's admitted assets or ten percent (10%) of an insurer's capital and surplus, whichever is greater. As used in this subdivision, 'industry' means a distinct and recognized area of economic activity that consists of the production, manufacture, or distribution of common goods, products, commodities, or services.

(12) Secured obligations of duly constituted churches and of church-holding companies; and the cost of investments made under this subdivision shall not exceed the lesser of one percent (1%) of the insurer's admitted assets or five percent (5%) of the insurer's capital and surplus.

(13) Equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of that transportation equipment; and the cost of investments made under this subdivision shall not exceed twenty percent (20%) of the insurer's admitted assets.

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

(15) Loans with a maturity not in excess of 12 years from the date thereof that are secured by the pledge of securities eligible for investment under this Chapter or by the pledge or assignment of life insurance policies issued by other insurers authorized to transact insurance in this State. On the date made, no such loan shall exceed in amount seventy-

five percent (75%) of the market value of the collateral pledged, except that loans upon the pledge of U.S. Government bonds and loans upon the pledge or assignment of life insurance policies shall not exceed ninety-five percent (95%) of the market value of the bonds or the cash surrender value of the policies pledged. The market value of the collateral pledge shall at all times during the continuance of the loans meet or exceed the minimum percentages herein. Loans made under this section shall not be renewable beyond a period of 12 years from the date of the loan.

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

(17) Mortgage pass-through securities and derivatives thereof, that have been rated as investment grade by the Securities Valuation Office of the NAIC and considered by the Federal Financial Institutions Examination Council or its successor to be nonhigh risk mortgage securities, including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class, and investment quality as those eligible for investment under G.S. ~~58-7-179, but not including investments permitted under G.S. 58-7-173(2), (8), or (11),~~ 58-7-179."

Sec. 14.1. G.S. 58-7-183 reads as rewritten:

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

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

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

(2) In such other investments not specifically authorized by this Chapter as long as any single interest investment does not exceed two percent (2%) of admitted assets and the aggregate of the investments does not exceed the lesser of five percent (5%) of the insurer's total admitted assets or ~~twenty percent (20%)~~ sixty percent (60%) of the amount by which the insurer's policyholders' surplus exceeds the minimum required to be maintained.

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

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

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

Sec. 15. The catch line of G.S. 58-7-192 reads as rewritten:

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

Sec. 16. G.S. 58-7-192 is amended by adding a new subsection to read:

"(e) All bonds or fully secured indebtedness having a stated term and a rate of interest that are held by an insurer shall be valued in accordance with the procedures and instructions contained in the NAIC publication entitled 'Valuations of Securities', unless the Commissioner determines that a more conservative valuation is appropriate."

Sec. 17. G.S. 58-8-20 reads as rewritten:

"**§ 58-8-20. Mutual companies with a guaranty capital.**

(a) A mutual insurance company formed as provided in Articles 1 through 64 of this Chapter, in lieu of the contributed surplus required for the organization of mutual companies under the provisions of G.S. 58-7-75, or a mutual insurance company now existing, ~~may~~ may, with the prior approval of the Commissioner, establish a guaranty capital ~~or surplus~~ of not less than ~~twenty five thousand dollars ($25,000),~~ fifty thousand dollars ($50,000), divided into shares of one hundred dollars ($100.00) each, which shall be invested in the same manner as is provided in this Chapter for the investment of the capital stock of insurance companies.

(b) The board of directors of a company may declare and pay dividends to the stockholders of the guaranty capital of a ~~company or owners of guaranty surplus if the net profits or unused premiums left after all expenses, losses, and liabilities then incurred, together with the reserve as provided for, are sufficient to pay the same,~~ company, subject to the notification requirements of G.S. 58-19-25(d) and the prior approval requirements of G.S. 58-19-30(c).

(c) The guaranty capital ~~or surplus~~ shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.

(d) Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in ~~purely~~ mutual companies.

(e) This guaranty capital ~~or surplus~~ may be reduced or retired by vote of the policyholders of the company and the assent of the ~~Commissioner of Insurance,~~

Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty ~~capital or surplus,~~ capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five ~~per centum~~ percent (25%) of the guaranty ~~capital or surplus.~~ capital. Due notice of such proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the ~~Commissioner of Insurance,~~ Commissioner, not less than three times a week for a period of not less than four weeks before such meeting. No insurance company with a guaranty capital ~~or surplus,~~ which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty ~~capital or surplus,~~ capital, except income from investments, until it has performed or canceled its policy obligations. In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders."

Sec. 18. The catch line of Article 9 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 9.

"~~Exchange of Stock.~~ Reinsurance Intermediaries."

Sec. 19. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-2. Reinsurance intermediaries.**

(a) As used in this Article:

(1) 'Actuary' means a person who meets the standards of a qualified actuary, as specified in the NAIC Annual Statement Instructions, as amended or clarified by rule or order of the Commissioner, for the type of insurer for which an intermediary is establishing loss reserves.

(2) 'Broker' means any person, other than an officer or employee of a ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

(3) 'Commissioner' includes the Commissioner's authorized deputies and employees.

(4) 'Controlling person' means any person who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of an intermediary.

(5) 'Intermediary' means any person who acts as a broker, as defined in G.S. 58-33-10(c), in soliciting, negotiating, or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer; or acts as a broker, as defined in G.S. 58-33-10(c), in accepting any reinsurance contract on behalf of an assuming insurer. 'Intermediary'

includes a broker or a manager, as those terms are defined in this section.

(6) 'Manager' means any person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the reinsurer. The following persons are not managers, with respect to a reinsurer:

a. An employee of a reinsurer;

b. A United States manager of the United States branch of an alien reinsurer;

c. An underwriting manager who, pursuant to contract, manages all the reinsurance operating of a reinsurer, is under common control with the reinsurer under Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written;

d. The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and that is subject to examination by the insurance regulator of the state in which the manager's principal business office is located.

(7) 'Producer' means an insurance agent or insurance broker licensed under Article 33 of this Chapter or an intermediary licensed under this Article.

(8) 'Qualified United States financial institution' means a bank that:

a. Is organized, or in the case of a United States office of a foreign banking organization is licensed, under the laws of the United States or any state;

b. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

c. Has been determined by the Securities Valuation Office of the NAIC to meet its standards of financial condition and standing in order to issue letters of credit.

(9) 'Reinsurer' means any licensed insurer that is authorized to assume reinsurance.

(b) No person shall act as a broker in this State if the broker maintains an office either directly, as a member or employee of a noncorporate entity, or as an officer, director, or employee of a corporation:

(1) In this State, unless the broker is a producer in this State; or

(2) In another state, unless the broker is a producer in this State or another state having a law or rule substantially similar to this Article or unless the broker is licensed under this Article as a nonresident intermediary.

(c) No person shall act as a manager:

(1) For a reinsurer domiciled in this State, unless the manager is a producer in this State;

(2) In this State, if the manager maintains an office directly, as a member or employee of a noncorporate entity, or as an officer, director, or employee of a corporation in this State, unless the manager is a producer in this State;

(3) In another state for a foreign insurer, unless the manager is a producer in this State or another state having a law or rule substantially similar to this Article, or the manager is licensed in this State as a nonresident intermediary.

(d) Every manager subject to subsection (c) of this section shall demonstrate to the Commissioner that he has evidence of financial responsibility in the form of fidelity bonds or liability insurance to cover the manager's contractual obligations. If any manager cannot demonstrate this evidence, the Commissioner shall require the manager to:

(1) Maintain a separate fidelity bond in favor of each reinsurer represented in an amount that will cover those obligations and which bond is issued by an authorized insurer; or

(2) Maintain an errors and omissions liability insurance policy in an amount that will cover those obligations and which policy is issued by a licensed insurer."

Sec. 20. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-6. Licensing.**

(a) The Commissioner shall issue an intermediary license to any person who has complied with the requirements of this Article. A license issued to a noncorporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license, and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as intermediaries on behalf of the corporation, and those persons shall be named in the application and any supplements.

(b) If an applicant for an intermediary license is a nonresident, the applicant, before receiving a license, shall designate the Commissioner as his agent for service of legal process and shall furnish the Commissioner with the name and address of a resident of this State upon whom notices or orders of the Commissioner or process affecting the nonresident intermediary may be served. The licensee shall notify the Commissioner in writing of every change in his designated agent for service of process within five business days after the change, and the change shall not become effective until acknowledged by the Commissioner.

(c) The Commissioner shall refuse to issue an intermediary license if:

(1) The applicant, anyone named on the application, or any member, principal, officer, or director of the applicant is not trustworthy;

(2) Any controlling person of the applicant is not trustworthy to act as an intermediary; or

(3) Any of the persons in subdivisions (1) and (2) of this subsection has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

Upon written request, the Commissioner shall furnish a summary of the basis for refusal to issue a license.

(d) Attorneys-at-law licensed by this State are exempt from this section when they are acting in their professional capacities."

Sec. 21. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-11. Broker and insurer transactions.**

(a) Transactions between a broker and the insurer it represents as a broker shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall include provisions to the effect that:

(1) The insurer may terminate the broker's authority at any time.

(2) The broker will render accounts to the insurer that accurately detail all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the broker and will remit all funds due to the insurer within 30 days after receipt by the broker.

(3) All funds collected for the insurer's account will be held by the broker in a fiduciary capacity in a qualified United States financial institution.

(4) The broker will comply with this Article.

(5) The broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

(7) The broker will annually provide the insurer with an audited statement of the broker's financial condition, which statement will be prepared by an independent certified public accountant.

(8) The insurer will have access and the right to copy and audit all accounts and records maintained by the broker related to its business, in a form usable by the insurer.

(9) For at least 10 years after the expiration of each contract of reinsurance transacted by the broker, the broker will keep a complete record for each transaction showing:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory;

b. Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

c. Reporting and settlement requirements of balances;

d. Rate or rates used to compute the reinsurance premium;

e. Names and addresses of assuming reinsurers;

f. Rates of all reinsurance commissions, including the commissions on any retrocession handled by the broker;
g. Related correspondence and memoranda;
h. Proof of placement;
i. Details regarding retrocessions handled by the broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
j. Financial records, including premium and loss accounts; and
k. When the broker procures a reinsurance contract on behalf of a licensed ceding insurer:
1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
2. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(b) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed under G.S. 58-9-6. An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of this Chapter."

Sec. 22. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-16. Manager and reinsurer transactions.**

(a) Transactions between a manager and the reinsurer it represents as a manager shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the manager, a certified copy of the approved contract shall be filed with the Commissioner for approval. The contract shall include provisions to the effect that:

(1) The reinsurer may terminate the contract for cause upon written notice to the manager. The reinsurer may immediately suspend the authority of the manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
(2) The manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the manager and will remit all funds due under the contract to the reinsurer at least once every month.
(3) All funds collected for the reinsurer's account will be held by the manager in a fiduciary capacity in a qualified United States financial institution. The manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

The manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after the expiration of each contract of reinsurance transacted by the manager, the manager will keep a complete record for each transaction showing:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory;

b. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risk;

c. Reporting and settlement requirements of balances;

d. Rate used to compute the reinsurance premium;

e. Names and addresses of reinsurers;

f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the manager;

g. Related correspondence and memoranda;

h. Proof of placement;

i. Details regarding retrocessions handled by the manager, as permitted by G.S. 58-9-21, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

j. Financial records, including, but not limited to, premium and loss accounts; and

k. When the manager places a reinsurance contract on behalf of a ceding insurer:

1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

2. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the manager related to its business in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the manager.

(7) The manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the manager may levy against the reinsurer shall be set forth.

(9) If the contract permits the manager to settle claims on behalf of the reinsurer:

a. All claims will be reported to the reinsurer in a timely manner;

b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
1. Has the potential to exceed an amount set by the reinsurer and approved by the Commissioner;
2. Involves a coverage dispute;
3. May exceed the manager's claims settlement authority;
4. Is open for more than six months; or
5. Is closed by payment of an amount set by the reinsurer and approved by the Commissioner.

c. All claim files will be the joint property of the reinsurer and manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the manager shall have reasonable access to and the right to copy the files on a timely basis; and

d. Any settlement authority granted to the manager may be terminated for cause upon the reinsurer's written notice to the manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the manager, the interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business and not until the adequacy of reserves on remaining claims has been verified pursuant to G.S. 58-9-21.

(11) The manager will annually provide the reinsurer with an audited statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the manager.

(13) The manager will disclose to the reinsurer any relationship it has with any insurer before ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority, the acts of the manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

(b) A manager shall not:

(1) Cede retrocessions on behalf of the reinsurer, except that the manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint any producer without assuring that the producer is duly licensed to transact the type of reinsurance for which he is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer unless the manager is under common control with the reinsurer under Article 19 of this Chapter.

(7) Appoint a submanager."

Sec. 23. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-21. Miscellaneous provisions.**

(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed under G.S. 58-9-6.

(b) If a manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the manager. This opinion shall be in addition to any other required loss reserve certification.

(c) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall be given to an officer of the reinsurer who is not affiliated with the manager.

(d) Within 30 days after termination of a contract with a manager, the reinsurer shall provide written notification of the termination to the Commissioner.

(e) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling person, or subproducer of its manager. This Article does not apply to relationships governed by Article 19 of this Chapter or G.S. 58-3-165.

(f) An intermediary is subject to examination by the Commissioner. The Commissioner shall have access to all books, bank accounts, and records of an intermediary in a form usable to the Commissioner. A manager may be examined as if it were the reinsurer."

Sec. 24. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-9-26. Sanctions.**

(a) If the Commissioner determines that any person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order:

(1) For each separate violation, a civil penalty under the procedures in G.S. 58-2-70(d); or

(2) Revocation or suspension of the person's license.

If the Commissioner finds that because of a material noncompliance that an insurer or reinsurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer or reinsurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer or reinsurer and its policyholders and creditors or for other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that any person has not materially complied with this Article, or any rule adopted or order issued under this Article, and the insurer suffered any loss or damage from the material noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer."

Sec. 25. G.S. 58-13-10 reads as rewritten:

"**§ 58-13-10. Scope.**

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to comply in substance with the requirements and limitations of this section. This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to ~~county farm mutual companies.~~ statutory deposits that are required to be maintained by insurance regulator agencies as a requirement for doing business in such jurisdictions."

Sec. 26. G.S. 58-19-15(a) reads as rewritten:

"(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer ~~unless, at the time any such offer, request, or invitation is made, or any such agreement is entered into, or prior to the acquisition of such securities, if no offer or agreement is involved, such person has filed with the Commissioner and has simultaneously sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner herinafter prescribed. Provided, however, that the provisions of this paragraph do not apply to any acquiisition or proposed acquisition of a domestic insurer's voting securities acquired or sought to be acquired that, when combined with all other voting securities of the domestic insurer acquired directly or indirectly during the preceding 12 months by the person in control and all affiliates of the person in control, do not exceed one percent (1%) of any class or series of the domestic insurer's outstanding voting securities.~~

~~Further, no person shall enter into an agreement to merge with or otherwise acquire control of a domestic insurer unless such agreement is conditioned upon the approval of the Commissioner pursuant to this section. No such merger or other acquisiton of~~

~~control shall be effective until a statement containing the information required by this section has been filed with the Commissioner and all other provisions of this section have been complied with and the merger or acquisiton of control has been approved by the Commissioner pursuant to this section.~~ unless such offer, request, invitation, agreement, or acquisition is conditioned upon the approval of the Commissioner pursuant to this section. No such merger or other acquisition of control shall be effective until a statement containing the information required by this section has been filed with the Commissioner and all other provisions of this section have been complied with and the merger or acquisition of control has been approved by the Commissioner pursuant to this section. The statement containing the information required by this section shall also be filed with the domestic insurer at the time it is filed with the Commissioner.

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

Sec. 27. G.S. 58-19-15(b) reads as rewritten:

"(b) The statement to be filed with the Commissioner under subsection (a) of this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be effected (hereinafter called 'acquiring party'), and: (i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; (ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by sub-subdivision (1)(i) of this subsection.

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control; a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates; and the identity of persons furnishing such ~~consideration.~~ consideration; provided, however, that where a source of such consideration is a loan made in the lender's

ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof have been in existence; and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(4) Any plans or proposals that each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) of this section that each acquiring party proposes to acquire; the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this section; and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) of this section that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) of this section during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a) of this section, and any related additional soliciting material that has been distributed.

(11) The term of any agreement, contract, or understanding made with or proposed to be made with any third party in connection with any

acquisition of control of or merger with a domestic insurer, and the amount of any fees, commissions, or other compensation to be paid to the third party with regard thereto.

(12) Such additional information as the Commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate, or other group, the Commissioner shall require that the information called for by subdivisions (1) through (12) of this subsection be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the Commissioner shall require that the information called for by subdivisions (1) through (12) of this subsection be given with respect to such corporation, each officer and director of such corporation, and each person who is, directly or indirectly, the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer by the filer within two business days after the person learns of such change."

Sec. 28. G.S. 58-19-15(d) reads as rewritten:

"(d) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he finds any of the following:

(1) After the change of control, the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the kind or kinds of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance or tend to create a monopoly in this State.

(3) The financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(4) Any plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the

interests of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(6) The acquisition is likely to be ~~detrimental~~ hazardous or prejudicial to the insurance-buying public."

Sec. 29. G.S. 58-19-15(h) reads as rewritten:

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

Sec. 30. G.S. 58-19-25(a) reads as rewritten:

"(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to the registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section ~~and G.S. 58-19-30(a).~~ and G.S. 58-19-30(b), 58-19-30(c), and 58-19-30(d), or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition. The insurer shall also file a copy of its registration statement and any amendments to the statement in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March ~~31~~ 1 of each year for ~~any changes that may have occurred during~~ the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within the extended time. All registration statements shall contain a summary, on a form prescribed by the Commissioner, outlining all items in the current registration statement representing changes from the prior registration statement. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulator of its domiciliary jurisdiction."

Sec. 31. G.S. 58-19-25(b) reads as rewritten:

"(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the Commissioner, which shall contain the following current information:

(1) The bylaws, capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer.

(2) The identity and relationship of every member of the insurance holding company system.

(3) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year

between such insurer and its affiliates ~~or other third parties where indicated~~:

a. Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.
b. Purchases, sales, or exchange of assets.
c. Transactions not in the ordinary course of business.
d. Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.
e. All management agreements, service contracts, and cost-sharing arrangements.
f. Reinsurance agreements.
g. Dividends and other distributions to shareholders.
h. Consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner."

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

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

Sec. 33. G.S. 58-19-30(b) reads as rewritten:

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

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

(2) Loans or extensions of credit to any person who is not affiliated, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to,

to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31.

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

(4) All management agreements, service contracts, or cost-sharing arrangements ~~wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection~~.

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

Nothing in this section authorizes or permits any transactions that, in the case of an insurer, not a member of the same holding company system, would be otherwise contrary to law. A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the Commissioner determines that such separate transactions were entered into over any 12-month period for that purpose, the Commissioner may exercise the Commissioner's authority under G.S. 58-19-50. The Commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders. The Commissioner shall be notified within 30 days after any investment of a domestic insurer in any one corporation if, as a result of the investment, the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities."

Sec. 34. G.S. 58-19-45(c) reads as rewritten:

"(c) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Article or any rule or order of the Commissioner under this Article, the Superior Court of Wake County may, on such notice as the court considers appropriate and upon the application of the insurer or the Commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue an order with respect thereto as may be appropriate to effectuate the

provisions of this Article. Notwithstanding any other provision of law, for the purposes of this Article the sites of the ownership of the securities of domestic insurers are in this State.

~~Notwithstanding any other provisions of law, for the purposes of this Article the sites of the ownership of the securities of domestic insurers are in this State~~."

Sec. 35. G.S. 58-22-10 reads as rewritten:

"**§ 58-22-10. Definitions.**

As used in this Article:

(1) 'Completed operations liability' means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:
   a. Any person who performs that work; or
   b. Any person who hires an independent contractor to perform that work;

   but includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(2) 'Domicile', for purposes of determining the state in which a purchasing group is domiciled, means:
   a. For a corporation, the state in which the purchasing group is incorporated; and
   b. For an unincorporated entity, the state of its principal place of business.

(3) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:
   a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
   b. To pay other obligations in the normal course of business.

(4) 'Insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this State.

(5) 'Liability' means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of any profit or nonprofit business, trade, product, professional or other services, premises, or operations; or any activity of any state or local government, or any agency or political subdivision thereof. Liability does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. § 51 **et seq.**).

(6) 'Personal risk liability' means liability for damage because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities. Personal risk liability does not include liability as defined in subdivision (5) of this section.

(7) 'Plan of operation' or 'feasibility study' means an analysis that presents the expected activities and results of a risk retention group including, at a minimum:

a. ~~The~~ For each state in which the group intends to do business, the coverages, deductibles, coverage limits, rates, and rating classification systems for each kind of insurance the group intends to offer;

b. Historical and expected loss experience of the proposed members and national experience of similar exposures;

c. ~~Pre forma~~ Prospective financial statements and projections;

d. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

e. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies; ~~and~~

f. ~~Such other matters as may be prescribed by the Commissioner for liability insurance companies authorized by Articles 1 through 64 of this Chapter.~~ Identification of each state in which the group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state;

g. Information sufficient to verify that the group's members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

h. Such other matters that are prescribed by the Commissioner for liability insurance companies authorized by this Chapter.

(8) 'Product liability' means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product; but does not include the liability of any person for those damages if the product involved was in the possession of such person when the incident giving rise to the claim occurred.

(9) 'Purchasing group' means any group that:

a. Has as one of its purposes the purchase of liability insurance on a group basis;
b. Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in sub-subdivision c. of this subdivision;
c. Is composed of members whose businesses or activities are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
d. Is domiciled in any state.

(10) 'Risk retention group' means any corporation or other limited liability ~~association formed under the laws of any state, Bermuda, or the Cayman Islands:~~ association:
a. Whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;
b. That is organized for the primary purpose of conducting the activity described under sub-subdivision a. of this subdivision;
c. That
(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulator of at least one state that it satisfied the capitalization requirements of such state; except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the Risk Retention Act of 1986;
d. That does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such person;
e. That
(i) Has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members who are provided insurance by the risk retention group; or

(ii) Has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

g. Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group, or any members of such other group, that is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f. of this subdivision from membership in the risk retention group that provides such reinsurance; and

h. The name of which includes the phrase 'Risk Retention Group'."

Sec. 36. G.S. 58-22-15 reads as rewritten:

"**§ 58-22-15. Risk retention groups chartered in this State.**

(a) A risk retention group seeking to be chartered in this State must be chartered and licensed as a liability insurance company under Article 7 of this Chapter and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State. ~~Before it may offer insurance in any State, each risk retention group shall also submit to the Commissioner, for his approval, a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.~~

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the Commissioner of this State a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days after any such change. The group shall not offer any additional kinds of liability insurance, in this State or in any other state, until a revision of such plan or study is approved by the Commissioner.

(c) At the time of filing its application for a charter, the risk retention group shall provide to the Commissioner in summary form the following information: the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the Commissioner shall forward such information to the NAIC. Providing

notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of G.S. 58-22-20 or any other sections of this Article."

Sec. 37. G.S. 58-22-20 reads as rewritten:

"**§ 58-22-20. Risk retention groups not chartered in this State.**

Risk retention groups that have been chartered in states other than this State and that seek to do business as risk retention groups in this state must observe and abide by the laws of this State as follows:

(1) Notice of Operations and Designation of Commissioner as Agent. – Before offering insurance in this State, a risk retention group shall submit to the Commissioner:

a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information including information on its membership, as the Commissioner may require to verify that the risk retention group is qualified under G.S. 58-22-10(10);

b. A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance that (i) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and (ii) was offered before that date by any risk retention group that had been chartered and operating for not less than three years before that date;

c. ~~A statement of registration that designates the Commissioner as its agent for the purpose of receiving service of legal process.~~ The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by G.S. 58-22-15(b) at the same time that such revision is submitted to the Commissioner of its chartering state; and

d. A statement of registration that designates the Commissioner as its agent for the purpose of receiving service of legal process.

(2) Financial Condition. – A risk retention group doing business in this State shall file with the Commissioner:

a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist, under criteria established by the NAIC or by the Commissioner;

b. A copy of each examination of the risk retention group as certified by the State insurance regulator or public official conducting the examination;
c. Upon request by the Commissioner, a copy of any audit performed with respect to the risk retention group; and
d. Such information as may be required to verify its continuing qualification as a risk retention group under G.S. 58-22-10(10).

(3) Taxation.
a. All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same payment procedures and to the same interest, fines, and penalties for nonpayment as those applicable to surplus lines insurance under Article 21 of this Chapter.
b. To the extent licensed agents or brokers are ~~utilized,~~ utilized pursuant to G.S. 58-22-60, they shall report and pay the taxes for the premiums for ~~risk~~ risks that they have placed with or on behalf of a risk retention group not chartered in this State. Such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the Commissioner, as provided in G.S. 58-2-185. These records shall, for each policy and each kind of insurance provided thereunder, include the following:
1. The limit of liability;
2. The time period covered;
3. The effective date;
4. The name of the risk retention group that issued the policy;
5. The gross premium charged; and
6. The amount of return premiums, if any.
c. To the ~~extent~~ extent that insurance agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State.

(4) Compliance With Unfair Claims Settlement Practices Law. – A risk retention group and its agents and representatives shall comply with G.S. 58-3-100(5) and G.S. 58-63-15(11).

(5) Deceptive, False, or Fraudulent Practices. – A risk retention group shall comply with the provisions of Article 63 of this Chapter and Chapter 75 of the General Statutes regarding deceptive, false, or fraudulent acts or practices.

(6) Examination Regarding Financial Condition. – A risk retention group must submit to an examination by the Commissioner to determine its

financial condition if the insurance regulator of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner. This examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the NAIC.

(7) Notice to Purchasers. – Any policy issued by a risk retention group shall contain in 10 point type and contrasting color on the front page and the declaration page, the following notice:

'NOTICE

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. In the event of the insolvency of your risk retention group, losses under this policy will not be paid by any insurance insolvency or guaranty fund in this State.'

(8) Prohibited Acts Regarding Solicitation or Sale. – The following acts by a risk retention group are prohibited:

a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) Prohibition of Ownership By An Insurance Company. – No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) Prohibited Coverage. – No risk retention group may offer insurance policy coverage prohibited or not authorized by this Chapter or declared unlawful by the appellate courts of this State.

(11) Delinquency Proceedings. – A risk retention group not chartered in this State and doing business in this State must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under ~~G.S. 58-22-20.~~ G.S. 58-22-20(6).

(12) Penalties. – A risk retention group that violates any provision of this Article is subject to G.S. 58-2-70."

Sec. 38. G.S. 58-22-40 reads as rewritten:

"**§ 58-22-40. Notice and registration requirements of purchasing groups.**

(a) A purchasing group that intends to do business in this State ~~shall~~ shall, before doing business, furnish notice to the Commissioner that shall:

(1) Identify the state in which the group is domiciled;

(2) Specify the lines and classifications of liability insurance that the purchasing group intends to purchase;

(3) Identify the insurer from which the group intends to purchase its insurance and the domicile of such insurer;

(4) Identify the principal place of business of the group;

(5) Provide such other information as may be required by the Commissioner to verify that the purchasing group is qualified under G.S. 58-22-10(9); ~~and~~

(6) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this State; and furnish such information as may be required by the Commissioner to determine the appropriate premium tax ~~treatment.~~ treatment; and

(7) Identify all other states in which the group intends to do business.

(b) The purchasing group shall register with and designate the Commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement does not apply in the case of a purchasing group:

(1) That

a. Was domiciled before April 2, 1986, in any state of the United States; and

b. Is domiciled on and after October 27, 1986, in any state of the United States;

(2) That before October 27, 1986, purchased insurance from an insurer licensed in any state; and since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(3) That was a purchasing group under the requirements of the Product Liability Retention Act of 1981 before October 27, 1986; and

(4) That does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

(c) A purchasing group shall notify the Commissioner of any changes in any of the items in subsection (a) of this section within 10 days after those changes.

(d) Each purchasing group that is required to give notice under subsection (a) of this section shall also furnish such information as may be required by the Commissioner to:

(1) Verify that the entity qualifies as a purchasing group;

(2) Determine where the purchasing group is located; and

(3) Determine appropriate tax treatment."

Sec. 39. Article 23 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-23-26. Financial monitoring and evaluation of pools.**

(a) Each pool shall have an annual audit by an independent certified public accountant, at the expense of the pool, and shall make a copy of the audit available to the governing body or chief executive officer of each member of the pool. A copy of the audit shall be filed with the Commissioner within 130 days after the end of the pool's fiscal year, unless that time is extended by the Commissioner. The annual audit shall report the financial position of the pool in conformity with statutory accounting practices prescribed or permitted by the Commissioner.

(b) Each pool shall have an actuarial evaluation of its loss and loss adjustment expense reserves, including reserves for loss and loss adjustment expenses incurred but not reported, performed annually by a qualified actuary. A copy of the evaluation shall be filed with the Commissioner along with the annual audit submitted pursuant to subsection (a) of this section. A 'qualified actuary' shall be as defined or prescribed by the Commissioner.

(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-70, 58-3-75, 58-3-80, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-32, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-190, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

Sec. 40. A new section is added to Article 30 of Chapter 58 of the General Statutes to read:

"**§ 58-30-71. Immunity and indemnification of the receiver and employees.**

(a) For the purposes of this section, the persons entitled to protection under this section are:

(1) All receivers responsible for the conduct of a delinquency proceeding under this Article, including present and former receivers; and

(2) Their employees meaning all present and former special deputies and assistant special deputies appointed by the Commissioner, staff assigned to the delinquency proceeding employed by the Attorney General's Office, and all persons whom the Commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this Article. Attorneys, accountants, auditors, and other professional persons or firms, who are retained by the receiver as independent contractors and their employees are not employees of the receiver for purposes of this section.

(b) The receiver and his employees have official immunity and are immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any employee arising out of or by reason of their duties or employment; provided that nothing in this section holds the receiver or any employee immune from suit or liability for any

damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the receiver or any employee or for any bodily injury caused by the operation of a motor vehicle.

(c) If any legal action is commenced against the receiver or any employee, whether against him personally or in his official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any employee arising out of or by reason of their duties or employment, the receiver and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of such legal action; unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or employee giving rise to the claim did not arise out of or by reason of his duties or employment, or was caused by intentional or willful and wanton misconduct.

(d) Attorneys' fees and all related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, before the final disposition of the action, upon receipt of any agreement by or on behalf of the receiver or employee to repay the attorneys' fees and expenses if it is ultimately determined upon a final adjudication on the merits that the receiver or employee is not entitled to immunity or indemnity under this section.

(e) Any indemnification for expense payments, judgments, settlements, decrees, attorneys' fees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets under this section shall be an administrative expense of the insurer.

(f) In the event of any actual or threatened litigation against a receiver or any employee for which immunity or indemnity may be available under this section, a reasonable amount of funds, that in the judgment of the Commissioner may be needed to provide immunity or indemnity, shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run, all actual or threatened actions against the receiver or any employee have been completely and finally resolved, and all obligations of the insurer and the Commissioner under this section have been satisfied.

(g) In lieu of segregation and reserving of funds, the Commissioner may, in his discretion, obtain a surety bond or make other arrangements that will enable the Commissioner to fully secure the payment of all obligations under this section.

(h) If any legal action against an employee for which indemnity may be available under this section is settled before final adjudication on the merits, the insurer must pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the Commissioner determines:

(1) That the claim did not arise out of or by reason of the employee's duties or employment; or

(2) That the claims were caused by the intentional or willful and wanton misconduct of the employee.

(i) In any legal action in which the receiver is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the court before which the delinquency proceeding is pending. The court shall not approve that portion of the settlement if it determines:

(1) That the claim did not arise out of or by reason of the receiver's duties or employment; or

(2) That the claim was caused by the intentional or willful and wanton misconduct of the receiver.

(j) Nothing in this section deprives the receiver or any employee of any immunity, indemnity, benefits of law, rights, or any defense otherwise available.

(k) Subsection (b) of this section applies to any suit based in whole or in part on any alleged act, error, or omission that occurs on or after October 1, 1993.

(l) No legal action shall lie against the receiver or any employee based in whole or in part on any alleged act, error, or omission that occurred before October 1, 1993, unless suit is filed and valid service of process is obtained within 12 months after October 1, 1993.

(m) Subsections (c), (h), and (i) of this section apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place."

Sec. 41. G.S. 58-30-95 reads as rewritten:

"**§ 58-30-95. Termination of rehabilitation.**

(a) Whenever the rehabilitator believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the rehabilitator may petition the Court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under G.S. 58-30-100. The Court may make such findings and issue such orders at any time upon its own motion. The Court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require. The court may allow the payment of costs and expenses incurred in defending against the petition for an order of liquidation only upon a specific finding that the defense was conducted, and the costs and expenses were incurred, in good faith. The directors shall have the burden of proving good faith. Evidence of good faith shall be the existence of a reasonable basis to conclude that the insurer is actually solvent or that there exists a viable means to accomplish rehabilitation without jeopardizing the remaining assets of the insurer and that continued operation of the insurer is in the best interest of the policyholders, stockholders, and creditors.

(b) The rehabilitator may at any time petition the Court for an order terminating rehabilitation of an insurer. The Court shall also permit the directors of the insurer to petition the Court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. The court may allow the payment of costs and expenses incurred in defending against the petition for an order terminating rehabilitation only upon a specific finding that the defense was conducted, and the costs and expenses were

incurred, in good faith. The directors shall have the burden of proving good faith. Evidence of good faith shall be the existence of a reasonable basis to conclude that the insurer is actually solvent or that there exists a viable means to accomplish rehabilitation without jeopardizing the remaining assets of the insurer and that continued operation of the insurer is in the best interest of the policyholders, stockholders, and creditors. If the Court finds that rehabilitation has been accomplished and that grounds for rehabilitation under G.S. 58-30-75 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The Court may also make that finding and issue that order at any time upon its own motion."

Sec. 42. G.S. 58-7-21(b)(2) reads as rewritten:

"(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:

a. Files with the Commissioner evidence of its submission to this State's jurisdiction;

b. Submits to this State's authority to examine its books and records;

c. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

d. Files annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of ~~domicile and~~ domicile, a copy of its most recent audited financial ~~statement;~~ statement, and a fee of five hundred dollars ($500.00); and either

1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars ($20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or

2. Maintains a policyholders' surplus in an amount less than twenty million dollars ($20,000,000) and whose accreditation has been approved by the Commissioner.

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and opportunity for a hearing."

Sec. 43. G.S. 58-34-2(a) reads as rewritten:

"(a) As used in this Article:

(1) 'Control', including the terms 'controlling', 'controlled by', and 'under common control', means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement

services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

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

(3) 'Managing general agent' or 'MGA' means any person who ~~negotiates and binds ceding reinsurance contracts on behalf of an insurer or~~ manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with persons under common control, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced: (i) adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of the insurer. 'MGA' does not mean an employee of the insurer; an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written; ~~or~~ a person who, under Article 15 of this Chapter, is designated and authorized by subscribers as the attorney-in-fact for a reciprocal having authority to obligate them on reciprocal and other insurance contracts; or a U.S. Manager of the United States branch of an alien insurer.

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

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

Sec. 44. G.S. 58-34-2(d) reads as rewritten:

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

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

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

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

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

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

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

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

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

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

c. All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer the files shall become the sole property of the insurer or its estate; the MGA shall have reasonable access to and the right to copy the files on a timely basis.

d. Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or by any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under subsection (m) of this section.

(10) The MGA shall not:

a. Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

b. Commit the insurer to participate in insurance or reinsurance syndicates;

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of the preceding December 31~~ of the last completed calendar year~~;

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without the insurer's prior approval. If prior approval is given, a report must be promptly forwarded to the insurer;

f. Permit its subproducer to serve on the insurer's board of directors;

g. Jointly employ an individual who is employed with the insurer; or

h. Appoint a sub-MGA."

Sec. 45. G.S. 58-34-2(i) reads as rewritten:

"(i) Within 15 days after entering into or termination of a contract with an MGA, the insurer shall provide written notification of the appointment or termination to the Commission. Notices of appointment of an MGA shall include a copy of the contract, a statement of duties that the MGA is expected to perform on behalf of the insurer, the ~~kinds~~ lines of insurance for which the MGA is to be authorized to act, whether any affiliation exists between the insurer and the MGA and the basis for the affiliation,

NAIC biographical affidavit for each officer, director, and each person who owns ten percent (10%) or more of the outstanding voting stock of the MGA, and any other information the Commissioner may request. The Commissioner may prescribe the form to be used for notification of the information required by this item."

Sec. 46. G.S. 58-34-2(l) reads as rewritten:

"(l) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its MGAs. This subsection does not apply to relationships governed by Article 19 of this Chapter or, if applicable, ~~G.S. 58-7-157.~~ G.S. 58-3-165."

Sec. 47. G.S. 58-34-2(n) reads as rewritten:

"(n) If the Commissioner ~~finds after a hearing conducted in accordance with G.S. 58-2-50 that any person has violated any provision of this Article,~~ determines that an MGA or any other person has not materially complied with this section or with any rule adopted or order issued under this section, after notice and opportunity to be heard, the Commissioner may order:

(1) For each separate violation, a civil penalty ~~of one thousand dollars ($1,000) to be credited to the General Fund;~~ under the procedures in G.S. 58-2-70(d); or

(2) Revocation or suspension of the ~~agent's license, or~~ person's license.

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

If the Commissioner finds that because of a material noncompliance that an insurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or for other appropriate relief."

Sec. 48. G.S. 58-34-2 is amended by adding a new subsection to read:

"(p) If an order of rehabilitation or liquidation of the insurer has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that the MGA or any other person has not materially complied with this section, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer."

Sec. 49. G.S. 58-34-10 reads as rewritten:

"**§ 58-34-10. Management contracts.**

(a) ~~All agreements or contracts under which any person is delegated management duties or control of a domestic insurer, or which transfer a substantial part of any major function of a domestic insurer such as adjustment of losses, production of business, investment of assets, or general servicing of the insurer's business must be filed with the Commissioner on or before the effective date of such contract or agreement.~~ Subject to G.S. 58-19-30(b)(4), any domestic insurer that enters into a management contract must file that contract with the Commissioner on or before its effective date. As used in this section, 'management contract' means any agreement or contract under which any

person is delegated management duties or control of an insurer, or transfers a substantial part of any major function of an insurer, such as adjustment of losses, production of business, investment of assets, or general servicing of the insurer's business.

(b) ~~There shall be exempted from the filing requirement of this section contracts by groups of affiliated insurers on a pooled funds basis or service company management basis, where costs to the individual member insurers are charged on an actually incurred or closely estimated basis. However, these contracts must be reduced to written form.~~ Any domestic insurer that has a management contract shall file a statement with the initial filing of that contract that discloses (i) criteria on which charges to the insurer are based for that contract; (ii) whether management personnel or other employees of the insurer are to be performing management functions and receiving any remuneration therefor through that contract in addition to the compensation by way of salary received directly from the insurer for their services; (iii) whether the contract transfers substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurer's management; (iv) biographical information for each officer and director of the management firm; and (v) other information concerning the contract or the management firm as may be included from time to time in any registration forms adopted or approved by the Commissioner. Such statement shall be filed on a form prescribed by the Commissioner.

(c) Any domestic insurer that amends or cancels a management contract filed pursuant to subsection (a) of this section shall notify the Commissioner thereof within 15 business days after the amendment or cancellation. If the contract is amended, the notice shall provide a copy of the amended contract and shall disclose if the amendment affects any of the items in subsection (b) of this section. The Commissioner may prescribe a form to be used to provide notice under this subsection.

(d) Any domestic insurer that has a management contract shall file a statement on or before March 1 of each year, for the preceding calendar year, disclosing (i) total charges incurred by the insurer under the contract; (ii) any salaries, commissions, or other valuable consideration paid by the insurer directly to any officer, director, or shareholder of the management firm; and (iii) other information concerning the contract or the management firm as may be included from time to time in any registration forms adopted or approved by the Commissioner. The Commissioner may prescribe a form to be used to provide the information required by this subsection.

(e) Any domestic insurer that has a management contract may request an exemption from the filing requirements of this section if the contract is for a group of affiliated insurers on a pooled funds basis or service company management basis, where costs to the individual member insurers are charged on an actually incurred or closely estimated basis. The request for an exemption must be in writing, must explain the basis for the exemption, and must be received by the Commissioner on or before the effective date of the contract. As used in this subsection, 'affiliated' has the same meaning as in G.S. 58-19-5(1). Management contracts exempted under this subsection must still be reduced to written form."

Sec. 50. G.S. 58-34-15 reads as rewritten:

"**§ 58-34-15. Grounds for disapproval.**

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

(1) That the service or management charges are based upon criteria unrelated either to the managed insurer's profits or to the reasonable customary and usual charges for such services or are based on factors unrelated to the value of such services to the insurer; or

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

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

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

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

(b) If the Commissioner disapproves ~~of~~ any management ~~contract or service agreement,~~ contract, notice of such action shall be given to the insurer assigning the reasons therefor in writing. The Commissioner shall grant any party to the contract a hearing upon request according to G.S. 58-2-50."

Sec. 51. G.S. 58-48-20 reads as rewritten:

"**§ 58-48-20. Definitions.**

As used in this Article:

(1) 'Account' means any one of the three accounts created by G.S. 58-48-25.

(1a) 'Affiliate' means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(2) 'Association' means the North Carolina Insurance Guaranty Association created under G.S. 58-48-25.

(2a) 'Claimant' means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(3) Repealed by Session Laws 1991, c. 720, s. 6.

(3a) 'Control' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(4) 'Covered claim' means an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured ~~event; provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured~~ event; or (ii) the property from which the claim arises is permanently located in this State. 'Covered claim' shall not include any amount awarded as punitive or exemplary damages; sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation or contribution recoveries or otherwise.

(5) 'Insolvent insurer' means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a **writ of supersedeas** or other comparable order.

(6) 'Member insurer' means any person who (i) writes any kind of insurance to which this Article applies under G.S. 58-48-10, including the exchange of reciprocal or interinsurance contracts, and (ii) is licensed and authorized to transact insurance in this State.

(7) 'Net direct written premiums' means direct gross premiums written in this State on insurance policies to which this Article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. 'Net direct written premiums' does not include premiums on contracts between insurers or reinsurers.

(8) 'Person' means any individual, corporation, partnership, association or voluntary organization.

(9) 'Policyholder' means the person to whom an insurance policy to which this Article applies was issued by an insurer which has become an insolvent insurer.

(10) 'Resident' means:

a. An individual domiciled in this State;

b. An individual formerly domiciled in this State at the time the applicable policy was issued or renewed and the term of the policy had not expired at the time of the insured event, and who at the time of the insured event had complied with the laws of the current domicile necessary to allow maintenance in force and effect of the applicable policy; or

c. In the case of a corporation or other entity that is not a natural person, a corporation or entity whose principal place of business is located in this State at the time of the insured event."

Sec. 52. G.S. 58-58-50 is amended by adding the following new subsections:

"(i) Every life insurance company doing business in this State shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with previously reported amounts, and comply with applicable laws of this State. The Commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope. Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by this subsection, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The Commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may deem to be necessary in order to render the opinion required by this subsection.

(j) Each opinion required by subsection (i) of this section shall be governed by the following provisions:

(1) A memorandum, in form and substance acceptable to the Commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting memorandum at the request of the Commissioner within a period specified by rule or the Commissioner determines that the supporting memorandum

provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commissioner.

(3) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.

(4) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the Commissioner as specified by rule.

(5) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the Commissioner may by rule prescribe.

(6) In the case of an opinion required to be submitted by a foreign or alien company, the Commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(7) For the purposes of this section, 'qualified actuary' means a member in good standing of the American Academy of Actuaries who meets the requirement set forth in such rules.

(8) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the Commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(9) Disciplinary action by the Commissioner against the company or the qualified actuary shall be defined in rules by the Commissioner.

(10) Any memorandum in support of the opinion, and any other material provided by the company to the Commissioner in connection therewith, shall be kept confidential by the Commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted under this section; provided, however, that the memorandum or other material may otherwise be released by the Commissioner (i) with the written consent of the company or (ii) to the American Academy of Actuaries upon request stating the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency

other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(k) The Commissioner shall adopt rules containing the minimum standards applicable to the valuation of health plans."

Sec. 53. G.S. 58-58-50(c)(1) reads as rewritten:

"(1) Except as otherwise provided in subdivisions (3) and (4) of this subsection, the minimum standard for the valuation of all such policies and contracts issued ~~prior to~~ before the ~~operative~~ effective date of ~~G.S. 58-58-55~~ this section shall be that provided by the laws in effect immediately ~~prior to such~~ before that date, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued ~~prior to such effective~~ before that date shall be that provided by the laws in effect immediately ~~prior to such~~ before that date but replacing the interest rates specified in such laws by an interest rate of five percent (5%) per annum, and five and one-half percent (5 1/2%) interest for single premium life insurance policies."

Sec. 54. G.S. 58-58-50(c)(2) reads as rewritten:

"(2) Except as otherwise provided in subdivisions (3) and (4) of this subsection, the minimum standards for the valuation of all such policies and contracts issued on or after the ~~operative date of G.S. 58-58-55~~ effective date of this section shall be the Commissioner's reserve valuation methods defined in subsections (d), (d-1) and (g), five percent (5%) interest for group annuity and pure endowment contracts and three and one-half percent (3 1/2%) interest for all other policies and contracts, or, in the case of policies and contracts other than annuity and pure endowment contracts, issued on or after July 1, 1975, four percent (4%) interest for such policies issued prior to April 19, 1979, and four and one-half percent (4 1/2%) interest for such policies issued on or after April 19, 1979, and the following tables:

a. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies – the Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subdivision (e)(2) of G.S. 58-58-55, the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of subdivision (e)(2) of G.S. 58-58-55 prior to the operative date of subdivision (e)(4) of G.S. 58-58-55, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and, for such policies issued on or

after the operative date of subdivision (e)(4) of G.S. 58-58-55, (i) the Commissioner's 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies;

b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies – the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subdivision (e)(3) of G.S. 58-58-55 and for such policies issued on or after such operative date the Commissioner's 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies;

c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies – the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Commissioner;

d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies – the Group Annuity Mortality Table for 1951, any modification of such table approved by the Commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

e. For total and permanent disability benefits in or supplementary to ordinary policies or contracts – for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the NAIC, that are approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3)

Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

f. For accidental death benefits in or supplementary to policies – for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

g. For group life insurance, life insurance issued on the substandard basis and other special benefits – such tables as may be approved by the Commissioner."

Sec. 55. G.S. 58-58-50(e) reads as rewritten:

"(e) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of ~~G.S. 58-58-55,~~ this section, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (d), (d-1), (g) and (h) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (i) of this section."

Sec. 56. G.S. 58-58-50(f) reads as rewritten:

"(f) Reserves for all policies and contracts issued ~~prior to the operative date of G.S. 58-58-55~~ before the effective date of this section may be calculated, at the option of the company, according to any standards ~~which~~ that produce greater aggregate reserves for ~~all such~~ those policies and contracts than the minimum reserves required by the laws in effect immediately ~~prior to such~~ before that date.

Reserves for any category of policies, contracts or benefits as established by the Commissioner, issued on or after ~~the operative date of G.S. 58-58-55,~~ the effective date of this section may be calculated, at the option of the company, according to any standards ~~which~~ that produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

Any such company ~~which at any time shall have adopted~~ that adopts any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided. Provided, however, that for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (c) of this section shall not be deemed to be the adoption of a higher standard of valuation."

Sec. 57. G.S. 58-58-55(b) reads as rewritten:

"(b) In the case of policies issued on or after the operative date of this section, as defined in subsection (h), no policy of life insurance, except as stated in subsection (g), shall be delivered or issued for delivery in this State unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (f1) of this section:

(1) That, in the event of default in any premium payment after premiums have been paid for at least one full year in the case of ordinary insurance or three full years in the case of industrial insurance, the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default. Nothing herein shall prevent the use of an automatic premium loan provision.

(4) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy

anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) ~~A brief and general statement of the method to be used in calculating the cash surrender value and the paid-up nonforfeiture benefit available under the policy on any policy anniversary with an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy.~~ A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the Commissioner in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy."

Sec. 58. G.S. 58-58-55(e1) reads as rewritten:

"(e1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections (b), (c), (d), or (e) herein, then:

(1) The Commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (b), (c), (d), or (e) herein;

(2) The Commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law, as determined by regulations promulgated by the ~~Commissioner.~~ Commissioner;

(4) Notwithstanding any other provision in the laws of this State, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the Commissioner before it can be marketed, issued, delivered, or used in this State."

Sec. 59. G.S. 58-58-55 is amended by adding a new subsection to read:

"(i) For any single premium whole life or endowment insurance policy subject to subdivisions (e)(2) and (e)(3) of this section, a rate of interest not exceeding six and one-half percent (6 1/2%) per annum may be used."

Sec. 60. G.S. 58-62-16 reads as rewritten:

"**§ 58-62-16. Definitions.**

As used in this Article:

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

(2) 'Association' means the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.

(3) 'Board' means the board of directors of the Association established under G.S. 58-62-31.

(4) 'Contractual obligation' means any obligation under a policy or certificate under a group policy, or part thereof, for which coverage is provided under G.S. 58-62-21.

(5) 'Covered policy' means any policy within the scope of this Article under G.S. 58-62-21.

(6) 'Delinquent insurer' means an impaired insurer or an insolvent insurer; and 'delinquency' means an insurer impairment or insolvency.

(7) 'Health insurance' includes accident and health insurance, accident insurance, and disability insurance.

(8) 'Impaired insurer' means a member insurer that, after the effective date of this Article, is not an insolvent insurer, and (i) is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations or (ii) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(9) 'Insolvent insurer' means a member insurer that, after the effective date of this Article, is placed under an order of liquidation with a finding of insolvency by a court of competent jurisdiction.

(10) 'Insurance regulator' means the official or agency of another state that is responsible for the regulation of a foreign insurer.

(11) 'Member insurer' means any insurer licensed or that holds a license to transact in this State any kind of insurance for which coverage is provided under G.S. 58-62-21; and includes any insurer whose license in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include an entity governed by Articles 65 through 67 of this Chapter; fraternal order or fraternal benefit society; mandatory State pooling plan; mutual assessment company or any entity that operates on an assessment basis; insurance exchange; or any entity similar to any of the foregoing.

(12) 'Moody's Corporate Bond Yield Average' means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(13) 'Person' includes an individual, corporation, company, partnership, association, or aggregation of individuals.

(14) 'Plan' means the plan of operation established under G.S. 58-62-46.

(15) 'Policy' includes a contract of insurance and an annuity contract.

(16) 'Premiums' means amounts received in any calendar year on covered policies less premiums, considerations, and deposits returned thereon, and less dividends and experience credits thereon. 'Premiums' does not include any amounts received for any policies or for the parts of any policies for which coverage is not provided under G.S. 58-62-21(b); except that assessable premium shall not be reduced on account of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-21(d)(2) relating to limitations with respect to any one individual, any one participant, and any one contract holder.

(17) 'Resident' means any person who resides in this State when a member insurer is determined to be a delinquent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. <u>'Resident' also means a U.S. citizen residing outside of the United States who owns a covered policy that was purchased from a member insurer while that person resided in this State.</u>

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

Sec. 61. G.S. 58-62-21(d) reads as rewritten:

"(d) The benefits for which the Association is liable do not, in any event, exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not a delinquent insurer; or

(2) With respect to any one individual, regardless of the number of policies, three hundred thousand dollars ($300,000) for all benefits, including cash ~~values.~~ values; or

(3) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code covered by an unallocated annuity contract, or the beneficiaries of each individual if deceased, in the aggregate, three hundred thousand dollars ($300,000) in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(4) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (3) of this subsection, five million dollars ($5,000,000) in benefits, regardless of the number of such contracts held by that contract holder."

Sec. 61.1. G.S. 58-62-41(a) reads as rewritten:

"(a) To provide the funds necessary to carry out the powers and duties of the Association, the Board shall assess the member insurers, separately for each account, at such time and for such amounts as the Board finds necessary. Assessments are due not less than 30 days after prior written notice to the member insurers and shall accrue interest at ~~eight percent (8%) per annum on and~~ the rate of one percent (1%) per month, or any part thereof, after the due date."

Sec. 62. G.S. 58-62-41(l) reads as rewritten:

"(l) The Association shall issue to each insurer paying an assessment under this Article, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. ~~A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time as the Commissioner approves.~~"

Sec. 63. G.S. 58-64-20(a) reads as rewritten:

"(a) At the time of, or prior to, the execution of a contract to provide continuing care, or at the time of, or prior to, the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into, the text of which shall contain at least:

(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.

(2) The names and business addresses of the officers, directors, trustees, managing or general partners, any person having a ten percent (10%) or greater equity or beneficial interest in the provider, and any person who will be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider.

(3) The following information on all persons named in response to subdivision (2) of this section:

a. A description of the business experience of this person, if any, in the operation or management of similar facilities;

b. The name and address of any professional service firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of five hundred dollars ($500.00) or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility, provider, or residents or a statement that this cost cannot presently be estimated; and

c. A description of any matter in which the person (i) has been convicted of a felony or pleaded **nolo contendere** to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (ii) is subject to a currently effective injunctive or restrictive court order, or within the past five years, had any State or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for aged, or facility subject to this Article or a similar law in another state.

(4) A statement as to whether the provider is, or is not affiliated with, a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.

(5) The location and description of the physical property or properties of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates, whether construction has begun, and the contingencies subject to which construction may be deferred.

(6) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished, and a clear statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge.

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include:

a. A statement of the fees that will be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;

b. The circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

c. The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions, if any, under which all or any portion of the entrance fee <u>or any other fee</u> will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

d. The conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the prior resident; and

e. The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any; and, if the facility is already in operation, or if the provider or manager operates one or more similar continuing care locations within this State, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five years, or such shorter period as the facility or location may have been operated by the provider or manager.

(8) The health and financial condition required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering into a contract for continuing care and the date of initial occupancy of a living unit by that person.

(9) The provisions that have been made or will be made, ~~if any,~~ including, but not limited to, the requirements of G.S. 58-64-33 and G.S. 58-64-35, to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions.

(10) Financial statements of the provider certified to by an independent public accountant as of the end of the most recent fiscal year or such shorter period of time as the provider shall have been in existence. If the provider's fiscal year ended more than 120 days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than 90 days prior to the date of recording the statement shall also be included, but need not be certified to by an independent certified public accountant.

(11) In the event the facility has had an actuarial report prepared within the prior two years, the summary of a report of an actuary that estimates the capacity of the provider to meet its contractual obligations to the residents.

(12) Forecast financial statements for the facility of the next five years, including a balance sheet, a statement of operations, a statement of cash flows, and a statement detailing all significant assumptions, compiled by an independent certified public accountant. Reporting routine, categories, and structure may be further defined by regulations or forms adopted by the Commissioner.

(13) The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.

(14) Proposed or development stage facilities shall additionally provide:

a. The summary of the report of an actuary estimating the capacity of the provider to meet its contractual obligation to the residents;

b. Narrative disclosure detailing all significant assumptions used in the preparation of the forecast financial statements, including:

1. Details of any long-term financing for the purchase or construction of the facility including interest rate, repayment terms, loan covenants, and assets pledged;

2. Details of any other funding sources that the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

3. The total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations along with anticipated accounting methods used in the recognition of revenues from and expected refunds of life occupancy fees;
4. A description of any equity capital to be received by the facility;
5. The cost of the acquisition of the facility or, if the facility is to be constructed, the estimated cost of the acquisition of the land and construction cost of the facility;
6. Related costs, such as financing any development costs that the provider expects to incur or become obligated for prior to the commencement of operations;
7. The marketing and resident acquisition costs to be incurred prior to commencement of operations; and
8. A description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services.

(15) Any other material information concerning the facility or the provider which, if omitted, would lead a reasonable person not to enter into this contract."

Sec. 64. G.S. 58-64-33(a) reads as rewritten:

"(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by ~~liquid, marketable investments, including invested cash, bonds, stocks, commercial paper, U.S. Treasury obligations, other equivalents, or under G.S. 58-7-85(a)(1) through (6), or by an unconditional, irrevocable letter of credit of a quality satisfactory to the Commissioner~~ cash, invested cash, commercial paper, or by investment grade securities, including bonds, stocks, U.S. Treasury obligations, or obligations of U.S. government agencies."

Sec. 65. G.S. 58-2-175, 58-3-70, 58-3-80, 58-7-32, 58-7-135, 58-7-190, 58-9-1, 58-9-5, 58-9-10, 58-9-15, 58-9-20, 58-9-25, 58-9-30, 58-12-1, 58-12-5, 58-12-10, 58-12-15, 58-12-20, 58-19-20, 58-23-25, and 58-34-20 are repealed.

Sec. 66. If any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 67. This act becomes effective October 1, 1993.

In the General Assembly read three times and ratified this the 23rd day of July, 1993.

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Dennis A. Wicker
President of the Senate

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Daniel Blue, Jr.
Speaker of the House of Representatives