

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 342*
Insurance Committee Substitute Adopted 5/13/91

Short Title: Insurer Solvency Program.

(Public)

Sponsors:

Referred to:

March 28, 1991

A BILL TO BE ENTITLED

1 AN ACT TO AMEND AND IMPROVE THE INSURANCE LAWS ON THE
2 MONITORING OF THE FINANCIAL CONDITION OF INSURANCE
3 COMPANIES IN ACCORDANCE WITH THE FINANCIAL REGULATION
4 STANDARDS AND INSURANCE DEPARTMENT ACCREDITATION
5 PROGRAM OF THE NATIONAL ASSOCIATION OF INSURANCE
6 COMMISSIONERS.
7

8 The General Assembly of North Carolina enacts:

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

10 "§ 58-2-25. **Other deputies, actuaries, examiners and employees.**

11 (a) The Commissioner shall appoint or employ such other deputies, actuaries,
12 economists, financial analysts, financial examiners, licensed attorneys, rate and policy
13 analysts, accountants, fire and rescue training instructors, market conduct analysts,
14 insurance complaint analysts, investigators, engineers, building inspectors, risk
15 managers, clerks and other employees ~~as may be found~~ that the Commissioner considers
16 to be necessary for the proper execution of the work of the Department, at ~~such the~~
17 compensation as shall be that is fixed and provided by the Department of
18 Administration. If the Commissioner ~~finds it~~ considers it to be necessary for the proper
19 execution of the work of the ~~Insurance~~ Department to contract with persons, except to
20 fill authorized employee positions, all of those contracts, except those provided for in
21 Articles 36 and 37 of this Chapter, shall be made pursuant to the provisions of Article
22 3C of Chapter ~~143-~~ 143 of the General Statutes.

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

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

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

15 **"§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct**
16 **of examinations.**

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

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

27 (1) 'Commissioner' includes an authorized representative or designee of
28 the Commissioner.

29 (2) 'Examination' means an examination conducted under the
30 Examination Law.

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

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

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

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

41 (d) The Commissioner may conduct an examination of any insurer whenever the
42 Commissioner deems it to be prudent for the protection of policyholders but shall at a
43 minimum conduct an examination of every domestic insurer not less frequently than
44 once every three years. In scheduling and determining the nature, scope, and frequency

1 of examinations, the Commissioner shall consider such matters as the results of
2 financial statement analyses and ratios, changes in management or ownership, actuarial
3 opinions, reports of independent certified public accountants, and other criteria as set
4 forth in the NAIC Examiners' Handbook.

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

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

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

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

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

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

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

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

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

25 **"§ 58-2-132. Examination reports.**

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

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

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

43 (1) Adopting the examination report as filed or with modifications or
44 corrections. If the examination report reveals that the insurer is

1 operating in violation of any law, rule, or prior order of the
2 Commissioner, the Commissioner may order the insurer to take any
3 action the Commissioner considers necessary and appropriate to cure
4 the violation; or

5 (2) Rejecting the examination report with directions to the examiners to
6 reopen the examination to obtain additional data, documentation of the
7 information, and refileing under subdivision (1) of this subsection; or

8 (3) Calling for an investigatory hearing with no less than 20 days notice to
9 the insurer for purposes of obtaining additional documentation, data,
10 and testimony.

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

38 (e) Upon completion of the examination report under subdivision (c)(1) of this
39 section, the Commissioner shall hold the content of the examination report as private
40 and confidential information for the 30-day period provided for written submissions or
41 rebuttals. If after 30 days after the examination report has been submitted to it, the
42 insurer examined has neither notified the Commissioner of its acceptance and approval
43 of the report nor requested to be heard on the report, the report shall then be filed as a
44 public document and shall be open to public inspection, as long as no court of

1 competent jurisdiction has stayed its publication. Nothing in the Examination Law
2 prohibits the Commissioner from disclosing the content of the examination report,
3 preliminary examination report or results, or any related matter, to an insurance
4 regulator or to law enforcement officials of this or any other state or country or of the
5 U.S. government at any time, as long as the person or agency receiving the report or
6 related matters agrees in writing and is authorized by law to hold it confidential and in a
7 manner consistent with this section. If the Commissioner determines that further
8 regulatory action is appropriate as a result of any examination, the Commissioner may
9 initiate such proceedings or actions as provided by law.

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

21 **"§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.**

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

26 (1) A policyholder or claimant under an insurance policy.

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

30 (3) An investment owner in shares of regulated diversified investment
31 companies; or

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

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

39 (c) Any insurer examined shall pay the proper charges incurred in the
40 examination, including the expenses and compensation of the Commissioner. The
41 charges and expenses shall be reasonable as determined by the Commissioner and in
42 accordance with guidelines established by the NAIC set forth in the NAIC Examiners'
43 Handbook. The refusal of any insurer to submit to examination, or the refusal or failure
44 of any insurer to pay the expenses of examination upon presentation by the

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

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

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

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

10 **"§ 58-2-145. Examination, financial statement, and records of employers self-**
11 **insuring for workers' compensation.**

12 The provisions of G.S. ~~58-2-130, 58-2-140, 58-2-131 through 58-2-133, 58-2-150, 58-~~
13 ~~2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5~~ apply to
14 employers that furnish proof of financial responsibility to the Commissioner under G.S.
15 97-93(a)(2) and to persons that administer workers' compensation self-insurance for
16 ~~such those~~ employers."

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

18 **"§ 58-20-30. Financial monitoring and evaluation of clubs.**

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

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

36 **"§ 58-23-25. Financial monitoring and evaluation of pools.**

37 Each pool must be audited annually at the expense of the pool by a certified public
38 accounting firm, with a copy of the report available to the governing body or chief
39 executive officer of each member of the pool and to the Commissioner. The board of
40 trustees of the pool must obtain an appropriate actuarial evaluation of the loss and loss
41 adjustment expense reserves of the pool, including an estimate of losses and loss
42 adjustment expenses incurred but not reported. The provisions of G.S. ~~58-2-130, 58-2-~~
43 ~~131 through G.S. 58-2-133, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-~~
44 ~~190, 58-2-200, and 58-6-5~~ apply to each pool and to persons that administer pools for

1 local governments. Annual financial statements required by G.S. 58-2-165 shall be
2 filed by each pool within 60 days after the end of the pool's fiscal year."

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

4 **"§ 58-2-165. Annual, semiannual, ~~or~~ monthly, or quarterly statements to be filed**
5 **with Commissioner.**

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

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

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

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

30 **"§ 58-2-225. Regulation of reinsurance intermediaries.**

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

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

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

42 **"§ 58-3-155. Business transacted with insurer-controlled brokers.**

43 (a) As used in this section:

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

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

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

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

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

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

38 **"§ 58-3-160. Sale of company or major reorganization; license to be restricted.**

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

1 following information with the Commissioner and the Commissioner has granted
2 approval:

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

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

18 **"§ 58-4-5. Filing requirements.**

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

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

34 **"§ 58-4-15. Revocation of certificate of authority.**

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

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

41 **"§ 58-4-25. Insurance Regulatory Information System and similar program test**
42 **data records.**

43 Financial test ratios, data, or information generated by the NAIC Insurance
44 Regulatory Information System, any successor program, or any similar program shall be

1 disseminated by the Commissioner consistent with procedures established by the
2 NAIC."

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

4 **"§ 58-2-220. Insurance Regulatory Information System and similar program test**
5 **data not public records.**

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

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

12 **"§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine**
13 **insurance companies.**

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

18 (1) ~~Companies whose premium income derived from this State is less than~~
19 ~~fifty thousand dollars (\$50,000) per annum, ten thousand dollars~~
20 ~~(\$10,000);~~

21 (2) ~~Companies whose premium income is more than fifty thousand dollars~~
22 ~~(\$50,000) but less than one hundred thousand dollars (\$100,000) per~~
23 ~~annum, twenty thousand dollars (\$20,000);~~

24 (3) ~~Companies whose premium income is more than one hundred~~
25 ~~thousand dollars (\$100,000) per annum, twenty five thousand dollars~~
26 ~~(\$25,000);~~

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

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

29 **"§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and**
30 **casualty insurance companies.**

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

35 (1) ~~Companies whose premium income derived from this State is less than~~
36 ~~one hundred thousand dollars (\$100,000), twenty five thousand dollars~~
37 ~~(\$25,000);~~

38 (2) ~~Companies whose premium income is in excess of one hundred~~
39 ~~thousand dollars (\$100,000), fifty thousand dollars (\$50,000);~~

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

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

42 **"§ 58-5-15. Minimum deposit required upon admission.**

43 Upon admission to do business in the State of North Carolina every foreign or alien
44 fire, marine, or fire and marine, fidelity, surety or casualty company shall deposit with

1 the Commissioner securities in the ~~minimum~~ amounts required under the provisions of
2 G.S. 58-5-5 and 58-5-10."

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

4 **"§ 58-5-20. Type of deposits.**

5 The deposits required to be made under the provisions of G.S. 58-5-5, 58-5-10, and
6 58-5-50 shall be composed of:

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

8 (b) Interest bearing bonds of the State of North Carolina, or of the ~~its~~ cities or
9 counties of this State. counties; or

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

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

13 **"§ 58-5-40. Authority to increase deposit.**

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

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

21 (b) Interest bearing bonds of the State of North Carolina or of its cities or
22 counties;

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

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

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

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

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

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

34 (2) Interest bearing bonds of the State of North Carolina or of its cities or
35 counties; or

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

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

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

41 **"§ 58-7-21. Credit allowed a domestic ceding insurer.**

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

43 (1) 'Reinsurance' means a transfer of insurance risk from a ceding insurer
44 to an assuming insurer.

1 (2) 'Insurance risk' means an uncertainty regarding the ultimate amount of
2 any claim payment (underwriting risk) or an uncertainty regarding the
3 timing of such payments (timing risk), or both.

4 (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an
5 asset or a deduction from liability on account of reinsurance ceded only when the
6 reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this
7 subsection. If meeting the requirements of subdivisions (3) or (4) of this subsection, the
8 reinsurer must also meet the requirements of subdivision (6) of this subsection.

9 (1) Credit shall be allowed when the reinsurance is ceded to an assuming
10 insurer that is licensed to transact insurance or reinsurance in this
11 State.

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

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

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

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

23 d. Files annually with the Commissioner a copy of its annual
24 statement filed with the insurance regulator of its state of
25 domicile and a copy of its most recent audited financial
26 statement; and either

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

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

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

38 (3) Credit shall be allowed when the reinsurance is ceded to an assuming
39 insurer that is domiciled and licensed in, or in the case of a United
40 States branch of an alien assuming insurer is entered through, a state
41 that uses standards regarding credit for reinsurance substantially
42 similar to those applicable under this section and the assuming insurer
43 or United States branch of an alien assuming insurer:

- 1 a. Maintains a policyholders' surplus in an amount not less than
2 twenty million dollars (\$20,000,000); and
3 b. Submits to the authority of this State to examine its books and
4 records.

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

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

- 31 b. In the case of a group of incorporated insurers under common
32 administration which (i) complies with the filing requirements
33 contained in the previous paragraph, (ii) has continuously
34 transacted an insurance business outside the United States for at
35 least three years immediately before making application for
36 accreditation, (iii) submits to this State's authority to examine
37 its books and records and bears the expense of the examination,
38 and (iv) has aggregate policyholders' surplus of ten billion
39 dollars (\$10,000,000,000); the trust shall be in an amount equal
40 to the group's several liabilities attributable to business ceded
41 by United States ceding insurers to any member of the group
42 under reinsurance contracts issued in the name of the group. In
43 addition, the group shall maintain a joint trustee surplus of
44 which one hundred million dollars (\$100,000,000) shall be held

1 jointly for the benefit of United States ceding insurers of any
2 member of the group as additional security for any such
3 liabilities, and each member of the group shall make available
4 to the Commissioner an annual certification of the member's
5 solvency by the member's domiciliary regulator and its
6 independent public accountant.

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

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

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

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

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

42 b. To designate the Commissioner as its true and lawful attorney
43 upon whom may be served any lawful process in any action,

1 suit, or proceeding begun by or on behalf of the ceding
2 company.

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

6 (c) This section applies to all reinsurance cessions made on or after January 1,
7 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
8 on or after January 1, 1992.

9 **"§ 58-7-26. Reduction from liability for reinsurance ceded by a domestic insurer to**
10 **an assuming insurer.**

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

21 (1) Cash;

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

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

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

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

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

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

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

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

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

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

15 (d) This section applies to all reinsurance cessions made on or after January 1,
16 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
17 on or after January 1, 1992."

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

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

20 "(6) Satisfies the Commissioner that it is in substantial compliance with the
21 provisions of ~~G.S. 58-7-20 through G.S. 58-7-30~~ G.S. 58-7-21, 58-7-26,
22 58-7-30, and 58-7-32 and Article 13 of this Chapter."

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

25 **"§ 58-7-32. Life reinsurance agreements.**

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

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

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

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

40 (3) The reserve credit taken by the ceding insurer is greater than the
41 underlying reserve of the ceding insurer supporting the policy
42 obligations transferred under the reinsurance agreement;

43 (4) The ceding insurer is required to reimburse the reinsurer for negative
44 experience under the ceding insurer of an amount equal to prior years'

1 losses upon voluntary termination of in-force reinsurance by that
2 ceding insurer shall be considered such a reimbursement to the
3 reinsurer for negative experience;

4 (5) The ceding insurer can be deprived of surplus at the reinsurer's option
5 or automatically upon the occurrence of some event, such as the
6 insolvency of the ceding insurer; except that termination of the
7 reinsurance agreement by the reinsurer for nonpayment of reinsurance
8 premiums shall not be considered to be such a deprivation of surplus;

9 (6) The ceding insurer must, at scheduled times specified or implied in the
10 agreement, terminate or automatically recapture all or part of the
11 coverage ceded;

12 (7) No cash payment is due from the reinsurer, throughout the lifetime of
13 the reinsurance agreement, with all settlements before the termination
14 date of the agreement made only in a reinsurance account, and no
15 funds in the account are available for the payment of benefits; or

16 (8) The reinsurance agreement involves the possible payment by the
17 ceding insurer to the reinsurer of amounts other than from income
18 reasonably expected from the reinsured policies.

19 (c) Notwithstanding subsection (b) of this section, an insurer may, with the
20 Commissioner's prior approval, take such reserve credit as the Commissioner considers
21 to be consistent with insurance statutes; or rules, actuarial interpretations, or standards
22 adopted by the Commissioner.

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

28 (e) In the case of a letter of intent, a reinsurance agreement or an amendment to a
29 reinsurance agreement must be executed within a reasonable period of time, not
30 exceeding 90 days after the execution date of the letter of intent, for credit to be granted
31 for the reinsurance ceded.

32 (f) Insurers may continue to reduce liabilities or establish assets in financial
33 statements filed with the Commissioner for reinsurance ceded under types of
34 reinsurance agreements described in subsection (b) of this section, provided:

35 (1) The agreements were executed and in force before the effective date of
36 this section;

37 (2) No new business is ceded under the agreements after the effective date
38 of this section;

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

43 (4) The Commissioner is notified, within 90 days after the effective date
44 of this section, of the existence of the reinsurance agreements and all

1 corresponding credits taken in the ceding insurer's 1990 Annual
2 Statement."

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

5 **"§ 58-7-33. Minimum policyholders' surplus to assume property or casualty**
6 **reinsurance.**

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

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

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

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

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

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

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

24 Sec. 28. Article 7 of Chapter 58 of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 58-7-157. Business transacted with broker-controlled property or casualty**
27 **insurers.**

28 (a) As used in this section:

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

33 (2) 'Captive insurer' means an insurer owned by another person, the
34 exclusive purpose of which is to insure risks of a parent person or its
35 affiliates; or, in the case of groups or associations, an insurer owned by
36 the insured, the exclusive purpose of which is to insure risks of
37 member organizations or group members and their affiliates.

38 (3) 'Control' means the direct or indirect possession of the power to direct
39 or cause the direction of the management and policies of a person,
40 whether through the ownership of voting securities, by contract other
41 than a commercial contract for goods or nonmanagement services, or
42 otherwise, unless the power is the result of an official position with or
43 corporate office held by the person. Control is presumed to exist if
44 any person directly or indirectly owns, controls, holds with the power

- 1 to vote, or holds proxies representing ten percent (10%) or more of the
2 voting securities of any other person.
- 3 (4) 'Insurer' means any person incorporated or organized under the laws of
4 this State and duly licensed to transact property or casualty insurance.
5 Insurer does not include a: foreign or nonadmitted insurer; risk
6 retention group under Article 22 of this Chapter; residual market
7 mechanism; joint underwriting authority or association; or captive
8 insurer.
- 9 (5) 'Qualified actuary' means a person that meets the standards of a
10 qualified actuary as specified in the NAIC Annual Statement
11 Instructions: Property and Casualty, as amended or clarified by rule,
12 order, directive, or bulletin of the Commissioner.
- 13 (6) 'Reinsurance intermediary' or 'intermediary' means any person that
14 acts as a broker in soliciting, negotiating, or procuring the making of
15 any reinsurance contract or binder on behalf of a ceding insurer; or
16 acts as a broker in accepting any reinsurance contract or binder on
17 behalf of an assuming insurer.
- 18 (7) 'Violation' means a finding that:
- 19 a. A controlling broker did not materially comply with subsections
20 (c) or (d) of this section; or
- 21 b. A controlled insurer, with respect to business placed by the
22 controlling broker, engaged in a pattern of charging premiums
23 that were lower than those being charged by the insurer or other
24 insurers for similar risks written during the same period and
25 placed by noncontrolling brokers. When determining whether
26 premiums were lower than those prevailing in the market, the
27 Commissioner shall take into consideration applicable industry
28 or actuarial standards when the business was written; or
- 29 c. A controlling broker failed to maintain records sufficient: to
30 demonstrate that the broker's dealings with its controlled insurer
31 were fair and equitable and in compliance with Article 19 of
32 this Chapter; and to accurately disclose the nature and details of
33 its transactions with the controlled insurer, including
34 information that is necessary to support the charges or fees to
35 the respective parties; or
- 36 d. A controlled insurer, with respect to business placed by a
37 controlling broker, either failed to establish or deviated from its
38 underwriting procedures; or
- 39 e. A controlled insurer's capitalization when business was placed
40 by a controlling broker and with respect to the business was not
41 in compliance with criteria established by the Commissioner or
42 with this Chapter or Title 11 of the North Carolina
43 Administrative Code; or

1 f. A controlling broker or the controlled insurer failed to comply
2 substantially with Article 19 of this Chapter and any rules
3 adopted under that Article.

4 (b) The Commissioner may determine, after furnishing all persons in interest
5 notice and opportunity to be heard and making specific findings of fact to support the
6 determination, that control exists in fact, notwithstanding the absence of a presumption
7 to that effect. The Commissioner may determine upon application that any person does
8 not or will not upon the taking of some proposed action control another person. The
9 Commissioner may prospectively revoke or modify this determination, after notice and
10 opportunity to be heard, whenever, in the Commissioner's discretion, revocation or
11 modification is consistent with this section.

12 (c) No broker that has control of an insurer may directly or indirectly place
13 business with the insurer in any transaction in which the broker, when the business is
14 placed, is acting as such on behalf of the insured for any compensation, commission or
15 other thing of value, unless:

16 (1) There is a written contract between the controlling broker and the
17 insurer that has been approved by the board of directors of the insurer
18 and filed with the Commissioner;

19 (2) The broker, before the effective date of any policy, delivers written
20 notice to the prospective insured disclosing the relationship between
21 the broker and the controlled insurer. The disclosure, signed by the
22 insured, shall be retained in the underwriting file of the insurer until
23 the completion and release of the report on examination for the period
24 in which the coverage is in effect. However, if the business is placed
25 through a subbroker who is not a controlling broker, the controlling
26 broker shall retain in the controlling broker's records a signed
27 commitment from the subbroker that the subbroker is aware of the
28 relationship between the insurer and the broker and that the subbroker
29 has notified or will notify, in a form that may be prescribed by the
30 Commissioner, the insured;

31 (3) All funds collected for the account of the insurer by the controlling
32 broker are paid, net of commissions, cancellations, and other
33 adjustments, to the insurer no less often than monthly;

34 (4) In addition to any other required statement of actuarial opinion, the
35 controlled insurer provides with its annual financial statement the
36 statement of a qualified actuary reporting loss ratios for each kind of
37 insurance written and attesting to the adequacy of loss reserves
38 established on insurance placed by the broker; and the statement
39 complies in all respects with the NAIC Annual Statement Instructions
40 regarding the Statement of Actuarial Opinion;

41 (5) The controlled insurer provides with its annual financial statement a
42 report, in a form that may be prescribed by the Commissioner, about
43 the amount of commissions paid to the broker, the percentage the
44 amount represents of the net premiums written, and comparable

1 amounts and percentages paid to noncontrolling brokers for
2 placements of the same kinds of insurance; and

3 (6) Every controlled insurer has an audit committee of its board of
4 directors comprising independent directors; and before approval of the
5 annual financial statement, the audit committee meets with the
6 insurer's management, the insurer's independent certified public
7 accountants, and a qualified actuary to review the adequacy of the
8 insurer's loss reserves.

9 (d) No reinsurance intermediary that has control of an assuming insurer may
10 directly or indirectly place business with the insurer in any transaction in which the
11 intermediary is acting as a broker on behalf of the ceding insurer. No intermediary that
12 has control of a ceding insurer may directly or indirectly accept business from the
13 insurer in any transaction in which the reinsurance intermediary is acting as a broker on
14 behalf of the assuming insurer. This subsection does not apply to an intermediary that
15 makes a full and complete written disclosure to the parties of its relationship with the
16 assuming or ceding insurer before completion of the transaction.

17 (e) If the Commissioner has reason to believe that any person has committed or
18 is committing an act that could be a violation, and that the violation substantially
19 contributed to the insolvency of a controlled insurer, the Commissioner or receiver may
20 maintain a civil action against the person broker for the damage for losses and loss
21 adjustment and administrative expenses on the business placed by the controlling broker
22 in excess of gross earned premiums and investment income earned on premiums and
23 loss reserves for such business.

24 (f) In addition to any other remedies provided in this section, whenever it
25 appears to the Commissioner that a person has committed or is committing an act that
26 could be determined to be a violation, the Commissioner may institute a proceeding
27 under G.S. 58-2-60 or under G.S. 58-2-70. In addition to the civil penalty or restitution
28 proceedings provided for in G.S. 58-2-70, the Commissioner may issue a cease and
29 desist order against the person.

30 (g) This section does not affect the Commissioner's right to impose any other
31 penalties provided for in this Chapter nor the rights of policyholders, claimants,
32 creditors, or other third parties."

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

35 **"§ 58-7-160. Investments unlawfully acquired.**

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

41 **"§ 58-7-162. Allowable or admitted assets.**

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

- 1 (1) Cash in the possession of the insurer, or in transit under its control, and
2 including the true balance of any deposit in a solvent United States
3 bank, savings and loan association, or trust company, and the balance
4 of any such deposit in an insolvent United States bank, savings and
5 loan association, or trust company, to the extent insured by a federal
6 agency.
- 7 (2) Investments, securities, properties, and loans acquired or held in
8 accordance with this Chapter, and in connection therewith the
9 following items:
- 10 a. Interest due or accrued on any bond or evidence of indebtedness
11 that is not in default.
- 12 b. Declared and unpaid dividends on stock and shares, unless that
13 amount has otherwise been allowed as an asset.
- 14 c. Interest due or accrued upon a collateral loan in an amount not
15 to exceed one year's interest thereon.
- 16 d. Interest due or accrued on deposits in solvent banks, savings
17 and loan associations, and trust companies, and interest due or
18 accrued on other assets, if the interest is, in the Commissioner's
19 judgment, a collectible asset.
- 20 e. Interest due or accrued on a current mortgage loan, in an
21 amount not exceeding in any event the amount, if any, of the
22 excess of the value of the property less delinquent taxes thereon
23 over the unpaid principal; but in no event shall interest accrued
24 for a period in excess of 90 days be allowed as an asset.
- 25 f. Rent due or accrued on real property if the rent is not in arrears
26 for more than three months, and rent more than three months in
27 arrears if the payment of the rent is adequately secured by
28 property held in the tenant's name and conveyed to the insurer
29 as collateral and the underlying collateral is admissible under
30 this Chapter.
- 31 g. The unaccrued portion of taxes paid before the due date on real
32 property.
- 33 (3) Premium notes, policy loans, and other policy assets and liens on
34 policies and certificates of life insurance and annuity contracts and
35 accrued interest thereon, in an amount not exceeding the legal reserve
36 and other policy liabilities carried on each individual policy.
- 37 (4) The net amount of uncollected and deferred premiums and annuity
38 considerations in the case of a life insurer.
- 39 (5) Premiums in the course of collection, other than for life insurance, not
40 more than 90 days past due, less commissions payable thereon, except
41 for premiums payable directly or indirectly by the United States
42 Government or by any of its instrumentalities.
- 43 (6) All premiums not more than 90 days past due, excluding commissions
44 payable thereon, due from any person that solely or in combination

1 with the person's affiliates owes the insurer an amount that exceeds
2 five percent (5%) of the insurer's total premiums in course of
3 collection, but only if:

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

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

33 c. The person or affiliates shall provide to the insurer, and the
34 insurer shall maintain in its possession, evidence that the person
35 or affiliates have purchased and have currently in effect a
36 financial guaranty bond, payable to the insurer, issued for a
37 term of not less than one year and that is in conformity with the
38 requirements set forth in this sub-subdivision, the amount of
39 which equals or exceeds the liability of the person or affiliates
40 to the insurer, at all times during which the financial guaranty
41 bond is in effect, for the premiums collected by the person or
42 persons. The financial guaranty bond shall be issued under an
43 arrangement satisfactory to the Commissioner and the financial
44 guaranty bond shall be issued by an insurer that is authorized to

1 transact that business in this State, that has a financial standing
2 satisfactory to the Commissioner, and that is neither controlled
3 nor controlling in relation to either the insurer or the person or
4 affiliates for whom the bond is purchased.

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

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

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

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

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

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

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

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

35 **§ 58-7-163. Assets not allowed.**

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

39 (1) Good will, trade names, and other like intangible assets.

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

43 (3) Stock of the insurer or any material equity therein or loans secured
44 thereby, or any material proportionate interest in the stock acquired or

1 held through the ownership by the insurer of an interest in another
2 firm, corporation, or business unit.

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

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

16 (6) Bonds, notes, or other evidences of indebtedness that are secured by
17 mortgages or deeds of trust that are in default, to the extent of the cost
18 of carrying value that is in excess of the value as determined pursuant
19 to other provisions of this Chapter.

20 (7) Prepaid and deferred expenses.

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

22 **"§ 58-7-165. Eligible investments.**

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

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

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

30 (d) Any investment limitation based upon the amount of the insurer's assets or
31 particular funds shall relate to those assets or funds shown by the insurer's annual
32 statement as of the December 31 preceding the date of acquisition of the investment by
33 the insurer, or, if applicable, as shown by the most current quarterly financial statement
34 filed by the insurer.

35 **"§ 58-7-167. General qualifications.**

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

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

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

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

8 An insurer shall not make any investment or loan, other than a policy loan or annuity
9 contract loan of a life insurer, unless the investment or loan is authorized or approved by
10 the insurer's board of directors or by a committee authorized by the board and charged
11 with the supervision or making of the investment or loan. The minutes of any such
12 committee shall be recorded and regular reports of the committee shall be submitted to
13 the board of directors.

14 **"§ 58-7-170. Diversification.**

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

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

22 (1) The cost of investments made by insurers in stock authorized by G.S.
23 58-7-173 shall not exceed twenty percent (20%) of the insurer's
24 admitted assets; and the cost of an investment in stock of any one
25 corporation shall not exceed three percent (3%) of the insurer's
26 admitted assets. Notwithstanding any other provision in this Chapter,
27 the financial statement carrying value of all stock investments shall be
28 used for the purpose of determining the asset value against which the
29 percentage limitations are to be applied.

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

32 (c) The cost of investments made by insurers in a mortgage loan authorized by
33 G.S. 58-7-179 shall not exceed the lesser of five percent (5%) of the insurer's admitted
34 assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not
35 invest in additional mortgage loans without the Commissioner's consent if the admitted
36 value of all mortgage loans held by the insurer exceeds:

37 (1) With respect to life and health insurers, forty percent (40%) of the
38 admitted assets of the insurer.

39 (2) With respect to property and casualty insurers, ten percent (10%) of
40 the admitted assets of the insurer.

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

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

- 6 (1) No more than twenty percent (20%) of an insurer's admitted assets;
7 (2) No more than ten percent (10%) of an insurer's admitted assets in
8 obligations that have been given a rating of 4, 5, or 6 by the Securities
9 Valuation Office of the NAIC;
10 (3) No more than three percent (3%) of an insurer's admitted assets in
11 obligations that have been given a rating of 5 or 6 by the Securities
12 Valuation Office of the NAIC;
13 (4) No more than one percent (1%) of an insurer's admitted assets in
14 obligations that have been given a rating of 6 by the Securities
15 Valuation Office of the NAIC;
16 (5) No more than ten percent (10%) of an insurer's admitted assets, if the
17 investments are in issuers from any one industry; and
18 (6) No more than two percent (2%) of an insurer's admitted assets or ten
19 percent (10%) of an insurer's capital and surplus, whichever is greater,
20 if the investment is in any one issuer.

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

27 (f) Each insurer shall possess and maintain adequate documentation to establish
28 that its investments in medium to lower quality obligations do not exceed the limitations
29 under subsection (d).

30 (g) The provisions of subsections (d), (e), and (f) of this section apply to any
31 investment made after December 31, 1991. If an insurer's investments in medium to
32 lower quality obligations equal or exceed the maximum amounts permitted by
33 subsection (d) as of December 31, 1991, the insurer shall not acquire any additional
34 medium to lower quality obligations without the Commissioner's prior written approval.
35 An insurer that is not in compliance with subsection (d) of this section as of December
36 31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner,
37 only those medium to lower quality obligations it owns on that date, if the obligations
38 were obtained in compliance with the law in effect when the investments were made. If
39 the insurer sells, transfers, or otherwise disposes of the securities before maturity, the
40 insurer may not acquire any medium to lower quality obligations as substitutions or
41 replacements without the Commissioner's prior approval.

42 (h) An insurer that is not in compliance with subsection (d) of this section on
43 December 31, 1991, shall file with its annual statement a separate schedule of the
44 medium to lower quality obligations it owns on December 31, 1991. Until it is in

1 compliance with subsection (d) of this section, the insurer shall file with each
2 succeeding annual and quarterly statement a separate schedule of the medium to lower
3 quality obligations it owns as of the reporting date of the filed statement.

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

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

11 (k) The provisions of this section supersede any inconsistent provision of section
12 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to
13 the extent permitted by that Act.

14 **"§ 58-7-172. Cash and deposits.**

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

18 **"§ 58-7-173. Permitted insurer investments.**

19 An insurer may invest in:

- 20 (1) Bonds, notes, warrants, and other evidences of indebtedness that are
21 direct obligations of the U.S. Government or for which the full faith
22 and credit of the U.S. Government is pledged for the payment of
23 principal and interest.
- 24 (2) Loans insured or guaranteed as to principal and interest by the U.S.
25 Government or by any agency or instrumentality of the U.S.
26 Government to the extent of the insurance or guaranty.
- 27 (3) Student loans insured or guaranteed as to principal by the U.S.
28 Government or by any agency or instrumentality of the U.S.
29 Government to the extent of the insurance or guaranty.
- 30 (4) Bonds, notes, warrants, and other securities not in default that are the
31 direct obligations of any state or United States territory or the
32 government of Canada or any Canadian province, or for which the full
33 faith and credit of such state, government, or province has been
34 pledged for the payment of principal and interest.
- 35 (5) Bonds, notes, warrants, and other securities not in default of any
36 county, district, incorporated city, or school district in any state of the
37 United States, or the District of Columbia, or in any Canadian
38 province, that are the direct obligations of the county, district, city, or
39 school district and for payment of the principal and interest of which
40 the county, district, city, or school district has lawful authority to levy
41 taxes or make assessments.
- 42 (6) Bonds, notes, certificates of indebtedness, warranties, or other
43 evidences of indebtedness that are payable from revenues or earnings
44 specifically pledged therefor of any public toll bridge, structure, or

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

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

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

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

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

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

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

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

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

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

39 (9) Bonds, debentures, or other securities of public housing authorities,
40 issued under the Housing Act of 1949, the Municipal Housing
41 Commission Act or the Rural Housing Commission Act, or issued by
42 any public housing authority or agency in the United States, if the
43 bonds, debentures, or other securities are secured by a pledge of annual
44 contributions to be paid by the United States or any United States

- 1 agency; and the cost of investments made under this subdivision shall
2 not exceed the lesser of three percent (3%) of the insurer's admitted
3 assets or ten percent (10%) of the insurer's capital and surplus.
- 4 (10) Obligations issued, assumed, or guaranteed by the International Bank
5 for Reconstruction and Development, the Inter-American
6 Development Bank, the Asian Development Bank, or the African
7 Development Bank; and the cost of investments made under this
8 subdivision shall not exceed the lesser of three percent (3%) of the
9 insurer admitted assets or ten percent (10%) of the insurer's capital and
10 surplus.
- 11 (11) Bonds, notes, or other interest-bearing or interest-accruing obligations
12 of any solvent institution organized under the laws of the United
13 States, of any state, Canada or any Canadian province; provided such
14 instruments are rated and approved by the Securities Valuation Office
15 of the NAIC.
- 16 (12) Secured obligations of duly constituted churches and of church-
17 holding companies; and the cost of investments made under this
18 subdivision shall not exceed the lesser of one percent (1%) of the
19 insurer's admitted assets or five percent (5%) of the insurer's capital
20 and surplus.
- 21 (13) Equipment trust obligations or certificates adequately secured and
22 evidencing an interest in transportation equipment, wholly or in part
23 within the United States, and the right to receive determined portions
24 of rental, purchase, or other fixed obligatory payments for the use or
25 purchase of that transportation equipment; and the cost of investments
26 made under this subdivision shall not exceed twenty percent (20%) of
27 the insurer's admitted assets.
- 28 (14) Share or savings accounts of savings and loan associations or building
29 and loan associations; and the cost of investments made under this
30 subdivision shall not exceed the lesser of three percent (3%) of the
31 insurer's admitted assets or five percent (5%) of the insurer's capital
32 and surplus.
- 33 (15) Loans with a maturity not in excess of 12 years from the date thereof
34 that are secured by the pledge of securities eligible for investment
35 under this Chapter or by the pledge or assignment of life insurance
36 policies issued by other insurers authorized to transact insurance in this
37 State. On the date made, no such loan shall exceed in amount
38 seventy-five percent (75%) of the market value of the collateral
39 pledged, except that loans upon the pledge of U.S. Government bonds
40 and loans upon the pledge or assignment of life insurance policies shall
41 not exceed ninety-five percent (95%) of the market value of the bonds
42 or the cash surrender value of the policies pledged. The market value
43 of the collateral pledge shall at all times during the continuance of the
44 loans meet or exceed the minimum percentages herein. Loans made

1 under this section shall not be renewable beyond a period of 12 years
2 from the date of the loan.

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

14 **"§ 58-7-175. Policy loans.**

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

20 **"§ 58-7-177. Investments in subsidiaries and affiliated corporations.**

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

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

31 (c) For purposes of this section:

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

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

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

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

41 **"§ 58-7-178. Foreign or territorial investments.**

42 An insurer authorized to transact insurance in a foreign country or any U.S. territory
43 may have funds invested in securities that may be required for that authority and for the
44 transaction of that business. Canadian securities eligible for investment under other

1 provisions of this Chapter are not subject to this section. Unless disapproved by the
2 Commissioner:

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

5 (2) In addition to Canadian securities eligible for investment and to
6 investments in countries in which an insurer transacts insurance, an
7 insurer may invest in bonds, notes, or stocks of any foreign country or
8 alien corporation if the security meets the general requirements of G.S.
9 58-7-167 and does not exceed, in total, five percent (5%) of admitted
10 assets.

11 **"§ 58-7-179. Mortgage loans.**

12 (a) An insurer may invest any of its funds in bonds, notes, or other evidences of
13 indebtedness that are secured by first mortgages or deeds of trust upon improved real
14 property located in the United States, any U.S. territory, or Canada, or that are secured
15 by first mortgages or deeds of trust upon leasehold estates having an unexpired term of
16 not less than 40 years, inclusive of the terms that may be provided by enforceable
17 options of renewal, as long as the loan matures at least 20 years before the expiration of
18 such lease, in improved real property located in the United States, any U.S. territory, or
19 Canada. In all cases the security for the loan must be a first lien upon the real property,
20 and there must not be any condition or right of reentry or forfeiture not insured against
21 under which, in the case of real property other than leaseholds, the lien can be cut off or
22 subordinated or otherwise disturbed, or under which, in the case of leaseholds, the
23 insurer cannot continue the lease in force for the duration of the loan. Nothing herein
24 prohibits any investment because of the existence of any prior lien for ground rents,
25 taxes, assessments, or other similar charges not yet delinquent. This section does not
26 prohibit investment in mortgages or similar obligations when made under G.S. 58-7-
27 180.

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

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

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

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

43 (3) The percentage-of-value limit on the amount of the loan applicable
44 under subdivision (1) of this subsection, plus the amount by which the

1 excess of the loan over the percentage-of-value limit is insured or
2 guaranteed by the United States or by any agency or instrumentality
3 thereof.

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

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

11 **"§ 58-7-180. Chattel mortgages.**

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

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

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

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

31 **"§ 58-7-182. Special investments by title insurers.**

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

38 **"§ 58-7-183. Special consent investments.**

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

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

1 (2) In such other investments not specifically authorized by this Chapter
2 as long as any single interest investment does not exceed two percent
3 (2%) of admitted assets and the aggregate of the investments does not
4 exceed the lesser of five percent (5%) of the insurer's total admitted
5 assets or ten percent (10%) of the amount by which the insurer's
6 policyholders' surplus exceeds the minimum required to be
7 maintained.

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

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

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

15 **"§ 58-7-185. Prohibited investments and investment underwriting.**

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

19 (1) Issued shares of its own capital stock, except in connection with a plan
20 for purchase of the shares by the insurer's officers, employees, or
21 agents. No such stock shall, however, constitute an asset of the insurer
22 in any determination of its financial condition.

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

30 (3) Any note or other evidence of indebtedness of any director, officer, or
31 controlling stockholder of the insurer, except as to policy loans
32 authorized under G.S. 58-7-175 and loans authorized under G.S. 58-7-
33 200(e).

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

36 **"§ 58-7-187. Real estate, in general.**

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

39 (b) An insurer may acquire and hold:

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

- 1 (2) Real property acquired in satisfaction in whole or in part of loans,
2 mortgages, liens, judgments, decrees, or debts previously owing to the
3 insurer, in the course of its business.
- 4 (3) Real property acquired in part payment of the consideration on the sale
5 of other real property owned by it, if the transaction effects a net
6 reduction in the insurer's investment in real estate.
- 7 (4) Real property acquired by gift or devise or through merger,
8 consolidation, or bulk reinsurance of another insurer under this
9 Chapter.
- 10 (5) Additional real property and equipment incident to real property, if
11 necessary or convenient for the enhancement of the marketability or
12 sale value of real property previously acquired or held by it under
13 subdivisions (2) through (4) of this subsection.

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

- 16 (1) The amount shall not exceed in the aggregate the lesser of five percent
17 (5%) of the insurer's admitted assets or fifteen percent (15%) of the
18 insurer's capital and surplus.
- 19 (2) The amount in any one property shall not exceed one percent (1%) of
20 the insurer's admitted assets.
- 21 (3) The amount in unimproved land shall not exceed one-half of one
22 percent (0.5%) of the insurer's admitted assets.
- 23 (4) There shall be no time limit for the disposal of investment real estate.

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

28 **"§ 58-7-188. Time limit for disposal of ineligible property and securities; effect of**
29 **failure to dispose.**

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

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

43 **"§ 58-7-190. Valuation of bonds and other evidences of indebtedness.**

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

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

12 **"§ 58-7-192. Valuation of other securities and investments.**

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

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

21 (c) Stock of a subsidiary corporation of an insurer shall not be valued at an
22 amount in excess of its net value as based upon those assets only of the subsidiary that
23 would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of
24 the insurer direct.

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

29 **"§ 58-7-193. Valuation of property.**

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

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

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

1 (d) If the Commissioner and an insurer do not agree on the value of real or
2 personal property of an insurer, in carrying out the Commissioner's responsibilities
3 under this section, the Commissioner may retain the services of a qualified real or
4 personal property appraiser. The insurer shall reimburse the Commissioner for the costs
5 of the services of any appraiser incurred with respect to the Commissioner's
6 responsibilities under this section.

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

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

12 **"§ 58-7-197. Replacing certain assets; reporting certain liabilities.**

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

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

20 (c) When the Commissioner determines that an admitted asset held by any
21 insurer is of doubtful value or is without ascertainable value on a public exchange,
22 unless the insurer establishes a value by placing the asset upon the market and obtaining
23 a bona fide offer for the asset, the Commissioner may have the asset appraised, and the
24 appraisal shall be the true value of the asset. No asset may be carried in an insurer's
25 financial statement under G.S. 58-2-165 at an appraised value established by the insurer
26 unless the Commissioner's prior written approval is obtained.

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

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

36 **"§ 58-7-198. Assets of foreign or alien insurers.**

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

41 **"§ 58-7-200. Investment transactions.**

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

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

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

15 **(d)** No director, officer, or controlling stockholder of any insurer shall receive
16 any money or valuable thing, either directly or indirectly or through any substantial
17 interest in any other person, for negotiating, procuring, recommending, or aiding in any
18 purchase or sale of property or loan from the insurer; or be monetarily interested either
19 as principal, corporation, agent, or beneficiary, in any such purchase, sale, or loan; and
20 no financial obligation of any such director, officer, or stockholder shall be guaranteed
21 by the insurer. 'Substantial interest in any other person' means an interest equivalent to
22 ownership or control by a director, officer, or controlling stockholder or the aggregate
23 ownership or control by all directors, officers, and controlling stockholders of the same
24 insurer of those percentages or more of the stock of the person, as defined under
25 'control' in G.S. 58-19-5(2).

26 **(e)** Nothing in this section prohibits:

27 **(1)** A director or officer of any insurer from receiving the usual salary,
28 compensation, or emoluments for services rendered in the ordinary
29 course of that person's duties as a director or officer, if the salary,
30 compensation, or emolument is authorized by vote of the board of
31 directors of the insurer;

32 **(2)** Any insurer in connection with the relocation of the place of
33 employment of an officer, including any relocation in connection with
34 the initial employment of the officer, from (i) making, or the officer
35 from accepting therefrom, a mortgage loan to the officer on real
36 property owned by the officer that is to serve as the officer's residence
37 or (ii) acquiring, or the officer from selling thereto, at not more than its
38 fair market value, the officer's prior residence;

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

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

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

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

3 **"§ 58-13-5. Purposes.**

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

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

11 **"§ 58-13-10. Scope.**

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

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

18 "~~(a) Every insurer subject to this Article shall at all times have and maintain free~~
19 ~~and unencumbered assets in an amount equal to its reserve liabilities. No insurer shall~~
20 ~~pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the~~
21 ~~amount of its capital and surplus. No insurer shall pledge, hypothecate, or otherwise~~
22 ~~encumber more than ten percent (10%) of its reserve assets. The Commissioner, upon~~
23 ~~application made to him, may issue a written order approving the pledging,~~
24 ~~hypothecation, or encumbrance of any of the assets of an insurer in any amount upon a~~
25 ~~finding that the pledging, hypothecation, or encumbrance will not adversely affect the~~
26 ~~solvency of the insurer. Every insurer subject to this Article shall at all times have and~~
27 maintain free and unencumbered reserve assets equal to an amount that is at least ten
28 percent (10%) more than the total of its reserve liabilities and its required minimum
29 capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber
30 those reserve assets. The Commissioner, upon application made to the Commissioner,
31 may issue a written order approving the pledging, hypothecation, or encumbrance of
32 any of the assets of an insurer not otherwise prohibited upon a finding that the pledging,
33 hypothecation, or encumbrance will not adversely affect the insurer's solvency.

34 "~~(b) Any insurer that pledges, hypothecates, or otherwise encumbers any of its~~
35 ~~assets shall within 10 days thereafter report in writing to the Commissioner the amount~~
36 ~~and identity of the assets so pledged, hypothecated, or encumbered and the terms and~~
37 ~~conditions of the transaction. In addition, the Every insurer shall file, along with its~~
38 ~~statement under G.S. 58-2-165, a statement sworn to by the chief executive officer of~~
39 ~~the insurer that: (i) Title to assets in an amount equal to the reserve liability and~~
40 minimum required capital and minimum required surplus of the insurer that are not
41 pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only
42 assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as
43 identified and reported in the sworn statement and no other assets of the insurer are
44 pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of

1 the transaction of the pledge, hypothecation, or encumbrance are as reported in ~~such the~~
2 sworn statement."

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

4 "(e) The public hearing referred to in subsection (d) of this section shall be held
5 within 120 days after the statement required by subsection (a) of this section is filed,
6 and the Commissioner shall give at least 60-30 days notice thereof shall be given by the
7 Commissioner of the hearing to the person filing the statement, to the insurer, and to such
8 other persons as may be designated by the Commissioner. The Commissioner shall
9 make a determination as expeditiously as is reasonably practicable after the conclusion
10 of ~~such the~~ hearing. At ~~such the~~ hearing, the person filing the statement, the insurer, any
11 person to whom notice of hearing was sent, and any other person whose interest may be
12 affected ~~thereby by the hearing~~ shall have the right to present evidence, examine and
13 cross-examine witnesses, and offer oral or written arguments; and in connection
14 therewith shall be entitled to conduct discovery proceedings at any time after the
15 statement is filed with the Commissioner pursuant to under this section and in the same
16 manner as is presently allowed in the superior courts of this State. In connection with
17 discovery proceedings authorized by this section, the Commissioner ~~is authorized to may~~
18 issue such protective orders and other orders governing the timing and scheduling of
19 discovery proceedings as might otherwise have been issued by a superior court of this
20 State in connection with a civil proceeding. ~~In the event~~ If any party fails to make
21 reasonable and adequate response to discovery on a timely basis or fails to comply with
22 any order of the Commissioner with respect to discovery, the Commissioner on ~~his the~~
23 Commissioner's own motion or on motion of any other party or person may order that
24 the hearing be ~~postponed postponed, or recessed, shall be convened convened,~~ or
25 reconvened, as the case may be, following proper completion of discovery and
26 reasonable notice to the person filing the statement, to the insurer, and to such other
27 persons as may be designated by the Commissioner."

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

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

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

36 "(a) Every insurer that is licensed to do business in this State and that is a member
37 of an insurance holding company system shall register with the Commissioner, except a
38 foreign insurer subject to registration requirements and standards adopted by statute or
39 regulation in the jurisdiction of its domicile that are substantially similar to those
40 contained in this section and G.S. 58-19-30(a). ~~Such The~~ insurer shall also file a copy of
41 its registration statement and any amendments ~~thereto to the statement~~ in each state in
42 which that insurer is authorized to do business if requested by the insurance regulator of
43 that state. Any insurer that is subject to registration under this section shall register
44 within 30 days after it becomes subject to registration, and an amendment to the

1 registration statement shall be filed by March ~~1~~31 of each year for any changes that
2 may have occurred during the previous calendar year; unless the Commissioner for
3 good cause shown extends the time for registration or filing, and then within ~~such~~that
4 extended time. All registration statements shall contain a summary, on a form
5 prescribed by the Commissioner, outlining all items in the current registration statement
6 representing changes from the prior registration statement. The Commissioner may
7 require any insurer that is a member of a holding company system that is not subject to
8 registration under this section to furnish a copy of the registration statement or other
9 information filed by ~~such~~the insurance company with the insurance regulator of its
10 domiciliary jurisdiction."

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

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

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

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

22 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
23 or investments, provided ~~such~~the transactions equal or exceed: (i)
24 with respect to nonlife insurers, the lesser of three percent (3%) of the
25 insurer's admitted assets or twenty-five percent (25%) of surplus as
26 regards policyholders; (ii) with respect to life insurers, three percent
27 (3%) of the insurer's admitted assets; each as of the preceding 31st day
28 of December 31, next preceding.

29 (2) Loans or extensions of credit to any person who is not affiliated, where
30 the insurer makes ~~such~~the loans or extensions of credit with the
31 agreement or understanding that the proceeds of ~~such~~the transactions,
32 in whole or in substantial part, are to be used to make loans or
33 extensions of credit to, to purchase assets of, or to make investments
34 in, any affiliate of the insurer making ~~such~~the loans or extensions of
35 credit provided ~~such~~the transactions equal or exceed: (i) with respect
36 to nonlife insurers, the lesser of three percent (3%) of the insurer's
37 admitted assets or twenty-five percent (25%) of surplus as regards
38 policyholders; (ii) with respect to life insurers, three percent (3%) of
39 the insurer's admitted assets; each as of the preceding 31st day of
40 December 31, next preceding.

41 (3) Reinsurance agreements or modifications ~~thereto~~to the agreements in
42 which the reinsurance premium or a change in the the insurer's
43 liabilities equals or exceeds five percent (5%) of the insurer's surplus
44 as regards policyholders, as of the preceding 31st day of December 31,

1 ~~next preceding~~, including those agreements that may require as
 2 consideration the transfer of assets from an insurer to a nonaffiliate, if
 3 an agreement or understanding exists between the insurer and
 4 nonaffiliate that any portion of ~~such the~~ assets will be transferred to
 5 one or more affiliates of the insurer.

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

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

14 (6)- (5) Any material transactions, specified by rule, that the Commissioner
 15 determines may adversely affect the interests of the insurer's
 16 policyholders.

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

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

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

38 For the purposes of this section, an 'extraordinary dividend' or 'extraordinary
 39 distribution' includes any dividend or distribution of cash or other property, whose fair
 40 market value together with that of other dividends or distributions made within the
 41 preceding 12 months exceeds the ~~greater lesser~~ of (i) ten percent (10%) of ~~such the~~
 42 insurer's surplus as regards policyholders as of the ~~preceding 31st day of December 31,~~
 43 ~~next preceding~~, or (ii) the net gain from operations of ~~such the~~ insurer, if ~~such the~~ insurer
 44 is a life ~~insurer, insurer,~~ or the ~~greater of (i) the net income or (ii) the net investment~~ income,

1 if ~~such~~ the insurer is not a life insurer, not including realized capital gains, for the 12-
2 month period ending the preceding 31st day of December 31; ~~next preceding~~; but does not
3 include pro rata distributions of any class of the insurer's own securities. In determining
4 whether a dividend or distribution is extraordinary, an insurer other than a life insurer
5 may carry forward net income from the previous two calendar years that has not already
6 been paid out as dividends. This carryforward shall be computed by taking the net
7 income from the second and third preceding calendar years, not including realized
8 capital gains, less dividends paid in the second and immediate preceding calendar years.

9 Notwithstanding any other provision of law, an insurer may declare an extraordinary
10 dividend or distribution that is conditional upon the Commissioner's ~~approval thereof~~;
11 approval, and ~~such a the~~ declaration shall confer no rights upon shareholders until (i)
12 the Commissioner has approved the payment of ~~such a the~~ dividend or
13 distribution or (ii) the Commissioner has not disapproved ~~such the~~ payment within the
14 30-day period referred to above."

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

16 "(c) In any case where a person has acquired or is proposing to acquire any voting
17 securities in violation of this Article or any rule or order of the Commissioner under this
18 Article, the Superior Court of Wake County may, on such notice as the court considers
19 appropriate and upon the application of the insurer or the Commissioner, seize or
20 sequester any voting securities of the insurer owned directly or indirectly by ~~such the~~
21 person, and issue ~~such an~~ order with respect thereto as may be appropriate to effectuate
22 the provisions of this Article. Notwithstanding any other provision of law, for the
23 purposes of this Article the sites of the ownership of the securities of domestic insurers
24 are in this State."

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

27 "**§ 58-19-17. Foreign or alien insurer's report of change of control.**

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

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

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

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

41 a. Has capital and surplus or its equivalent under the laws of its
42 domiciliary jurisdiction, which equals either:

43 1. this-This State's minimum capital and surplus requirements
44 under G.S. 58-7-75-G.S. 58-7-75, or

1 2. Fifteen million dollars (\$15,000,000),
2 whichever is greater, except that nonadmitted insurers already
3 qualified under this Article must have ten million dollars
4 (\$10,000,000) by December 31, 1991, twelve million five
5 hundred thousand dollars (\$12,500,000) by December 31, 1992,
6 and fifteen million dollars (\$15,000,000) by December 31,
7 1993. The requirements of this sub-subdivision may be
8 satisfied by an insurer possessing less than the commitment
9 capital and surplus upon an affirmative finding of acceptability
10 by the Commissioner. The finding shall be based upon such
11 factors as quality of management, capital and surplus of any
12 parent company, company underwriting profit and investment
13 income trends, and the insurer's record and reputation within the
14 industry. In no event shall the Commissioner make an
15 affirmative finding of acceptability when the insurer's capital
16 and surplus is less than four million five hundred thousand
17 dollars (\$4,500,000).

18 In addition, an alien insurer qualifies under this subdivision if
19 it maintains in the United States an irrevocable trust fund in
20 either a national bank or a member of the Federal Reserve
21 System, in an amount not less than ~~one million five hundred~~
22 ~~thousand dollars (\$1,500,000)~~ two million five hundred thousand
23 dollars (\$2,500,000) for the protection of all of its policyholders
24 in the ~~United States~~ United States, and ~~such~~ the trust fund
25 consists of cash, securities, letters of credit, or of investment of
26 substantially the same character and quality as those which are
27 eligible investments for the capital and statutory reserves of
28 admitted insurers authorized to write like kinds of insurance in
29 this State. ~~Such~~ The trust fund, which shall be included in any
30 calculation of capital and surplus or its equivalent, shall have an
31 expiration date which at no time shall be less than five years; or

32 b. In the case of any Lloyd's plans or other similar unincorporated
33 group of ~~alien~~ individual insurers, maintains a trust fund of not
34 less than fifty million dollars (\$50,000,000) as security to the
35 full amount thereof for all policyholders and creditors in the
36 United States of each member of the group, and ~~such~~ the trust
37 shall likewise comply with the terms and conditions established
38 in subdivision (2)a. of this section for alien insurers; and

39 c. In the case of an 'insurance exchange' created by the laws of
40 individual states, maintain capital and surplus, or the substantial
41 equivalent thereof, of not less than ~~fifteen million dollars~~
42 ~~(\$15,000,000)~~ fifty million dollars (\$50,000,000) in the
43 aggregate. For insurance exchanges which maintain funds for
44 the protection of all insurance exchange policyholders, each

1 individual syndicate shall maintain minimum capital and
2 surplus, or the substantial equivalent thereof, of not less than
3 ~~one million five hundred thousand dollars (\$1,500,000). three~~
4 million dollars (\$3,000,000). ~~In the event~~ If the insurance
5 exchange does not maintain funds for the protection of all
6 insurance exchange policyholders, each individual syndicate
7 shall meet the minimum capital and surplus requirements of
8 subdivision (2)a. of this section."

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

11 **"§ 58-30-12. Duty to report insurer impairment; violations; penalties.**

12 (a) As used in this section:

- 13 (1) 'Chief executive officer', as used in subsection (b) of this section,
14 means the person, irrespective of title, designated by the board of
15 directors or trustees of an insurer as the person charged with
16 administering and implementing an insurer's policies and procedures.
17 (2) 'Impaired', as used in subsections (b) and (c) of this section, means a
18 financial condition in which the assets of an insurer are less than the
19 sum of the insurer's minimum required capital, minimum required
20 surplus, and all liabilities as determined in accordance with the
21 requirements for the preparation and filing of a financial statement
22 under G.S. 58-2-165 and under other provisions of this Chapter.
23 (3) 'Insolvent', as used in subsection (c) of this section, has the same
24 meaning as set forth in G.S. 58-30-10(13).

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

34 (c) Any person who willfully:

- 35 (1) Conceals any property belonging to an insurer; or
36 (2) Transfers or conceals in contemplation of a delinquency proceeding
37 the person's own property or property belonging to an insurer; or
38 (3) Conceals, destroys, mutilates, alters, or makes a false entry in any
39 document that affects or relates to the property of an insurer or
40 withholds any such document from a receiver, trustee, or other officer
41 of a court entitled to its possession; or
42 (4) Gives, obtains, or receives a thing of value for acting or forbearing to
43 act in any court proceedings;

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

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

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

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

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

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

22 (4) If the person served is or was, when the delinquency proceeding was
23 begun against the insurer, holding assets in which the receiver claims
24 an interest on behalf of the insurer, in any action concerning the assets;
25 or

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

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

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

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

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

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

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

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

- 4 (1) Adverse findings reported in financial condition and market conduct
5 examination reports;
- 6 (2) The NAIC Insurance Regulatory Information System and its related
7 reports;
- 8 (3) The ratios of commission expense, general insurance expense, policy
9 benefits, and reserve increases as to annual premium and net
10 investment income that could lead to an impairment of capital and
11 surplus;
- 12 (4) Whether an insurer's asset portfolio, when viewed in light of current
13 economic conditions, is not of sufficient value, liquidity, or diversity to
14 assure the insurer's ability to meet its outstanding obligations as they
15 mature;
- 16 (5) The ability of an assuming reinsurer to perform and whether the ceding
17 insurer's reinsurance program provides sufficient protection for the
18 insurer's remaining surplus, after taking into account the insurer's cash
19 flow and the classes of business written as well as the financial
20 condition of the assuming reinsurer;
- 21 (6) Whether an insurer's operating loss in the last 12-month period or any
22 shorter time, including net capital gain or loss, changes in nonadmitted
23 assets, and cash dividends paid to shareholders, is greater than fifty
24 percent (50%) of the insurer's remaining policyholders' surplus in
25 excess of the minimum required;
- 26 (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened
27 with insolvency, or delinquent in payment of its monetary or any other
28 obligation;
- 29 (8) Contingent liabilities, pledges, or guaranties that either individually or
30 collectively involve a total amount that in the Commissioner's opinion
31 may affect an insurer's solvency;
- 32 (9) Whether any controlling person of an insurer is delinquent in the
33 transmitting to or payment of net premiums to the insurer;
- 34 (10) The age and collectibility of receivables;
- 35 (11) Whether the management of an insurer, including officers, directors, or
36 any other person who directly or indirectly controls the operation of
37 the insurer, fails to possess or demonstrate the competence, fitness, or
38 reputation considered by the Commissioner to be necessary to serve
39 the insurer in that position;
- 40 (12) Whether the management of an insurer has failed to respond to the
41 Commissioner's inquiries about the condition of the insurer or has
42 furnished false and misleading information in response to an inquiry
43 by the Commissioner;

- 1 (13) Whether the management of an insurer has filed any false or
2 misleading sworn financial statement, has released a false or
3 misleading financial statement to a lending institution or to the general
4 public, or has made a false or misleading entry or omitted an entry of
5 material amount in the insurer's books;
6 (14) Whether the insurer has grown so rapidly and to such an extent that it
7 lacks adequate financial and administrative capacity to meet its
8 obligations in a timely manner; or
9 (15) Whether the insurer has experienced or will experience in the
10 foreseeable future cash flow or liquidity problems.

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

21 If upon examination or at any other time the Commissioner has reasonable cause to
22 believe that any domestic insurer is in such condition as to render the continuance of its
23 business hazardous to the public or to holders of its policies or certificates of insurance,
24 or if ~~such~~ the domestic insurer gives its consent, then the Commissioner shall upon ~~his~~
25 the Commissioner's determination:

- 26 (1) Notify the insurer of ~~his~~ that determination; and
27 (2) Furnish to the insurer a written list of the Commissioner's requirements
28 to abate ~~his~~ that determination.

29 The written list may include requirements that the insurer: reduce the total amount of
30 present and potential liability for policy benefits by reinsurance; reduce, suspend, or
31 limit the volume of insurance being accepted or renewed; reduce general insurance and
32 commission expenses by specified methods; increase its capital and surplus; suspend or
33 limit its declaration and payment of dividends to its stockholders or policyholders; file
34 reports in a form acceptable to the Commissioner concerning the market value of its
35 assets; limit or withdraw from certain investments or discontinue certain investment
36 practices to the extent the Commissioner considers to be necessary; document the
37 adequacy of premium rates in relation to the risks insured; or file, in addition to regular
38 annual financial statements, interim financial reports on the form adopted by the NAIC
39 or on such format prescribed by the Commissioner. Notwithstanding any other
40 provision of law limiting the frequency or amount of premium rate adjustments, the
41 Commissioner may include in ~~his~~ the list of requirements ~~such~~ any rate adjustments for
42 any kinds of insurance written by the insurer that the Commissioner considers necessary
43 to improve the financial condition of the insurer."

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

3 **"§ 58-30-62. Administrative supervision of insurers.**

4 (a) As used in this section, an insurer has 'exceeded its powers' when it: has
5 refused to permit examination of its books, papers, accounts, records or affairs by the
6 Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers,
7 accounts or records necessary for an examination of the insurer; has failed to comply
8 promptly with applicable financial reporting statutes or rules and related Department
9 requests; continues to transact the business of insurance after its license has been
10 revoked, suspended, or not renewed by the Commissioner; by contract or otherwise, has
11 unlawfully, or has in violation of an order of the Commissioner, or has without first
12 having obtained any legally required written approval of the Commissioner, totally
13 reinsured its entire outstanding business or merged or consolidated substantially its
14 entire property or business with another insurer; has engaged in any transaction in
15 which it is not authorized to engage under the laws of this State; or has refused to
16 comply with a lawful order of the Commissioner. As used in this section,
17 'Commissioner' includes an authorized representative or designee of the Commissioner.

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

21 (c) An insurer may be subject to administrative supervision by the Commissioner
22 if upon examination or at any other time it appears to the Commissioner that the insurer:
23 has exceeded its powers; has failed to comply with applicable provisions of this
24 Chapter; is conducting its business in a manner that is hazardous to the public or to its
25 insureds; or consents to administrative supervision.

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

31 (e) If placed under administrative supervision, the insurer shall have 60 days, or a
32 different period of time determined by the Commissioner, to comply with the
33 requirements of the Commissioner under this section. If the Commissioner determines
34 after notice and hearing that the conditions giving rise to the supervision still exist at the
35 end of the supervision period specified in this subsection, the Commissioner may extend
36 the period; or if the Commissioner determines that none of the conditions giving rise to
37 the supervision exist, the Commissioner shall release the insurer from supervision.

38 (f) Notwithstanding any other provision of law and except as set forth in this
39 section, all proceedings, hearings, notices, correspondence, reports, records, and other
40 information in the possession of the Commissioner or the Department relating to the
41 supervision of any insurer are confidential. The Department shall have access to such
42 proceedings, hearings, notices, correspondence, reports, records, or other information as
43 permitted by the Commissioner. The Commissioner may open the proceedings or
44 hearings or disclose the notices, correspondence, reports, records, or information to a

1 department, agency or instrumentality of this or another state of the United States if the
2 Commissioner determines that the disclosure is necessary or proper for the enforcement
3 of the laws of this or another state of the United States. The Commissioner may open
4 the proceedings or hearings or make public the notices, correspondence, reports,
5 records, or other information if the Commissioner considers that it is in the best interest
6 of the insurer, its insureds or creditors, or the general public. This section does not
7 apply to hearings, notices, correspondence, reports, records, or other information
8 obtained upon the appointment of a receiver for the insurer by a court of competent
9 jurisdiction.

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

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

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

33 (j) Notwithstanding any other provision of law, the Commissioner may meet
34 with a supervisor appointed under this section and with the attorney or other
35 representative of the supervisor, without the presence of any other person, at the time of
36 any proceeding or during the pendency of any proceeding held under the authority of
37 this section, to carry out the Commissioner's duties under this section or for the
38 supervisor to carry out the supervisor's duties under this section.

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

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

44 "**§ 58-30-127. Duties of agents.**"

1 (a) Every person who receives notice in the form prescribed in G.S. 58-30-125
2 that an insurer that person represents as an agent is the subject of a liquidation order
3 shall, upon request of the liquidator and within 60 days after receipt of the request,
4 provide to the liquidator the information in the agent's records related to any policy
5 issued by the insurer through the agent; and if the agent is a general agent, the
6 information in the general agent's records related to any policy issued by the insurer
7 through a subagent under contract with the general agent, including the name and
8 address of the subagent.

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

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

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

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

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

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

23 "**§ 58-30-160. Setoffs and counterclaims. Setoffs.**

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

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

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

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

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

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

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

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

1 (7) The obligations between the person and the insurer arise out of
2 transactions where either the person or the insurer has assumed risks
3 and obligations from the other party and then has ceded back to that
4 party substantially the same risks and obligations;

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

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

10 (c) A setoff shall be permitted to local agents against agents' balances otherwise
11 payable to the domiciliary or ancillary receiver for the amount expended by ~~sueh~~the
12 agents to replace insurance coverage of their insureds and the reasonable expenses
13 incident thereto as a result of any domestic, foreign or alien insurer being placed in
14 delinquency proceedings. Agents claiming ~~sueh~~a setoff shall within 60 days of
15 replacing ~~sueh~~coverage provide a verified accounting of the replacement of ~~sueh~~the
16 insurance to the domiciliary receiver, the ancillary receiver, if any, and the North
17 Carolina Insurance Guaranty Association or similar organization in the state of
18 residence of the policyholder. The verified accounting shall include the name of the
19 agent, the name of the insured, the policy number, the replacement policy number, the
20 cost of the replacement policy, the amount of unearned premium under each policy as to
21 which setoff is claimed, any claimed expenses and a verification that the accounting has
22 been provided to each of the persons and entities described herein. Unearned premiums
23 set off as provided above in any amount shall be deemed paid in full by the insurer and
24 no person shall have a claim for ~~sueh~~the unearned premiums against the North Carolina
25 Insurance Guaranty Association or similar organization in the state of residence of the
26 policyholder.

27 (d) The receiver shall provide persons with accounting statements identifying
28 debts which are currently due and payable. Where a person owes to the insurer
29 currently due and payable balances, against which the person asserts setoff of mutual
30 credits which may become due and payable from the insurer in the future, the person
31 shall promptly pay to the receiver the currently due and payable amount; provided that,
32 notwithstanding any other provision of this Article, the receiver shall promptly and fully
33 refund, to the extent of the person's prior payments, any mutual credits that become due
34 and payable to the person by the insurer.

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

43 Sec. 48. Section 47 of this act becomes effective January 1, 1992, and applies
44 to all contracts entered into, renewed, extended, or amended on or after that date, and to

1 debts or credits arising from any business written or transactions occurring on or after
2 January 1, 1992, pursuant to any contract, including those in existence prior to January
3 1, 1992; and shall supersede any agreements or contractual provisions that might be
4 construed to enlarge the setoff rights of any person under any contract with the insurer.
5 For purposes of this section any change in the terms of, or consideration from, any such
6 contract shall be deemed to be an amendment.

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

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

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

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

13 **"§ 58-34-2. Managing general agents.**

14 (a) As used in this Article:

15 (1) 'Control', including the terms 'controlling', 'controlled by', and 'under
16 common control', means the direct or indirect possession of the power
17 to direct or cause the direction of the management and policies of a
18 person, whether through the ownership of voting securities, by contract
19 other than a commercial contract for goods or nonmanagement
20 services, or otherwise, unless the power is the result of an official
21 position with or corporate office held by the person.

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

24 (3) 'Managing general agent' or 'MGA' means any person who negotiates
25 and binds ceding reinsurance contracts on behalf of an insurer or
26 manages all or part of the insurance business of an insurer (including
27 the management of a separate division, department, or underwriting
28 office) and acts as an agent for the insurer, whether known as a
29 managing general agent, manager, or other similar term, who, with or
30 without the authority, either separately or together with persons under
31 common control, produces, directly or indirectly, and underwrites an
32 amount of gross direct written premium equal to or more than five
33 percent (5%) of the policyholder surplus as reported in the last annual
34 statement of the insurer in any one quarter or year. 'MGA' does not
35 mean an employee of the insurer; an underwriting manager who,
36 pursuant to contract, manages all the insurance operations of the
37 insurer, is under common control with the insurer, is subject to Article
38 19 of this Chapter, and whose compensation is not based on the
39 volume of premiums written; or a person who, under Article 15 of this
40 Chapter, is designated and authorized by subscribers as the attorney-
41 in-fact for a reciprocal having authority to obligate them on reciprocal
42 and other insurance contracts.

43 (4) 'Qualified actuary' means a person who meets the standards of a
44 qualified actuary as specified in the NAIC Annual Statement

1 Instructions, as amended or clarified by rule, order, directive, or
2 bulletin of the Department, for the type of insurer for which the MGA
3 is establishing loss reserves.

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

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

17 (c) No person shall act as an MGA with respect to risks located in this State for
18 an insurer unless that person is a licensed agent in this State. No person shall act as an
19 MGA representing an insurer with respect to risks located outside of this State unless
20 that person is licensed as an agent in this State; and the license may be a nonresident
21 license. The Commissioner may require a bond in an amount acceptable to the
22 Commissioner for the protection of the insurer. The Commissioner may require the
23 MGA to maintain an errors and omissions policy.

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

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

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

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

41 (4) Separate records of business written by the MGA will be maintained.
42 The insurer shall have access to and right to copy all accounts related
43 to its business in a form usable by the insurer, and the Commissioner
44 shall have access to all books, bank accounts, and records of the MGA

1 in a form usable to the Commissioner. The records shall be retained
2 according to the provisions of 11 NCAC 11C.0105.

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

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

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

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

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

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

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

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

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

40 (10) The MGA shall not:

41 a. Bind reinsurance or retrocessions on behalf of the insurer,
42 except that the MGA may bind facultative reinsurance contracts
43 pursuant to obligatory facultative agreements if the contract
44 with the insurer contains reinsurance underwriting guidelines

1 including, for both reinsurance assumed and ceded, a list of
2 reinsurers with which such automatic agreements are in effect,
3 the coverages and amounts or percentages that may be
4 reinsured, and commission schedules;

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

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

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

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

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

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

23 h. Appoint a sub-MGA.

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

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

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

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

43 (i) Within 15 days after entering into or termination of a contract with an MGA,
44 the insurer shall provide written notification of the appointment or termination to the

1 Commissioner. Notices of appointment of an MGA shall include a copy of the contract,
2 a statement of duties that the MGA is expected to perform on behalf of the insurer, the
3 kinds of insurance for which the MGA is to be authorized to act, whether any affiliation
4 exists between the insurer and the MGA and the basis for the affiliation, and any other
5 information the Commissioner may request. The Commissioner may prescribe the form
6 to be used for notification of the information required by this item.

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

- 8 (1) Does not contain the required contract provisions specified in
9 subsection (d) of this section;
- 10 (2) Subjects the insurer to excessive charges for expenses or commission;
- 11 (3) Vests in the MGA any control over the management of the affairs of
12 the insurer to the exclusion of the board of directors of the insurer;
- 13 (4) Is entered into with any person if the person or its officers and
14 directors are of known bad character or have been affiliated directly or
15 indirectly through ownership, control, management, reinsurance
16 transactions, or other insurance or business relationships with any
17 person known to have been involved in the improper manipulation of
18 assets, accounts, or reinsurance; or
- 19 (5) Is determined by the Commissioner to contain provisions that are not
20 fair and reasonable to the insurer.

21 Failure of the Commissioner to disapprove any such contract within 30 days after the
22 contract has been filed with the Commissioner constitutes the Commissioner's approval
23 of the contract. An insurer may continue to accept business from such person until the
24 Commissioner disapproves the contract. Any disapproval shall be in writing. The
25 Commissioner may, after a hearing held under G.S. 58-2-50, withdraw approval of any
26 contract the Commissioner has previously approved upon finding that the basis of the
27 original approval no longer exists or that the contract has, in actual operation, shown
28 itself to be subject to disapproval on any of the grounds in this subsection.

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

33 (l) An insurer shall not appoint to its board of directors an officer, director,
34 employee, subagent, or controlling shareholder of its MGAs. This subsection does not
35 apply to relationships governed by Article 19 of this Chapter or, if applicable, G.S. 58-
36 7-157.

37 (m) The acts of an MGA are considered to be the acts of the insurer on whose
38 behalf it is acting. An MGA may be examined by the Commissioner under G.S. 58-2-
39 131, 58-2-132, or 58-2-133 as if it were an insurer.

40 (n) If the Commissioner finds after a hearing conducted in accordance with G.S.
41 58-2-50 that any person has violated any provision of this Article, the Commissioner
42 may order:

- 43 (1) For each separate violation, a penalty in an amount of one thousand
44 dollars (\$1,000);

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

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

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

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

9 "(c) The standards for approval shall be as set forth under ~~G.S. 58-34-1.~~ G.S. 58-
10 34-2(d)(5)."

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

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

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

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

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

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

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

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

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

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

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

- 1 (10) 'Insurance regulator' means the official or agency of another state that
2 is responsible for the regulation of a foreign insurer.
- 3 (11) 'Member insurer' means any insurer licensed or that holds a license to
4 transact in this State any kind of insurance for which coverage is
5 provided under G.S. 58-62-21; and includes any insurer whose license
6 in this State may have been suspended, revoked, not renewed or
7 voluntarily withdrawn, but does not include an entity governed by
8 Articles 65 through 67 of this Chapter; fraternal order or fraternal
9 benefit society; mandatory State pooling plan; mutual assessment
10 company or any entity that operates on an assessment basis; insurance
11 exchange; or any entity similar to any of the foregoing.
- 12 (12) 'Moody's Corporate Bond Yield Average' means the Monthly Average
13 Corporates as published by Moody's Investors Service, Inc., or any
14 successor thereto.
- 15 (13) 'Person' includes an individual, corporation, company, partnership,
16 association, or aggregation of individuals.
- 17 (14) 'Plan' means the plan of operation established under G.S. 58-62-46.
- 18 (15) 'Policy' includes a contract of insurance and an annuity contract.
- 19 (16) 'Premiums' means amounts received in any calendar year on covered
20 policies less premiums, considerations, and deposits returned thereon,
21 and less dividends and experience credits thereon. 'Premiums' does
22 not include any amounts received for any policies or for the parts of
23 any policies for which coverage is not provided under G.S. 58-62-
24 21(b); except that assessible premium shall not be reduced on account
25 of G.S. 58-62-21(c)(3) relating to interest limitations and G.S. 58-62-
26 21(d)(2) relating to limitations with respect to any one individual, any
27 one participant, and any one contract holder; provided that 'premiums'
28 does not include any premiums in excess of five million dollars
29 (\$5,000,000) on any unallocated annuity contract not issued under a
30 governmental retirement plan established under section 401, 403(b), or
31 457 of the United States Internal Revenue Code.
- 32 (17) 'Resident' means any person who resides in this State when a member
33 insurer is determined to be a delinquent insurer and to whom a
34 contractual obligation is owed. A person may be a resident of only
35 one state, which in the case of a person other than a natural person
36 shall be its principal place of business.
- 37 (18) 'Unallocated annuity contract' means any annuity contract or group
38 annuity certificate that is not issued to and owned by an individual,
39 except to the extent of any annuity benefits guaranteed to an individual
40 by an insurer under the contract or certificate.

41 **"§ 58-62-21. Coverage and limitations.**

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

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

5 (2) To persons who are owners or certificate holders under the policies, or
6 in the case of unallocated annuity contracts to the persons who are the
7 contract holders, and who are residents of this State, or who are not
8 residents of this State, but only under all of the following conditions:
9 (i) the insurers that issued the policies are domiciled in this State; (ii)
10 the insurers never held a license in the states in which the persons
11 reside; (iii) the states have associations similar to the association
12 created by this Article; and (iv) the persons are not eligible for
13 coverage by the associations.

14 (b) This Article provides coverage to the persons specified in subsection (a) of
15 this section for direct, nongroup life, health, annuity, and supplemental policies, for
16 certificates under direct group policies and contracts, and for unallocated annuity
17 contracts issued by member insurers, except as limited by this Article. Annuity
18 contracts and certificates under group annuity contracts include guaranteed investment
19 contracts, deposit administration contracts, unallocated funding agreements, allocated
20 funding agreements, structured settlement agreements, lottery contracts, and any
21 immediate or deferred annuity contracts.

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

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

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

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

29 a. Averaged over the period of four years before the date on which
30 the Association becomes obligated with respect to the policy,
31 exceeds a rate of interest determined by subtracting two
32 percentage points from Moody's Corporate Bond Yield Average
33 averaged for that same four-year period or for a lesser period if
34 the policy was issued less than four years before the
35 Association became obligated; and

36 b. On and after the date on which the Association becomes
37 obligated with respect to the policy, exceeds the rate of interest
38 determined by subtracting three percentage points from
39 Moody's Corporate Bond Yield Average as most recently
40 available;

41 (4) Any plan or program of an employer, association, or similar entity to
42 provide life, health, or annuity benefits to its employees or members to
43 the extent that the plan or program is self-funded or uninsured,

- 1 including benefits payable by an employer, association, or similar
2 entity under:
- 3 a. A multiple employer welfare arrangement as defined in section
4 514 of the Employee Retirement Income Security Act of 1974,
5 as amended.
- 6 b. A minimum premium group insurance plan;
7 c. A stop-loss group insurance plan; or
8 d. An administrative services only contract;
- 9 (5) Any part of a policy to the extent that it provides dividends or
10 experience-rating credits, or provides that any fees or allowances be
11 paid to any person, including the policyholder, in connection with the
12 service to or administration of the policy;
- 13 (6) Any policy issued in this State by a member insurer at a time when it
14 was not licensed to issue the policy in this State;
- 15 (7) Any unallocated annuity contract issued to an employee benefit plan
16 protected under the federal Pension Benefit Guaranty Corporation; and
- 17 (8) Any part of any unallocated annuity contract that is not issued to or in
18 connection with a specific employee, union, or association of natural
19 persons benefit plan or a government lottery.
- 20 (d) The benefits for which the Association is liable do not, in any event, exceed
21 the lesser of:
- 22 (1) The contractual obligations for which the insurer is liable or would
23 have been liable if it were not a delinquent insurer; or
- 24 (2) With respect to any one individual, regardless of the number of
25 policies, three hundred thousand dollars (\$300,000) for all benefits; but
26 not more than one hundred thousand dollars (\$100,000) in net cash
27 surrender and net cash withdrawal values for life insurance; and not
28 more than one hundred thousand dollars (\$100,000) in the present
29 value of annuity benefits, including net cash surrender and net cash
30 withdrawal values;
- 31 (3) With respect to each individual participating in a governmental
32 retirement plan established under section 401, 403(b), or 457 of the
33 Internal Revenue Code covered by an unallocated annuity contract, or
34 the beneficiaries of each such individual if deceased, in the aggregate,
35 one hundred thousand dollars (\$100,000) in present value annuity
36 benefits, including net cash surrender and net cash withdrawal values;
- 37 (4) With respect to any one contract holder covered by any unallocated
38 annuity contract not included in subdivision (3) of this subsection, five
39 million dollars (\$5,000,000) in benefits, regardless of the number of
40 such contracts held by that contract holder.
- 41 (e) In no event is the Association liable to expend more than three hundred
42 thousand dollars (\$300,000) in the aggregate with respect to any one individual under
43 subdivisions (d)(2) and (d)(3) of this section.
- 44 **"§ 58-62-26. Creation of the Association.**

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

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

10 a. Life insurance account;

11 b. Annuity account; and

12 c. Unallocated annuity account, which includes contracts qualified
13 under section 403(b) of the Internal Revenue Code.

14 (2) The health insurance account.

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

18 **"§ 58-62-31. Board of directors.**

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

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

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

35 **"§ 58-62-36. Powers and duties of the Association.**

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

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

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

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

3 (3) Lend money to the impaired insurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (s) The Association may:

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

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

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

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

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

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

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

11 **"§ 58-62-41. Assessments.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **"§ 58-62-46. Plan of operation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **"§ 58-62-76. Immunity.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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