

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1999**

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**SENATE BILL 594**

Insurance Committee Substitute Adopted 4/22/99

House Committee Substitute Favorable 6/22/99

Short Title: Miscellaneous Ins. Changes.

(Public)

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Sponsors:

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Referred to:

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March 29, 1999

**A BILL TO BE ENTITLED**

**AN ACT TO CLARIFY THE LAWS ON TITLE INSURANCE RATE MAKING,  
COMMERCIAL GENERAL LIABILITY POLICY EXTENDED REPORTING,  
AND INSURANCE FRAUD; TO MAKE A TECHNICAL CORRECTION IN THE  
LITTERING LAW; TO PROVIDE FOR UNIFORM APPLICATION OF NEW  
LAWS TO HEALTH BENEFIT PLANS; TO AMEND THE LAW GOVERNING  
CEASE AND DESIST ORDERS FOR UNAUTHORIZED INSURERS; TO ALLOW  
LICENSING OF A FOREIGN OR ALIEN INSURER TO BE DELAYED UNDER  
CERTAIN CIRCUMSTANCES; TO AMEND THE LAW GOVERNING AN  
INSURER'S ACKNOWLEDGMENT OF A CLAIM; TO PROVIDE THAT  
POLICIES WRITTEN BY SURETY BONDSMEN ARE SUBJECT TO THE LAW  
GOVERNING THE USE OF DEPOSITS FOR UNPAID LIABILITIES; TO DELAY  
THE EFFECTIVE DATE FOR THE REGULATION OF THIRD-PARTY  
ADMINISTRATORS FOR SELF-INSURED WORKERS' COMPENSATION; TO  
AMEND THE LAW ON COVERAGE FOR NONFORMULARY DRUGS; AND TO  
MAKE VARIOUS TECHNICAL CHANGES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-41-10(a) reads as rewritten:

1       "(a) Except as otherwise provided, this Article applies to all kinds of insurance  
2 authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all  
3 insurance companies licensed by the Commissioner to write those kinds of insurance.  
4 This Article does not apply to insurance written under Articles 21, 26, 36, 37, 45 or 46 of  
5 this Chapter; insurance written for residential risks in conjunction with insurance written  
6 under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to  
7 personal inland marine insurance; to aviation insurance; to policies issued in this State  
8 covering risks with multistate locations, except with respect to coverages applicable to  
9 locations within this State; to any town or county farmers mutual fire insurance  
10 association restricting its operations to not more than six adjacent counties in this State;  
11 nor to domestic insurance companies, associations, orders, or fraternal benefit societies  
12 doing business in this State on the assessment plan."

13       Section 2. G.S. 58-40-140(a) reads as rewritten:

14       "(a) Any policy for commercial general liability coverage or professional liability  
15 insurance wherein the insurer offers, and the insured elects to purchase, an extended  
16 reporting period for claims arising during the expiring policy period must provide:

- 17       (1) That in the event of a cancellation permitted by G.S. 58-41-15 or  
18 nonrenewal effective under G.S. 58-41-20, there shall be a 30-day  
19 period after the effective date of the cancellation or nonrenewal during  
20 which the insured may elect to purchase coverage for the extended  
21 reporting period.
- 22       (2) That the limit of liability in the policy aggregate for the extended  
23 reporting period shall be one hundred percent (100%) of the expiring  
24 policy ~~aggregate~~. aggregate that was in effect at the inception of the  
25 policy.
- 26       (3) Within 45 days after the mailing or delivery of the written request of the  
27 insured, the insurer shall mail or deliver the following loss information  
28 covering a three-year period:
- 29       a. Aggregate information on total closed claims, including date and  
30 description of occurrence, and any paid losses;
- 31       b. Aggregate information on total open claims, including date and  
32 description of occurrence, and amounts of any payments;
- 33       c. Information on notice of any occurrence, including date and  
34 description of occurrence."

35       Section 3. G.S. 58-2-161(a) reads as rewritten:

36       "(a) For the purposes of this section:

- 37       (1) ~~'Insurer' includes an entity under Articles 49 and 65 through 67 of this~~  
38 ~~Chapter, the Teachers' and State Employees' Comprehensive Major~~  
39 ~~Medical Plan under Chapter 135 of the General Statutes, and an~~  
40 ~~employer or group of employers that insure its workers' compensation~~  
41 ~~liability under Chapter 97 of the General Statutes.~~ 'Insurer' has the same  
42 meaning as in G.S. 58-1-5(3) and also includes:

- 1           a.     Any hull insurance and protection and indemnity club operating  
2           under Article 20 of this Chapter.
- 3           b.     Any surplus lines insurer operating under Article 21 of this  
4           Chapter.
- 5           c.     Any risk retention group or purchasing group operating under  
6           Article 22 of this Chapter.
- 7           d.     Any local government risk pool operating under Article 23 of  
8           this Chapter.
- 9           e.     Any risk-sharing plan operating under Article 42 of this Chapter.
- 10          f.     The North Carolina Insurance Underwriting Association  
11          operating under Article 45 of this Chapter.
- 12          g.     The North Carolina Joint Insurance Underwriting Association  
13          operating under Article 46 of this Chapter.
- 14          h.     The North Carolina Insurance Guaranty Association operating  
15          under Article 48 of this Chapter.
- 16          i.     Any multiple employer welfare arrangement operating under  
17          Article 49 of this Chapter.
- 18          j.     The North Carolina Life and Health Insurance Guaranty  
19          Association operating under Article 62 of this Chapter.
- 20          k.     Any service corporation operating under Article 65 of this  
21          Chapter.
- 22          l.     Any health maintenance organization operating under Article 67  
23          of this Chapter.
- 24          m.     The Teachers' and State Employees' Comprehensive Major  
25          Medical Plan operating under Chapter 135 of the General  
26          Statutes.
- 27          n.     A group of employers self-insuring their workers' compensation  
28          liabilities under Article 47 of this Chapter.
- 29          o.     An employer self-insuring its workers' compensation liabilities  
30          under Article 5 of Chapter 97 of the General Statutes.
- 31          p.     The North Carolina Self-Insurance Guaranty Association under  
32          Article 4 of Chapter 97 of the General Statutes.
- 33          q.     Any reinsurer licensed or accredited under this Chapter.
- 34        (2)    'Statement' includes any application, notice, statement, proof of loss, bill  
35            of lading, receipt for payment, invoice, account, estimate of property  
36            damages, bill for services, diagnosis, prescription, hospital or doctor  
37            records, X rays, test result, or other evidence of loss, injury, or  
38            expense."

39            Section 4. G.S. 14-399(f1) reads as rewritten:

40            "(f1) If a violation of this section involves the operation of a motor vehicle, upon a  
41            finding of guilt, the court shall forward a record of the finding to the Department of  
42            Transportation, Division of Motor Vehicles, which shall record a penalty of one point on  
43            the violator's drivers license pursuant to the point system established by G.S. 20-16.

1 There shall be no insurance premium surcharge or assessment of points under the  
2 classification plan adopted pursuant to ~~G.S. 58-30.4~~ under G.S. 58-36-65 for a finding of  
3 guilt under this section."

4 Section 5. Article 3 of Chapter 58 of the General Statutes is amended by  
5 adding a new section to read:

6 **"§ 58-3-167. Applicability of acts of the General Assembly to health benefit plans.**

7 (a) As used in this section:

8 (1) 'Health benefit plan' means an accident and health insurance policy or  
9 certificate; a nonprofit hospital or medical service corporation contract;  
10 a health maintenance organization subscriber contract; a plan provided  
11 by a multiple employer welfare arrangement; or a plan provided by  
12 another benefit arrangement, to the extent permitted by the Employee  
13 Retirement Income Security Act of 1974, as amended, or by any waiver  
14 of or other exception to that act provided under federal law or  
15 regulation. 'Health benefit plan' does not mean any plan implemented or  
16 administered by the North Carolina or United States Department of  
17 Health and Human Services, or any successor agency, or its  
18 representatives. 'Health benefit plan' does not mean any of the  
19 following kinds of insurance:

20 a. Accident.

21 b. Credit.

22 c. Disability income.

23 d. Long-term or nursing home care.

24 e. Medicare supplement.

25 f. Specified disease.

26 g. Dental or vision.

27 h. Coverage issued as a supplement to liability insurance.

28 i. Workers' compensation.

29 j. Medical payments under automobile or homeowners.

30 k. Hospital income or indemnity.

31 l. Insurance under which benefits are payable with or without  
32 regard to fault and that is statutorily required to be contained in  
33 any liability policy or equivalent self-insurance.

34 m. Short-term limited duration health insurance policies as defined  
35 in Part 144 of Title 45 of the Code of Federal Regulations.

36 (2) 'Insurer' includes an insurance company subject to this Chapter, a  
37 service corporation organized under Article 65 of this Chapter, a health  
38 maintenance organization organized under Article 67 of this Chapter,  
39 and a multiple employer welfare arrangement subject to Article 49 of  
40 this Chapter.

41 (b) Whenever a law is enacted by the General Assembly that applies to a health  
42 benefit plan, the term 'health benefit plan' shall be defined for purposes of that law as

1 provided in subsection (a) of this section unless that law provides a different definition or  
2 otherwise expressly provides that the definition in this section is not applicable.

3 (c) Whenever a law is enacted by the General Assembly that applies to health  
4 benefit plans that are delivered, issued for delivery, or renewed on and after a certain  
5 date, the renewal of a health benefit plan is presumed to occur on each anniversary of the  
6 date on which coverage was first effective on the person or persons covered by the health  
7 benefit plan."

8 Section 6. G.S. 58-28-20 reads as rewritten:

9 **"§ 58-28-20. Cease and desist orders.**

10 (a) Whenever the Commissioner, from evidence satisfactory to him, has  
11 reasonable grounds to believe that any person is violating or is about to violate G.S. 58-  
12 28-5, he may, after notice and opportunity for hearing, reduce his findings to writing and  
13 issue and cause to be served upon such person an order to cease and desist from violating  
14 G.S. 58-28-5.

15 (b) Until the expiration of the time allowed under G.S. 58-28-25(a) for filing a  
16 petition for review, if no such petition has been duly filed within such time; or if a  
17 petition for review has been filed within such time, then until the transcript of the record  
18 in the proceeding has been filed in the Court, the Commissioner may at any time, upon  
19 such notice and in such manner as he considers proper, modify or set aside in whole or in  
20 part any order issued by him under this section.

21 (c) After the expiration of the time allowed for filing a petition for review, if no  
22 such petition has been duly filed within such time, the Commissioner may at any time,  
23 after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole  
24 or in part, any order issued by him under this section, whenever in his opinion conditions  
25 of fact or of law have so changed as to require such action or if the public interest  
26 requires.

27 (d) Whenever the Commissioner has evidence that any person has or is violating G.S.  
28 58-28-5, or has or is violating any order or requirement of the Commissioner issued or  
29 promulgated by the Commissioner under this Article, and that the interests of  
30 policyholders, creditors, or the public may be irreparably harmed by delay, the  
31 Commissioner may issue a cease and desist order. Notice of the cease and desist order  
32 and notice of hearing shall be delivered by first-class mail."

33 Section 7. G.S. 58-16-5 is amended by adding a new subdivision to read:

34 "(8) Satisfies the Commissioner that the operation of the company in this  
35 State would not be hazardous to prospective policyholders, creditors, or  
36 the general public."

37 Section 8. G.S. 58-5-63 reads as rewritten:

38 **"§ 58-5-63. Interest; liquidation of deposits for liabilities.**

39 (a) All insurance companies making deposits under this Article are entitled to  
40 interest on those deposits, which shall remain in the deposit accounts. The right to interest  
41 is subject to a company paying its insurance policy liabilities. If any company fails to pay  
42 those liabilities, interest accruing after the failure is payable to the Commissioner for the  
43 payment of those liabilities under subsection (b) of this section.

1 (b) If any company fails to pay its insurance policy liabilities after those liabilities  
2 have been established by settlement or final adjudication, the Commissioner may  
3 liquidate the amount of the company's deposit and accrued interest specified in  
4 subsection (a) of this section that will satisfy the company's policy liabilities and make  
5 payment to the person to whom the liability is owed. After payment has been made, the  
6 Commissioner may require the company to deposit the amount paid out under this  
7 subsection. As used in this section, 'insurance policy' includes a policy written by a  
8 surety bondsman under Article 71 of this Chapter."

9 Section 9. G.S. 58-3-100(c) reads as rewritten:

10 "(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO,  
11 service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after  
12 receiving written notice of the claim, but only if the notice contains sufficient information  
13 for the insurer to identify the specific coverage involved. Acknowledgement of the claim  
14 shall be made to the claimant or his legal representative advising that the claim is being  
15 investigated; or shall be a payment of the claim; or shall be a bona fide written offer of  
16 settlement; or shall be a written denial of the claim. A claimant includes an insured, a  
17 health care provider, or a health care facility that is responsible for directly making the  
18 claim with an insurer."

19 Section 10. Section 58(b) of S.L. 1998-217 reads as rewritten:

20 "(b) This section becomes effective January 1, ~~2000-~~2002."

21 Section 11.(a) Section 2.1 of S.L. 1999-132 is repealed.

22 Section 11.(b) G.S. 58-30-10(14), as amended by Section 7.3 of S.L. 1999-132,  
23 reads as rewritten:

24 "(14) 'Insurer' means any entity that is or should be licensed under Articles 7,  
25 16, 26, 47, 49, 65, or 67 of this Chapter or under Article 5 of Chapter 97  
26 of the General Statutes. For the purposes of this Article, 'insurer' also  
27 includes continuing care retirement ~~centers~~ communities that are or  
28 should be licensed under Article 64 of this Chapter."

29 Section 12.(a) G.S. 58-36-75(b) and G.S. 58-36-75(e) are repealed.

30 Section 12.(b) G.S. 58-36-75(d) reads as rewritten:

31 "(d) There shall be no ~~Facility recoupment surcharge under G.S. 58-37-40(f) or Safe~~  
32 ~~Driver Incentive Plan surcharges under G.S. 58-36-65~~ for accidents occurring when only  
33 operating a firefighting, rescue squad, or law enforcement vehicle in accordance with  
34 G.S. 20-125(b) and in response to an emergency if the operator of the vehicle at the time  
35 of the accident was a paid or volunteer member of any fire department, rescue squad, or  
36 any law enforcement agency. This exception does not include an accident occurring after  
37 the vehicle ceases to be used in response to the emergency and the emergency ceases to  
38 exist."

39 Section 13. The Codifier of Rules may amend the text of the administrative  
40 rules in Title 11 of the North Carolina Administrative Code to reflect the recodification of  
41 Chapter 58 of the General Statutes. An amendment pursuant to this section is exempt  
42 from Chapter 150B of the General Statutes and review by the Rules Review Commission  
43 to the extent that it does not change the substance of the rule.

1 Section 14.(a) G.S. 58-3-221(c), as enacted by S.L. 1999-178, reads as  
2 rewritten:

3 "(c) As used in this section:

4 (1) 'Closed formulary' means a list of prescription drugs and devices  
5 reimbursed by the insurer that excludes coverage for drugs and devices  
6 not listed.

7 ~~(1)~~(2) 'Health benefit plan' means an accident and health insurance policy or  
8 certificate; a nonprofit hospital or medical service corporation  
9 contract; a health maintenance organization subscriber contract; a plan  
10 provided by a multiple employer welfare arrangement; or a plan  
11 provided by another benefit arrangement, to the extent permitted by  
12 the Employee Retirement Income Security Act of 1974, as amended,  
13 or by any waiver of or other exception to that Act provided under  
14 federal law or regulation. 'Health benefit plan' does not mean any  
15 plan implemented or administered by the North Carolina Department  
16 of Health and Human Services or the United States Department of  
17 Health and Human Services, or any successor agency, or its  
18 representatives. 'Health benefit plan' also does not mean any of the  
19 following kinds of insurance:

- 20 a. Accident.  
21 b. Credit.  
22 c. Disability income.  
23 d. Long-term care or nursing home care.  
24 e. Medicare supplement.  
25 f. Specified disease.  
26 g. Dental or vision.  
27 h. Coverage issued as a supplement to liability insurance.  
28 i. Workers' compensation.  
29 j. Medical payments under automobile or homeowners.  
30 k. Hospital income or indemnity.  
31 l. Insurance under which benefits are payable with or without  
32 regard to fault and that are statutorily required to be contained in  
33 any liability policy or equivalent self-insurance.

34 ~~(2)~~(3) 'Insurer' means an entity that writes a health benefit plan and that is an  
35 insurance company subject to this Chapter, a service corporation  
36 organized under Article 65 of this Chapter, a health maintenance  
37 organization organized under Article 67 of this Chapter, or a multiple  
38 employer welfare arrangement under Article 49 of this Chapter."

39 Section 14.(b) G.S. 58-3-221, as enacted by S.L. 1999-178, is amended by adding a  
40 new subsection to read:

41 "(d) Nothing in this section requires an insurer to pay for drugs or devices or classes  
42 of drugs or devices related to a benefit that is specifically excluded from coverage by the  
43 insurer."

1           Section 15. Sections 1 through 3 and Sections 5 through 9 of this act become  
2 effective October 1, 1999. The remaining sections of this act are effective when they  
3 become law.