

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 612

Short Title: Insurer Financial Operations.

(Public)

Sponsors: Senator Miller.

Referred to: Pensions & Retirement and Insurance.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES IN THE LAWS GOVERNING THE
FINANCIAL OPERATIONS OF INSURANCE COMPANIES AND THE ROLE OF
THE DEPARTMENT OF INSURANCE IN MONITORING THE SOLVENCY OF
INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-3-100 reads as rewritten:

"§ 58-3-100. Revocation, ~~suspension~~ suspension, restriction, and or refusal to renew license.

(a) ~~The Commissioner may revoke, suspend, or refuse to renew the license of any insurer if:~~ The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, restrict, or refuse to renew the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.

(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

(3) The insurer has published or made to the Department or to the public any false statement or report.

1 amendments and addenda to the financial statement that are subsequently filed with the
2 Commissioner shall also be filed with the NAIC.

3 (b) Foreign insurers that are domiciled in a state that has a law or regulation
4 substantially similar to this Article shall be deemed to be in compliance with this section.

5 (c) Each domestic, foreign, and alien insurer that is required to make any filing
6 with the NAIC shall pay all related filing fees, as determined by the NAIC."

7 Section 4. G.S. 58-4-15 reads as rewritten:

8 **"§ 58-4-15. Revocation of certificate of authority.**

9 The Commissioner may restrict, suspend, revoke, or refuse to renew the certificate of
10 authority license of any insurer failing to file its financial statement make any required filing
11 with the NAIC when due or within any extension of time that the Commissioner, for
12 good cause, may have granted. granted under G.S. 58-2-165(a), or of any insurer failing to
13 pay all related filing fees."

14 Section 5. Article 7 of Chapter 58 of the General Statutes is amended by
15 adding a new section to read:

16 **"§ 58-7-37. Background of incorporators and proposed management personnel.**

17 (a) Before a license is issued to a new domestic insurance company, each key
18 person must furnish the Commissioner a complete set of the applicant's fingerprints and a
19 recent passport-size, full-face photograph of the applicant. The applicant's fingerprints
20 shall be certified by an authorized law enforcement officer. The fingerprints of every
21 applicant shall be forwarded to the State Bureau of Investigation for a search of the
22 applicant's criminal history record file, if any. If warranted, the State Bureau of
23 Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation
24 for a national criminal history record check. An applicant shall pay the cost of the State
25 and any national criminal history record check of the applicant.

26 (b) As used in this section, 'key person' means a proposed officer, director, or any
27 other individual who will be in a position to influence the operating decisions of a
28 domestic insurance company.

29 (c) The Commissioner may refuse to approve the formation or initial license of a
30 new domestic insurance company under this Article if, after notice to the applicant and an
31 opportunity for a hearing, he finds as to the incorporators or other key person any one or
32 more of the following conditions:

33 (1) Any untrue material statement regarding the background or experience
34 of any incorporator or other key person.

35 (2) Violation of or noncompliance with any insurance laws or any rule or
36 order of the Commissioner or of the insurance regulator of another state
37 by any incorporator or other key person.

38 (3) Obtaining or attempting to obtain any license through misrepresentation
39 or fraud.

40 (4) An incorporator or other key person has been convicted of a felony.

41 (5) An incorporator or other key person has been found to have committed
42 any unfair trade practice or fraudulent act or omission.

1 (6) An incorporator or other key person has used fraudulent, coercive, or
2 dishonest practices; or has acted in a manner that is incompetent,
3 untrustworthy, or financially irresponsible.

4 (7) An incorporator or other key person has held such a position in another
5 insurance company that has had its license suspended or revoked by any
6 state.

7 (d) If the Commissioner disapproves a company formation or initial license, the
8 Commissioner shall notify the applicant and advise the applicant in writing of the reasons
9 for the disapproval. Within 30 days after date of receipt of the written disapproval, the
10 applicant may make a written request for a hearing which shall be scheduled within 30
11 days after the date of receipt of the request.

12 (e) For investigations under this section, the Commissioner has all of the authority
13 in G.S. 58-3-125.

14 (f) The Commissioner may adopt rules to set standards for obtaining background
15 information on each incorporator or other key person of a proposed new domestic
16 insurance company."

17 Section 6. G.S. 58-7-55(3)d. reads as rewritten:

18 "d. That if at any time the Commissioner finds that the conditions
19 justifying the maintenance of such offices, records, and assets
20 outside of this State no longer exist, or that the insurer has
21 willfully and knowingly violated any of the conditions stated in
22 sub-subdivisions b. and c., the Commissioner may order the
23 return of such offices, records, and assets to this State within
24 such reasonable time, not less than six months, as may be
25 specified in the order; ~~and that for failure to comply with such order,~~
26 ~~as thereafter modified or extended, if any, the Commissioner shall~~
27 ~~suspend or revoke the insurer's certificate of authority. and the~~
28 Commissioner may, for good cause shown, extend the time for
29 compliance in the order."

30 Section 7. G.S. 58-7-130 reads as rewritten:

31 "~~§ 58-7-130. Payment of dividends impairing financial soundness of company or~~
32 ~~detrimental to policyholders. Dividends and distributions to stockholders.~~

33 (a) Each domestic insurance company in North Carolina shall be restricted by the
34 Commissioner from the payment of any dividends or other distributions to its
35 stockholders whenever the Commissioner determines from examination of such
36 company's financial condition that the payment of future dividends or other distributions
37 would cause a hazardous financial condition, impair the financial soundness of the
38 company or be detrimental to its policyholders, and such restrictions shall continue in
39 force until such future date when the Commissioner may specifically permit the payment
40 of dividends or other distributions to stockholders by the company through a written
41 authorization. ~~Nothing contained in this section and no action taken by the Commissioner shall~~
42 ~~in any way restrict the liability of stockholders under G.S. 58-7-125.~~

1 **(b)** No domestic stock insurance company shall declare dividends to its
2 stockholders except from the unassigned surplus of the company as reflected in the
3 company's most recent financial statement filed with the Commissioner under G.S. 58-2-
4 165.

5 **(c)** A transfer out of paid-in and contributed surplus to common or preferred
6 capital stock will be permitted on a case-by-case basis, with the Commissioner's prior
7 approval, depending on the necessity for a company to make the transfer.

8 **(d)** Nothing in this section and not action taken by the Commissioner in any way
9 restricts the liabilities of stockholders under G.S. 58-7-125.

10 **(e)** Dividends and other distributions paid to stockholders are subject to the
11 requirements and limitations of G.S. 58-19-25(d) and G.S. 58-19-30(c)."

12 Section 8. G.S. 58-7-170(c) reads as rewritten:

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

23 ~~An insurer that, as of October 1, 1993, has mortgage investments that exceed the~~
24 ~~aggregate limitation specified in this subsection shall submit to the Commissioner no~~
25 ~~later than January 31, 1994, a plan to bring the amount of mortgage investments into~~
26 ~~compliance with the limitations by January 1, 2001. The cost of investments made by an~~
27 ~~insurer in mortgage loans authorized by G.S. 58-7-179, with any one person, or in~~
28 ~~mortgage pass-through securities and derivatives of mortgage pass-through securities~~
29 ~~authorized by G.S. 58-7-173(1), (2), (8), or (17), backed by a single collateral package,~~
30 ~~shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not~~
31 ~~invest in additional mortgage loans or mortgage pass-through securities and derivatives~~
32 ~~of mortgage pass-through securities without the Commissioner's consent if the admitted~~
33 ~~value of all such investments held by the insurer exceeds an aggregate of sixty percent~~
34 ~~(60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%)~~
35 ~~limitation, the admitted value of all mortgage pass-through securities and derivatives of~~
36 ~~mortgage pass-through securities permitted by G.S. 58-7-173(17) shall not exceed~~
37 ~~twenty-five percent (25%) of the admitted assets of the insurer. The admitted value of~~
38 ~~other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of~~
39 ~~the admitted assets of the insurer. Mortgage pass-through securities authorized by G.S.~~
40 ~~58-7-173(1), (2), or (8) shall only be subject to the single collateral package limitation~~
41 ~~and the sixty percent (60%) aggregate limitation. An insurer that has mortgage~~
42 ~~investments that exceed the limitations specified in this subsection shall submit to the~~

1 Commissioner no later than January 31, 1998, a plan to bring the amount of mortgage
2 investments into compliance with the limitations by January 1, 2003."

3 Section 9. G.S. 58-7-185(a) reads as rewritten:

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

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

11 (2) Except with the Commissioner's consent, securities issued by any
12 corporation or enterprise, the controlling interest of which is or will
13 after acquisition by the insurer be held directly or indirectly by the
14 insurer or any combination of the insurer and the insurer's directors,
15 officers, parent corporation, subsidiaries, or controlling stockholders.
16 Investments in subsidiaries under G.S. 58-7-177 are not subject to this
17 provision.

18 ~~(3) Any note or other evidence of indebtedness of any director, officer, or~~
19 ~~controlling stockholder of the insurer, except as to policy loans~~
20 ~~authorized under G.S. 58-7-175 and loans authorized under G.S. 58-7-~~
21 ~~200(e)."~~

22 Section 10. G.S. 58-7-187(c) reads as rewritten:

23 ~~"(c) An insurer may acquire and hold real property for investment, subject to the~~
24 ~~following conditions: An insurer may, subject to the limitations and conditions set out in~~
25 ~~subdivisions (1) through (4) of this subsection, acquire, improve, develop, manage, lease,~~
26 ~~mortgage, and dispose of real estate, other than real estate to be used primarily for mining~~
27 ~~or development of oil or mineral resources, situated in any state of the United States or~~
28 ~~province of Canada either directly or indirectly through limited partnership interest,~~
29 ~~general partnership interests, provided that in the case of general partnership interests, all~~
30 ~~other partners in the partnership are subsidiaries of the insurer, limited liability~~
31 ~~companies, joint ventures, stock of an investment subsidiary, trust certificates, or other~~
32 ~~similar instruments. The real estate shall be income-producing or to be improved or~~
33 ~~developed for investment purposes pursuant to an existing program, in which case the~~
34 ~~property shall be deemed to be income-producing. The real estate may be subject to~~
35 ~~mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the~~
36 ~~obligations secured by the mortgages, liens, or encumbrances are without recourse to the~~
37 ~~insurer, be deducted from the amount of the investment of the insurer in the real estate for~~
38 ~~purposes of determining compliance with this subsection and G.S. 58-7-187(d). As used~~
39 ~~in this subsection, 'investment subsidiary' means a subsidiary of an insurer engaged or~~
40 ~~organized to engage exclusively in real estate investments authorized in this subsection.~~

41 (1) The amount shall not exceed in the aggregate the lesser of five percent
42 (5%) of the insurer's admitted assets or fifteen percent (15%) of the
43 insurer's capital and surplus.

1 (2) The amount in any one property shall not exceed one percent (1%) of
2 the insurer's admitted assets.

3 (3) The amount in unimproved land shall not exceed one-half of one
4 percent (0.5%) of the insurer's admitted assets.

5 (4) There shall be no time limit for the disposal of investment real estate."

6 Section 11. G.S. 58-7-200(c) reads as rewritten:

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

15 Section 12. G.S. 58-8-10 reads as rewritten:

16 "**§ 58-8-10. Policyholders are members of mutual companies.**

17 Every person insured by a mutual insurance company is a member while ~~his~~ that
18 person's policy is in force, is entitled to one vote for each policy ~~he~~ that person holds, and
19 must be notified of the time and place of holding its meetings by a written notice or by an
20 imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

21 The insured is hereby notified that by virtue of this policy ~~he~~ the insured is a
22 member of the insurance company, and that the annual meetings of the
23 company are held at its home office on the day of, in each year,
24 at o'clock.

25 The blanks shall be duly filled in print and are a sufficient notice. A corporation ~~which~~
26 that becomes a member of ~~such a~~ mutual insurance company may authorize any person to
27 represent ~~it, the corporation;~~ and this representative has all the rights of an individual
28 member. A person holding property in trust may insure it in ~~such a~~ mutual insurance
29 company, and as trustee assume the liability and be entitled to the rights of a ~~member,~~
30 member; but that person is not personally liable upon the contract of insurance. Members
31 may vote by proxies, dated and executed within three ~~months,~~ months after receipt, and
32 returned and recorded on the books of the company three days or more before the
33 meeting at which they are to be used; ~~but no person as proxy or otherwise may cast more than~~
34 20 votes used."

35 Section 13. Article 10 of Chapter 58 of the General Statutes is amended by
36 adding a new section to read:

37 "**§ 58-10-10. Conversion to stock insurer.**

38 (a) A domestic mutual insurer may convert to a domestic stock insurer under a
39 plan that is approved in advance by the Commissioner.

40 (b) The Commissioner shall not approve the plan unless:

41 (1) It is fair and equitable to the insurer's policyholders.

42 (2) It is adopted by the insurer's board of directors in accordance with the
43 insurer's bylaws and approved by a vote of not less than two-thirds of

1 the insurer's members voting on it in person, by proxy, or by mail at a
2 meeting called for the purpose of voting on the plan, pursuant to
3 reasonable notice and procedure as approved by the Commissioner. If
4 the company is a life insurer, the right to vote may be limited, as its
5 bylaws provide, to members whose policies are other than term or group
6 policies and have been in effect for more than one year.

7 (3) Each policyholder's equity in the insurer is determinable under a fair
8 and reasonable formula approved by the Commissioner. The equity
9 shall be based upon the insurer's entire statutory surplus after deducting
10 certificates of contribution, guaranty capital certificates, and similar
11 evidences of indebtedness included in an insurer's statutory surplus.

12 (4) The policyholders entitled to vote on the plan and participate in the
13 purchase of stock or distribution of assets include all policyholders on
14 the date the plan was adopted by the insurer's board of directors.

15 (5) The plan provides that each policyholder specified in subdivision (4) of
16 this subsection receives a preemptive right to acquire a proportionate
17 part of all of the proposed capital stock of the insurer or of all of the
18 stock of a corporation affiliated with the insurer within a designated
19 reasonable period as the part is determinable under the plan of
20 conversion; and to apply toward the purchase of the stock the amount of
21 the policyholder's equity in the insurer under subdivision (3) of this
22 subsection. The plan must provide for an equitable distribution of
23 fractional interests.

24 (6) The plan provides for payment to each policyholder of the
25 policyholder's entire equity in the insurer; with that payment to be
26 applied toward the purchase of stock to which the policyholder is
27 entitled preemptively or to be made in cash, or both. The cash payment
28 may not exceed fifty percent (50%) of each policyholder's equity. The
29 stock purchased, together with the cash payment, if any, shall constitute
30 full payment and discharge of the policyholder's equity as an owner of
31 the mutual insurer.

32 (7) Shares are to be offered to policyholders at a price not greater than that
33 of shares to be subsequently offered to others.

34 (8) The Commissioner finds that the insurer's management has not, through
35 reduction of volume of new business written, through policy
36 cancellations, or through any other means, sought to (i) reduce, limit, or
37 affect the number or identity of the insurer's members entitled to
38 participate in the plan or (ii) secure for the individuals constituting
39 management any unfair advantage through the plan.

40 (9) The plan, when completed, provides that the insurer's capital and
41 surplus are not less than the minimum required of a domestic stock
42 insurer transacting the same kinds of insurance, are reasonable in

1 relation to the insurer's outstanding liabilities, and are adequate to meet
2 its financial needs.

3 (c) With respect to an insurer with a guaranty capital, the conversion plan shall be
4 approved by a vote of not less than two-thirds of the insurer's guaranty capital
5 shareholders and policyholders as provided for in subdivision (b)(2) of this section. The
6 plan may provide for the issuance of stock in exchange for outstanding guaranty capital
7 shares at their redemption value subject to the conditions in subsection (b) of this section.

8 (d) The Commissioner may schedule a public hearing on the proposed conversion
9 plan.

10 (e) The Commissioner may retain, at the mutual insurer's expense, any attorneys,
11 actuaries, economists, accountants, or other experts not otherwise a part of the
12 Commissioner's staff as may be reasonably necessary to assist the Commissioner in
13 reviewing the proposed conversion plan.

14 (f) The corporate existence of the mutual company continues in the stock
15 company created under this section. All assets, rights, franchises, and interests of the
16 former mutual insurer, in and to real or personal property, are deemed to be transferred to
17 and vested in the stock insurer, without any other deed or transfer; and the stock insurer
18 simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

19 (g) The Commissioner may adopt rules to carry out the provisions of this section."

20 Section 14. G.S. 58-16-5 reads as rewritten:

21 "**§ 58-16-5. Conditions of admission-licensure.**

22 A foreign or alien insurance company may be ~~admitted and authorized~~ licensed to do
23 business when it:

24 (1) Deposits with the Commissioner a certified copy of its charter or
25 certificate of organization and a statement of its financial condition and
26 business, in such form and detail as he requires, signed and sworn to by
27 its president and secretary or other proper officer, and pays for the filing
28 of this statement the sum required by law.

29 (2) Satisfies the Commissioner that it is fully and legally organized under
30 the laws of its state or government to do the business it proposes to
31 ~~transact,~~ transact as direct insurance or assumed reinsurance and that it
32 has been successful in the conduct of ~~such~~ that business; that it has, if a
33 stock company, a free surplus and a fully paid-up and unimpaired
34 capital, exclusive of stockholders' obligations of any description of an
35 amount not less than that required for the organization of a domestic
36 company writing the same kinds of business; and if a mutual company
37 that its free surplus is not less than that required for the organization of a
38 domestic company writing the same kind of business, and that such
39 capital, surplus, and other funds are invested in substantial accordance
40 with the requirements of ~~Articles 1 through 64~~ of this Chapter.

41 (3) Repealed by Session Laws 1995, c. 517, s. 6.

42 (4) Repealed by Session Laws 1987, c. 629, s. 20.

- 1 (5) Files with the Commissioner a certificate that it has complied with the
2 laws of the state or government under which it was organized and is
3 authorized to make contracts of insurance.
- 4 (6) Satisfies the Commissioner that it is in substantial compliance with ~~the~~
5 ~~provisions of~~ G.S. 58-7-21, 58-7-26, 58-7-30, and 58-7-31 and Article 13
6 of this Chapter.
- 7 (7) Satisfies the Commissioner that it is in compliance with the company
8 name requirements of G.S. 58-7-35.
- 9 (8) Satisfies the Commissioner that it is in substantial compliance with the
10 requirements of G.S. 58-7-37 pertaining to the background of its
11 officers and directors.
- 12 (9) Files with the Commissioner an instrument appointing the
13 Commissioner as the company's agent on whom any legal process under
14 G.S. 58-16-30 may be served. This appointment is irrevocable as long
15 as any liability of the company remains outstanding in this State. A
16 copy of this instrument, certified by the Commissioner, is sufficient
17 evidence of this appointment; and service upon the Commissioner is
18 sufficient service upon the company."

19 Section 15. G.S. 58-16-6 reads as rewritten:

20 "**§ 58-16-6. Conditions of continued licensure.**

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

26 Section 16. G.S. 58-19-25(a) reads as rewritten:

27 "(a) Every insurer that is licensed to do business in this State and that is a member
28 of an insurance holding company system shall register with the Commissioner, except a
29 foreign insurer subject to the registration requirements and standards adopted by statute
30 or regulation in the jurisdiction of its domicile that are substantially similar to those
31 contained ~~in this section and G.S. 58-19-30 or a provision such as the following:~~ Each registered
32 ~~insurer shall keep current the information required to be disclosed in its registration statement by~~
33 ~~reporting all material changes or additions within 15 days after the end of the month in which it~~
34 ~~learns of each change or addition. The insurer shall also file a copy of its registration statement~~
35 ~~and any amendments to the statement in each state in which that insurer is authorized to do~~
36 ~~business if requested by the insurance regulator of that state. in:~~

37 (1) This section.

38 (2) G.S. 58-19-30(a), 58-19-30(c), and 58-19-30(d).

39 (3) G.S. 58-19-30(b) or a provision such as the following: Each registered
40 insurer shall keep current the information required to be disclosed in its
41 registration statement by reporting all material changes or additions
42 within 15 days after the end of the month in which it learns of each
43 change or addition. The insurer shall also file a copy of its registration

1 statement and any amendments to the statement in each state in which
2 that insurer is authorized to do business, if requested by the insurance
3 regulator of that state.

4 Any insurer that is subject to registration under this section shall register within 30 days
5 after it becomes subject to registration, and an amendment to the registration statement
6 shall be filed by March 1 of each year for the previous calendar year; unless the
7 Commissioner for good cause shown extends the time for registration or filing, and then
8 within the extended time. All registration statements shall contain a summary, on a form
9 prescribed by the Commissioner, outlining all items in the current registration statement
10 representing changes from the prior registration statement. The Commissioner may
11 require any insurer that is a member of a holding company system that is not subject to
12 registration under this section to furnish a copy of the registration statement or other
13 information filed by the insurance company with the insurance regulator of its
14 domiciliary jurisdiction."

15 Section 17. G.S. 58-19-30(b) reads as rewritten:

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

- 21 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
22 or investments, provided the transactions equal or exceed: (i) with
23 respect to nonlife insurers, the lesser of three percent (3%) of the
24 insurer's admitted assets or twenty-five percent (25%) of surplus as
25 regards policyholders; (ii) with respect to life insurers, three percent
26 (3%) of the insurer's admitted assets; each as of the preceding December
27 31.
- 28 (2) Loans or extensions of credit to any person who is not affiliated, where
29 the insurer makes the loans or extensions of credit with the agreement or
30 understanding that the proceeds of the transactions, in whole or in
31 substantial part, are to be used to make loans or extensions of credit to,
32 to purchase assets of, or to make investments in, any affiliate of the
33 insurer making the loans or extensions of credit provided the
34 transactions equal or exceed: (i) with respect to nonlife insurers, the
35 lesser of three percent (3%) of the insurer's admitted assets or twenty-
36 five percent (25%) of surplus as regards policyholders; (ii) with respect
37 to life insurers, three percent (3%) of the insurer's admitted assets; each
38 as of the preceding December 31.
- 39 (3) Reinsurance agreements or modifications to the agreements in which the
40 reinsurance premium or a change in the insurer's liabilities equals or
41 exceeds five percent (5%) of the insurer's surplus as regards
42 policyholders, as of the preceding December 31, including those
43 agreements that may require as consideration the transfer of assets from

1 an insurer to a nonaffiliate, if an agreement or understanding exists
2 between the insurer and nonaffiliate that any portion of the assets will
3 be transferred to one or more affiliates of the insurer.

4 (4) All management agreements, service contracts, guarantees, or cost-
5 sharing arrangements.

6 (4a) Direct or indirect acquisitions or investments in a person that controls
7 the insurer or an affiliate of the insurer in an amount which, together
8 with its present holdings in the investments, exceeds two and one-half
9 percent (2.5%) of the insurer's surplus to policyholders. Direct or
10 indirect acquisitions or investments in subsidiaries acquired pursuant to
11 G.S. 58-19-10, or in nonsubsidiary insurance affiliates that are subject to
12 the provisions of this Article, are exempt from this requirement.

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

16 Section 18. G.S. 58-26-25 reads as rewritten:

17 "**§ 58-26-25. Amount of unearned premium reserve.**

18 (a) The unearned premium reserve of every domestic title insurance company shall
19 consist of the aggregate of:

20 (1) The amount of the unearned premium reserve held as of January 1,
21 1974-1998.

22 (2) The amount of all additions required to be made to such reserve by this
23 section, less the reduction of such aggregate amount required hereby.

24 (b) On each contract of title insurance issued by a domestic title insurance
25 company on and after January 1, 1974-1998, there shall be reserved initially as an
26 unearned premium reserve a sum equal to ten per centum (10%) of the original risk
27 premium charged therefor.

28 (c) The aggregate of the amounts set aside in unearned premium reserves in any
29 calendar year, pursuant to subsection (b) of this section, shall be reduced annually at the
30 end of each calendar year following the year in which the policy is issued, ~~at the annual~~
31 ~~rate of one twentieth of the aggregate of such amounts over a period of 20 years, pursuant to~~
32 the following: twenty percent (20%) the first year; ten percent (10%) for years two and
33 three; five percent (5%) for years four through 10; three percent (3%) for years 11
34 through 15; and two percent (2%) for years 16 through 20.

35 (d) The entire amount of the unearned premium reserve held as of January 1, 1974,
36 1998, shall be added to the reserve as of that date and shall be released from said reserve
37 and restored to net profits ~~at the annual rate of one twentieth of the said entire amount,~~
38 beginning in the next ensuing calendar year in accordance with percentages reflected in G.S.
39 58-26-25(c).

40 (e) ~~If substantially the entire outstanding liability under all policies, contracts of~~
41 ~~title insurance or reinsurance agreements of any such title insurance company shall be~~
42 ~~reinsured, the value of the consideration received by a reinsuring title insurance company~~
43 ~~authorized to transact the business of title insurance in this State, shall constitute, in its~~

1 entirety, unearned portions of original premiums and be added to its unearned premium
2 reserve and deemed, for recovery purposes, to have been provided for liabilities assumed
3 during the year of such reinsurance. The amount of such addition to the unearned
4 premium reserve of such assuming title insurance company shall be not less, however,
5 than two thirds of the amount of the unearned premium reserve required to be maintained
6 by the ceding title insurance company at the time of such reinsurance. A supplemental
7 reserve shall be established in accordance with the instructions of the annual statement
8 required under G.S. 58-27-15 consisting of the reserves necessary, when taken in
9 combination with the reserves required by G.S. 58-26-25(a) through (d), to cover the
10 company's liabilities with respect to all losses, claims, and loss adjustment expenses.

11 (f) Each title insurer subject to this Article shall file with its annual statement
12 required under G.S. 58-27-15 an actuarial certification of a member in good standing of
13 the American Academy of Actuaries. The actuarial certification shall conform to the
14 NAIC annual statement instructions for title insurers.

15 (g) If substantially the entire outstanding liability under all policies, contracts of
16 title insurance, or reinsurance agreements of any title insurance company is reinsured, the
17 value of the consideration received by a ceding title insurance company authorized to
18 transact title insurance in this State shall constitute, in its entirety, unearned portions of
19 original premiums, shall be added to its unearned premium reserve, and shall be deemed,
20 for recovery purposes, to have been provided for liabilities assumed during the year of
21 the reinsurance. The amount of the addition to the unearned premium reserve of the
22 assuming title insurance company shall be not less than two-thirds of the amount of the
23 unearned premium reserve required to be maintained by the ceding title insurance
24 company at the time of the reinsurance."

25 Section 19. G.S. 58-34-2(a) is amended by adding a new subdivision to read:

26 "(1a) 'Custodial agreement' means any agreement or contract under which any
27 person is delegated authority to safekeep assets of the insurer."

28 Section 20. G.S. 58-34-10 reads as rewritten:

29 "**§ 58-34-10. Management ~~contracts~~, ~~contracts~~ or custodial agreements.**

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

37 (b) Any domestic insurer that has a management contract or custodial agreement
38 shall file a statement with the initial filing of that contract that discloses (i) criteria on
39 which charges to the insurer are based for that contract; (ii) whether management
40 personnel or other employees of the insurer are to be performing management functions
41 and receiving any remuneration therefor through that contract in addition to the
42 compensation by way of salary received directly from the insurer for their services; (iii)
43 whether the contract transfers substantial control of the insurer or any of the powers

1 vested in the board of directors, by statute, articles of incorporation, or bylaws, or
2 substantially all of the basic functions of the insurer's management; (iv) biographical
3 information for each officer and director of the management firm; and (v) other
4 information concerning the contract or the management or custodian firm as may be
5 included from time to time in any registration forms adopted or approved by the
6 Commissioner. Such statement shall be filed on a form prescribed by the Commissioner.

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

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

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

31 Section 21. G.S. 58-34-15 reads as rewritten:

32 "**§ 58-34-15. Grounds for disapproval.**

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

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

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

- 1 (3) That the contract would transfer substantial control of the insurer or any
2 of the powers vested in the board of directors, by statute, articles of
3 incorporation, or bylaws, or substantially all of the basic functions of the
4 insurance company management; or
- 5 (4) That the contract contains provisions that would be clearly detrimental
6 to the best interest of policyholders, stockholders, or members of the
7 insurer; or
- 8 (5) That the officers and directors of the management or custodial firm are
9 of known bad character or have been affiliated, directly or indirectly,
10 through ownership, control, management, reinsurance transactions, or
11 other insurance or business relations with any person known to have
12 been involved in the improper manipulation of assets, accounts, or
13 reinsurance.
- 14 (6) That the custodial agreement is not substantially the same as the form
15 adopted by the Commissioner.

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

21 Section 22. G.S. 58-65-95 reads as rewritten:

22 "**§ 58-65-95. Investments and reserves.**

23 (a) No corporation subject to this Article shall invest in any securities other than
24 securities permitted ~~by the laws of this State by Article 7 of this Chapter~~ for the investment
25 of ~~assets of life insurance companies, banks, trust companies, executors, administrators and~~
26 ~~guardians~~ assets.

27 (b) ~~Every such corporation subject to this Article after the first full year of doing~~
28 ~~business after the passage of this Article and Article 66 of this Chapter shall accumulate and~~
29 maintain, in addition to proper reserves for current administrative liabilities and whatever
30 reserves are deemed to be adequate and proper by the Commissioner ~~of Insurance~~ for
31 unpaid ~~hospital and/or medical and/or~~ hospital, medical, or dental bills, and unearned
32 membership dues, a special contingent surplus or reserve at the following rates annually
33 of its gross annual collections from membership dues, exclusive of receipts from cost
34 plus plans, until ~~said the reserve shall equal~~ equals an amount that is three times its
35 average monthly expenditures for ~~hospital and/or medical and/or dental~~ claims and
36 administrative and selling expenses:

- 37 (1) First \$200,000 4%
- 38 (2) Next \$200,000 2%
- 39 (3) All above \$400,000 1%

40 (c) Any ~~such corporation subject to this Article~~ may accumulate and maintain a
41 contingent reserve in excess of the ~~reserve hereinabove provided for~~ reserve required in
42 subsection (b) of this section, not to exceed an amount equal to six times the average

1 monthly expenditures for hospital and/or medical and/or dental claims and administrative
2 and selling expenses.

3 (d) ~~In the event~~ If the Commissioner of Insurance finds that special conditions exist
4 warranting an increase or decrease in the reserves or schedule of reserves, hereinabove
5 ~~provided for, it may be modified by reserves in subsection (b) of this section, the~~
6 ~~Commissioner of Insurance accordingly, may modify them accordingly. provided~~ Provided,
7 however, when special conditions exist warranting an increase in ~~said~~ the schedule of
8 reserves, ~~said~~ the schedule shall not be increased by the Commissioner of Insurance until a
9 reasonable length of time ~~shall have~~ has elapsed after the Commissioner gives notice of
10 ~~such~~ the increase."

11 Section 23. Article 65 of Chapter 58 of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 58-65-102. Financial statements; examinations.**

14 (a) Every corporation organized under this Article is subject to G.S. 58-2-165.

15 (b) Service corporations organized under this Article shall be examined under G.S.
16 58-2-131, 58-2-132, and 58-2-133."

17 Section 24. Article 67 of Chapter 58 of the General Statutes is amended by
18 adding a new section to read:

19 **"§ 58-67-56. Financial statements.**

20 Every HMO under this Chapter is subject to G.S. 58-2-165."

21 Section 25. G.S. 58-67-160 reads as rewritten:

22 **"§ 58-67-160. Fees.**

23 Every health maintenance organization subject to this Article shall pay to the
24 Commissioner the following fees:

25 (1) ~~For filing an application for a certificate of authority, two hundred fifty~~
26 ~~dollars (\$250.00); for each renewal thereof, five hundred dollars~~
27 ~~(\$500.00);~~

28 (2) ~~For filing each annual report, one hundred dollars (\$100.00).~~

29 two hundred fifty dollars (\$250.00) for filing an application for a certificate of authority
30 and five hundred dollars (\$500.00) for renewal of a certificate of authority."

31 Section 26. G.S. 58-3-90, 58-65-100, 58-65-105, and 58-67-55 are repealed.

32 Section 27. This act becomes effective October 1, 1997.