

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 318*

Short Title: Insurance Producer Licensing.

(Public)

Sponsors: Senator Wellons.

Referred to: Insurance and Consumer Protection.

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAWS ON LICENSING OF INSURANCE AGENTS AND BROKERS TO MAKE THEM CONFORM TO A MODEL UNIFORM INSURANCE PRODUCER LICENSING ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND THEREBY, ALONG WITH THE OTHER STATES, ACHIEVE NATIONAL UNIFORMITY IN LICENSING INSURANCE PRODUCERS, AS PROVIDED BY THE FEDERAL GRAMM-LEACH-BLILEY ACT, PUBLIC LAW 106-102.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-1 reads as rewritten:

"§ 58-33-1. Scope.

This Article governs the qualifications and procedures for the licensing of agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers. This Article applies to any and all kinds of insurance and insurers under ~~Articles 1 through 67~~ of this Chapter. ~~Except as provided in G.S. 58-33-125, this Article does not apply to the licensing of surplus lines licensees under Article 21 of this Chapter.~~ For purposes of this Article, all references to insurance include annuities, unless the context otherwise requires. "

SECTION 2. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33.5. License required.

A person shall not sell, solicit, or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Article."

SECTION 3. G.S. 58-33-10 reads as rewritten:

"§ 58-33-10. Definitions.

As used in this Article, the following definitions apply:

- 1 (a)(1) 'Agent' means a person licensed to solicit applications for, or to
2 negotiate a policy of, insurance. A person not duly licensed who
3 solicits or negotiates a policy of insurance on behalf of an insurer is an
4 agent within the intent of this Article, and thereby becomes liable for
5 all the duties, requirements, liabilities and penalties to which an agent
6 of such company is subject, and such company by compensating such
7 person through any of its officers, agents or employees for soliciting
8 policies of insurance shall thereby accept and acknowledge such
9 person as its agent in such transaction.
- 10 (b)(2) 'Adjuster' means any individual who, for salary, fee, commission, or
11 other compensation of any nature, investigates or reports to his
12 principal relative to claims arising under insurance contracts other than
13 life or annuity. An attorney at law who adjusts insurance losses from
14 time to time incidental to the practice of his profession or an adjuster
15 of marine losses is not deemed to be an adjuster for purposes of this
16 Article. An individual may not simultaneously hold an agent's and an
17 adjuster's license in this State.
- 18 (c)(3) 'Broker' means a person who, being a licensed agent, procures
19 insurance for a party other than himself through a duly authorized
20 agent of an insurer that is licensed to do business in this State but for
21 which the broker is not authorized to act as agent. A person not duly
22 licensed who procures insurance for a party other than himself is a
23 broker within the intent of this Article, and thereby becomes liable for
24 all the duties, requirements, liabilities and penalties to which such
25 licensed brokers are subject.
- 26 (4) 'Business entity' means a corporation, association, partnership, limited
27 liability company, limited liability partnership, or other legal entity.
- 28 (5) 'Home state' means the District of Columbia and any state or territory
29 of the United States in which an insurance producer maintains his or
30 her principal place of residence or principal place of business and is
31 licensed to act as an insurance producer.
- 32 (6) 'Insurance' means any of the kinds of insurance in G.S. 58-7-15.
- 33 (7) 'Insurance producer' or 'producer' means a person required to be
34 licensed under this Article to sell, solicit, or negotiate insurance.
35 'Insurance producer' or 'producer' includes an agent, broker, and
36 limited representative.
- 37 (8) 'License' means a document issued by the Commissioner authorizing a
38 person to act as an insurance producer for the kinds of insurance
39 specified in the document. The license itself does not create any
40 authority, actual, apparent, or inherent, in the holder to represent or
41 commit an insurance carrier.
- 42 (9) 'Limited line credit insurance' includes any type of credit insurance
43 written under Article 57 of this Chapter, mortgage life, mortgage
44 guaranty, mortgage disability, automobile dealer gap insurance, and

- 1 any other form of insurance offered in connection with an extension of
2 credit that is limited to partially or wholly extinguishing that credit
3 obligation and that the Commissioner determines should be designated
4 a form of limited line credit insurance.
- 5 (10) 'Limited line credit insurance producer' means a person who sells,
6 solicits, or negotiates one or more forms of limited line credit
7 insurance coverage to individuals through a master, corporate, group,
8 or individual policy.
- 9 (11) 'Limited lines insurance' means motor vehicle physical damage
10 insurance and title insurance, or any other kind of insurance that the
11 Commissioner considers necessary to recognize for the purposes of
12 complying with G.S. 58-33-32(f).
- 13 (12) 'Limited lines producer' means a person authorized by the
14 Commissioner to sell, solicit, or negotiate limited lines insurance.
- 15 ~~(d)~~(13) 'Limited representative' means a person who is authorized by the
16 Commissioner to solicit or negotiate contracts for the particular kinds
17 of insurance identified in G.S. 58-33-25(e) and which kinds of
18 insurance are restricted in the scope of coverage afforded.
- 19 ~~(e)~~(14) 'Motor vehicle damage appraiser' means an individual who, for salary,
20 fee, commission, or other compensation of any nature, regularly
21 investigates or advises relative to the nature and amount of damage to
22 motor vehicles located in this State or the amount of money deemed
23 necessary to effect repairs thereto and who is not:
- 24 ~~(1)~~a. An adjuster licensed to adjust insurance claims in this State;
25 ~~(2)~~b. An agent for an insurance company who is not required by law
26 to be licensed as an adjuster;
27 ~~(3)~~c. An attorney at law who is not required by law to be licensed as
28 an adjuster; or
29 ~~(4)~~d. An individual who, incident to his regular employment in the
30 business of repairing defective or damaged motor vehicles,
31 investigates and advises relative to the nature and amount of
32 motor vehicle damage or the amount of money deemed
33 necessary to effect repairs thereto.
- 34 (15) 'Negotiate' means the act of conferring directly with, or offering advice
35 directly to, a purchaser or prospective purchaser of a particular
36 contract of insurance concerning any of the substantive benefits, terms,
37 or conditions of the contract, only if the person engaged in that act
38 either sells insurance or obtains insurance from insurers for purchasers.
- 39 (16) 'Person' means an individual or a business entity.
- 40 (17) "Sell" means to exchange a contract of insurance by any means, for
41 money or its equivalent, on behalf of an insurance company.
- 42 (18) 'Solicit' means attempting to sell insurance or asking or urging a
43 person to apply for a particular kind of insurance from a particular
44 company.

1 (19) 'Terminate' means the cancellation of the relationship between an
2 insurance producer and the insurer or the termination of a producer's
3 authority to transact insurance.

4 (20) 'Uniform Business Entity Application' means the current version of the
5 NAIC Uniform Business Entity Application for resident and
6 nonresident business entities.

7 (21) 'Uniform Application' means the current version of the NAIC Uniform
8 Application for resident and nonresident producer licensing."

9 **SECTION 4.** G.S. 58-33-17(d) reads as rewritten:

10 "(d) In the event that any provision of this section is violated by a limited licensee,
11 the Commissioner may:

12 (1) Revoke or suspend a limited license issued under this section in
13 accordance with the provisions of ~~G.S. 58-33-45~~; G.S. 58-33-46; or

14 (2) After notice and hearing, impose such other penalties, including
15 suspending the transaction of insurance at specific rental locations
16 where violations of this Article have occurred, as the Commissioner
17 deems to be necessary or convenient to carry out the purposes of this
18 section."

19 **SECTION 5.** G.S. 58-33-25 is repealed.

20 **SECTION 6.** Article 33 of Chapter 58 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 58-33-26. General license requirements.**

23 (a) No person shall act as or hold himself or herself out to be an agent, broker,
24 limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed.

25 (b) No agent, broker, or limited representative shall make application for,
26 procure, negotiate for, or place for others, any policies for any kinds of insurance as to
27 which that person is not then qualified and duly licensed.

28 (c) An agent or broker may be licensed for the following kinds of insurance:

29 (1) Life and health insurance, meaning:

30 a. Life-insurance coverage on human lives, including benefits of
31 endowment and annuities, and may include benefits in the event
32 of death or dismemberment by accident and benefits for
33 disability income.

34 b. Variable life and variable annuity products-insurance coverage
35 provided under variable life insurance contracts and variable
36 annuities.

37 c. Accident and health or sickness-insurance coverage for
38 sickness, bodily injury, or accidental death and may include
39 benefits for disability income.

40 (2) Property and liability insurance, meaning:

41 a. Coverage for the direct or consequential loss or damage to
42 property of every kind.

43 b. Coverage against legal liability, including that for death, injury,
44 or disability or damage to real or personal property.

1 (3) Personal lines, meaning property and liability insurance coverage sold
2 to individuals and families for primarily noncommercial purposes.

3 (4) Medicare supplement insurance and long-term care insurance, as a
4 supplement to a license for the kinds of insurance listed in subdivision
5 (1) of this subsection.

6 (d) A property and liability insurance license does not authorize an agent to sell
7 accident and health insurance. An agent must hold a life and health insurance license to
8 sell accident and health insurance.

9 (e) A life and health insurance license authorizes a resident agent to sell variable
10 contracts if the agent satisfies the Commissioner that the agent has met the National
11 Association of Securities Dealers requirements of the Secretary of State of North
12 Carolina.

13 (f) A life and health license authorizes a resident agent to sell Medicare
14 supplement and long-term care insurance policies as defined respectively in Articles 54
15 and 55 of this Chapter, provided that the licensee takes and passes a supplemental
16 written examination for the insurance as provided in G.S. 58-33-30(e) and pays the
17 supplemental registration fee provided in G.S. 58-33-125(c).

18 (g) A limited representative may receive qualification for one or more licenses
19 without examination for the following kinds of insurance:

20 (1) Dental services.

21 (2) Limited line credit insurance.

22 (3) Limited lines insurance.

23 (4) Motor club.

24 (5) Prearrangement insurance, as defined in G.S. 58-60-35(a)(2), when
25 offered or sold by a preneed sales licensee licensed under Article 13D
26 of Chapter 90 of the General Statutes.

27 (6) Travel accident and baggage.

28 (7) Vehicle service agreements and mechanical breakdown insurance.

29 (h) No licensed agent, broker, or limited representative shall solicit anywhere in
30 the boundaries of this State, or receive or transmit an application or premium of
31 insurance, for a company not licensed to do business in this State, except as provided in
32 G.S. 58-28-5 and Article 21 of this Chapter.

33 (i) No agent shall place a policy of insurance with any insurer unless the agent
34 has a current appointment as agent for the insurer in accordance with G.S. 58-33-40 or
35 has a valid temporary license issued in accordance with G.S. 58-33-66.

36 (j) A business entity that negotiates or solicits insurance may be licensed as an
37 agent, broker, or limited representative. Every member of the partnership and every
38 officer, director, stockholder, and employee of the business entity personally engaged in
39 this State in soliciting or negotiating policies of insurance shall be registered with the
40 Commissioner and each member, officer, director, stockholder, or employee shall also
41 qualify as an individual licensee. The business entity licensee shall notify the
42 Commissioner of any addition to or deletion from the list of registered individuals
43 within 30 days after the change.

1 (k) The license shall state the name and social security number, or other
2 identifying number of the licensee, date of issue, kind or kinds of insurance covered by
3 the license, and any other information as the Commissioner deems to be proper.

4 (l) A license issued to an agent authorizes him to act until his license is
5 otherwise suspended or revoked. Upon the suspension or revocation of a license, the
6 licensee or any person having possession of such license shall return it to the
7 Commissioner.

8 (m) A license of a broker, limited representative, adjuster, or motor vehicle
9 damage appraiser shall be renewed on April 1 each year and renewal fees shall be paid.
10 The Commissioner is not required to print licenses for the purpose of renewing licenses.
11 The Commissioner may establish for licenses 'staggered' license renewal dates that will
12 apportion renewals throughout each calendar year. If the system of staggered licensing
13 is adopted, the Commissioner may extend the licensure period for some licensees.
14 License renewal fees prescribed by G.S. 58-33-125 shall be prorated to the extent they
15 are commensurate with extensions.

16 (n) A license as an insurance producer is not required of the following:

17 (1) An officer, director, or employee of an insurer or of an insurance
18 producer, provided that the officer, director, or employee does not
19 receive any commission on policies written or sold to insure risks
20 residing, located, or to be performed in this State and:

21 a. The officer, director, or employee's activities are executive,
22 administrative, managerial, clerical, or a combination of these,
23 and are only indirectly related to the sale, solicitation, or
24 negotiation of insurance; or

25 b. The officer, director, or employee's function relates to
26 underwriting, loss control, inspection, or the processing,
27 adjusting, investigating, or settling of a claim on a contract of
28 insurance; or

29 c. The officer, director, or employee is acting in the capacity of a
30 special agent or agency supervisor assisting insurance producers
31 where the person's activities are limited to providing technical
32 advice and assistance to licensed insurance producers and do
33 not include the sale, solicitation, or negotiation of insurance.

34 (2) A person who secures and furnishes information for the purpose of
35 group life insurance, group property and casualty insurance, group
36 annuities, group or blanket accident and health insurance; or for the
37 purpose of enrolling individuals under plans; issuing certificates under
38 plans or otherwise assisting in administering plans; or performs
39 administrative services related to mass marketed property and casualty
40 insurance; where no commission is paid to the person for the service.

41 (3) An employer or association or its officers, directors, employees, or the
42 trustees of an employee trust plan, to the extent that the employers,
43 officers, employees, director, or trustees are engaged in the
44 administration or operation of a program of employee benefits for the

1 employer's or association's own employees or the employees of its
2 subsidiaries or affiliates, which program involves the use of insurance
3 issued by an insurer, as long as the employers, associations, officers,
4 directors, employees, or trustees are not in any manner compensated,
5 directly or indirectly, by the company issuing the contracts.

6 (4) Employees of insurers or organizations employed by insurers who are
7 engaging in the inspection, rating, or classification of risks, or in the
8 supervision of the training of insurance producers and who are not
9 individually engaged in the sale, solicitation, or negotiation of
10 insurance.

11 (5) A person whose activities in this State are limited to advertising
12 without the intent to solicit insurance in this State through
13 communications in printed publications or other forms of electronic
14 mass media whose distribution is not limited to residents of this State,
15 provided that the person does not sell, solicit, or negotiate insurance
16 that would insure risks residing, located, or to be performed in this
17 State.

18 (6) A person who is not a resident of this State who sells, solicits, or
19 negotiates a contract of insurance for commercial property and
20 casualty risks to an insured with risks located in more than one state
21 insured under that contract, provided that that person is otherwise
22 licensed as an insurance producer to sell, solicit, or negotiate that
23 insurance in the state where the insured maintains its principal place of
24 business and the contract of insurance insures risks located in that
25 state.

26 (7) A salaried full-time employee who counsels or advises his or her
27 employer relative to the insurance interests of the employer or of the
28 subsidiaries or business affiliates of the employer provided that the
29 employee does not sell or solicit insurance or receive a commission.

30 (8) Licensed insurers authorized to write the kinds of insurance described
31 in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without
32 the involvement of a licensed agent.

33 (o) Nothing in this Article requires an insurer to obtain an insurance producer
34 license. In this subsection, 'insurer' does not include an insurer's officers, directors,
35 employees, subsidiaries, or affiliates."

36 **SECTION 7.** G.S. 58-33-30(a), (b), and (c) are repealed.

37 **SECTION 8.** G.S. 58-33-30(d)(3) reads as rewritten:

38 "(3) Each resident applicant for a Medicare supplement and long-term care
39 insurance license shall furnish evidence satisfactory to the
40 Commissioner of successful completion of 10 hours of instruction,
41 which shall in all cases include the principles of Medicare supplement
42 and long-term care insurance and federal and North Carolina law
43 relating to such insurance. ~~An~~ A resident applicant who submits
44 satisfactory evidence of having successfully completed an agent

1 training course that has been approved by the Commissioner and that
2 is offered by or under the auspices of ~~an admitted~~ a licensed life or
3 health insurer or a professional insurance association satisfies the
4 educational requirements of this subdivision."

5 **SECTION 9.** G.S. 58-33-30(e) reads as rewritten:

6 "(e) Examination.

- 7 (1) After completion and filing of the application with the Commissioner,
8 except as provided in G.S. 58-33-35, the Commissioner shall require
9 each applicant for license as an agent or an adjuster to take ~~a written~~ an
10 examination as to ~~his~~ the applicant's competence to be licensed. The
11 applicant must take and pass the examination according to
12 requirements prescribed by the Commissioner.
- 13 (2) The Commissioner may require any licensed agent, adjuster, or motor
14 vehicle damage appraiser to take and successfully pass an examination
15 in writing, testing his competence and qualifications as a condition to
16 the continuance or renewal of his license, if the licensee has been
17 found guilty of any violation of any provision of ~~Articles 1 through 67~~
18 ~~of~~ this Chapter. If an individual fails to pass such an examination, the
19 Commissioner shall revoke all licenses issued in his name and no
20 license shall be issued until such individual has passed an examination
21 as provided in this Article.
- 22 (3) Each examination shall be as the Commissioner prescribes and shall be
23 of sufficient scope to test the applicant's knowledge of:
24 a. The terms and provisions of the policies or contracts of
25 insurance ~~he~~ the applicant proposes to effect; or
26 b. The types of claims or losses ~~he~~ the applicant proposes to
27 adjust; and
28 c. The duties and responsibilities of ~~such a~~ the license; and
29 d. The current laws of this State applicable to ~~such a~~ the license.
- 30 (4) The answers of the applicant to ~~any such~~ the examination shall be
31 ~~written~~ provided by the applicant under the Commissioner's
32 supervision. The Commissioner shall give examinations at such times
33 and places within this State as ~~he deems~~ the Commissioner considers
34 necessary reasonably to serve the convenience of both the
35 Commissioner and applicants: Provided that the Commissioner ~~is~~
36 ~~authorized to~~ may contract directly with persons for the processing of
37 examination application forms and for the administration and grading
38 of the examinations required by this section; the Commissioner ~~is~~
39 ~~authorized to~~ may charge a reasonable fee in addition to the
40 registration fee charged under G.S. 58-33-125, to offset the cost of the
41 examination contract authorized by this subsection; and such contracts
42 shall not be subject to Article 3 of Chapter 143 of the General Statutes.
- 43 (5) The Commissioner shall collect in advance the examination and
44 registration fees provided in G.S. 58-33-125 and in subsection (4) of

1 this section. The Commissioner shall make or cause to be made
2 available to all applicants, for a reasonable fee to offset the costs of
3 production, materials that he ~~deems~~ considers necessary for the
4 applicants' proper preparation for ~~such exams.~~ examinations. The
5 Commissioner ~~is empowered to~~ may contract directly with publishers
6 and other suppliers for the production of ~~such~~ the preparatory
7 materials, and contracts so let by the Commissioner shall not be
8 subject to Article 3 of Chapter 143 of the General Statutes.

9 (6) In addition to the examinations for the kinds of insurance specified in
10 G.S. 58-33-25(c)(1) and (2), before any ~~person~~ resident may sell
11 Medicare supplement or long-term care insurance policies defined
12 respectively in Articles 54 and 55 of this Chapter, ~~he~~ the resident must
13 take and pass a supplemental written examination according to
14 requirements prescribed by the Commissioner.

15 (7) An individual who fails to appear for the examination as scheduled or
16 fails to pass the examination, shall reapply for an examination and
17 remit all required fees and forms before being rescheduled for another
18 examination."

19 **SECTION 10.** G.S. 58-33-30(g) reads as rewritten:

20 "(g) Denial of License. – If the Commissioner finds that the applicant has not fully
21 met the requirements for licensing, he shall refuse to issue the license and shall notify in
22 writing the applicant and the appointing insurer, if any, of such denial, stating the
23 grounds therefor. The application may also be denied for any reason for which a license
24 may be suspended or revoked or not renewed under ~~G.S. 58-33-45(a).~~ G.S. 58-33-46.
25 Within 30 days after service of the notification, the applicant may make a written
26 demand upon the Commissioner for a review to determine the reasonableness of the
27 Commissioner's action. The review shall be completed without undue delay, and the
28 applicant shall be notified promptly in writing as to the outcome of the review. Within
29 30 days after service of the notification as to the outcome, the applicant may make a
30 written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B
31 of the General Statutes if the applicant disagrees with the outcome."

32 **SECTION 11.** G.S. 58-33-30(i) reads as rewritten:

33 "(i) Retaliatory Provision. – Whenever, by the laws or regulations of any other
34 state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any
35 other requirements are imposed upon residents of this State who are nonresident
36 applicants or licensees of such other state or jurisdiction in addition to, or in excess of,
37 those imposed on nonresidents under this Article, the same such requirements shall be
38 imposed upon such residents of such other state or jurisdiction. This subsection does not
39 apply to fees charged to insurance producers."

40 **SECTION 12.** Article 33 of Chapter 58 of the General Statutes is amended
41 by adding a new section to read:

42 "**§ 58-33-31. Application for license.**

43 (a) A person applying for a resident insurance producer license shall make
44 application to the Commissioner on the Uniform Application and declare under penalty

1 of denial, suspension, or revocation of the license that the statements made in the
2 application are true, correct, and complete to the best of the individual's knowledge and
3 belief. Before approving the application, the Commissioner shall find that the
4 individual:

- 5 (1) Is at least 18 years of age.
- 6 (2) Has not committed any act that is a ground for denial, suspension, or
7 revocation set forth in G.S. 58-33-46.
- 8 (3) Where required by the Commissioner, has completed a prelicensing
9 course of study for the kinds of insurance for which the person has
10 applied.
- 11 (4) Has paid the fees set forth in G.S. 58-33-125.
- 12 (5) Has successfully passed the examinations for the kinds of insurance
13 for which the person has applied.

14 (b) A business entity acting as an insurance producer is required to obtain an
15 insurance producer license. Application shall be made using the Uniform Business
16 Entity Application. Before approving the application, the Commissioner shall find that:

- 17 (1) The business entity has paid the fees set forth in G.S. 58-33-125.
- 18 (2) The business entity has designated a licensed producer responsible for
19 the business entity's compliance with the insurance laws and
20 administrative rules of this State and orders of the Commissioner.

21 (c) The Commissioner may require any documents reasonably necessary to
22 verify the information contained in an application.

23 (d) Each insurer that sells, solicits, or negotiates any form of limited line credit
24 insurance shall provide to each individual whose duties will include selling, soliciting,
25 or negotiating limited line credit insurance a program of instruction approved by the
26 Commissioner."

27 **SECTION 13.** G.S. 58-33-32 reads as rewritten:

28 "**§ 58-33-32. Interstate reciprocity in producer licensing.**

29 (a) The purpose of this section is to make North Carolina insurance producer
30 licensing comply with the reciprocity requirements in the federal Gramm-Leach-Bliley
31 Act, Public Law 106-102. This section does not apply to surplus lines licensees in
32 Article 21 of this Chapter, except as provided in subsections (c) and (d) of this section.

33 (b) ~~As used in this section:~~

- 34 (1) ~~"Home state" means the District of Columbia and any state or territory~~
35 ~~of the United States in which an insurance producer maintains a~~
36 ~~principal place of residence or principal place of business and is~~
37 ~~licensed to act as an insurance producer.~~
- 38 (2) ~~"Insurance producer" or "producer" means a person required to be~~
39 ~~licensed under this Article to sell, solicit, or negotiate insurance.~~
- 40 (3) ~~"License" means a document issued by the Commissioner authorizing~~
41 ~~a person to act as an insurance producer for the kinds of insurance~~
42 ~~specified in the document. The license itself does not create any~~
43 ~~authority, actual, apparent, or inherent, in the holder to represent or~~
44 ~~commit to an insurance carrier.~~

- 1 (4) ~~"Limited line credit insurance" includes any type of credit insurance~~
2 ~~written under Article 57 of this Chapter, mortgage life, mortgage~~
3 ~~guaranty, mortgage disability, automobile dealer gap insurance, and~~
4 ~~any other form of insurance offered in connection with an extension of~~
5 ~~credit that is limited to partially or wholly extinguishing that credit~~
6 ~~obligation and that the Commissioner determines should be designated~~
7 ~~a form of limited line credit insurance.~~
- 8 (5) ~~"Limited line credit insurance producer" means a person who sells,~~
9 ~~solicits, or negotiates one or more forms of limited line credit~~
10 ~~insurance coverage to individuals through a master, corporate, group,~~
11 ~~or individual policy.~~
- 12 (6) ~~"Negotiate" means the act of conferring directly with or offering~~
13 ~~advice directly to a purchaser or prospective purchaser of a particular~~
14 ~~contract of insurance concerning any of the substantive benefits, terms,~~
15 ~~or conditions of the contract, provided that the person engaged in that~~
16 ~~act either sells insurance or obtains insurance from insurers for~~
17 ~~purchasers.~~
- 18 (7) ~~"Sell" means to exchange a contract of insurance by any means, for~~
19 ~~money or its equivalent, on behalf of an insurance company.~~
- 20 (8) ~~"Solicit" means attempting to sell insurance or asking or urging a~~
21 ~~person to apply for a particular kind of insurance from a particular~~
22 ~~company.~~
- 23 (9) ~~"Uniform Application" means the most recent version of the NAIC~~
24 ~~Uniform Application for resident and nonresident producer licensing.~~
- 25 (10) ~~"Uniform Business Entity Application" means the most recent version~~
26 ~~of the NAIC Uniform Business Entity Application for a resident and a~~
27 ~~nonresident corporation, association, partnership, limited liability~~
28 ~~company, limited liability partnership, or other legal entity.~~
- 29 (c) Unless denied licensure under G.S. 58-33-30 or G.S. 58-33-50, a nonresident
30 person shall receive a nonresident producer license if:
- 31 (1) The person is currently licensed as a resident and in good standing in
32 that person's home state;
- 33 (2) The person has submitted the proper request for licensure and has paid
34 the fees required by G.S. 58-33-125;
- 35 (3) The person has submitted or transmitted to the Commissioner the
36 application for licensure that the person submitted to that person's
37 home state, or in lieu of the same, a completed Uniform Application or
38 Uniform Business Entity Application; and
- 39 (4) The person's home state awards nonresident producer licenses to
40 residents of this State on the same a reciprocal basis.

41 The Commissioner may verify the producer's licensing status through the producer
42 database maintained by the NAIC or affiliates or subsidiaries of the NAIC.

43 (d) Notwithstanding any other provision of this section, a person licensed as a
44 surplus lines producer in that person's home state shall receive a nonresident surplus

1 lines license pursuant to the provisions of subsection (c) of this section. Except for the
2 licensure provisions of this section, nothing in this section otherwise amends or
3 supersedes any provision of Article 21 of this Chapter.

4 (e) Notwithstanding any other provision of this section, a person licensed or
5 registered as a viatical settlement broker, viatical settlement provider, or viatical
6 settlement representative, as defined in G.S. 58-58-42(a), in that person's home state
7 shall receive a nonresident viatical settlement broker, viatical settlement provider, or
8 viatical settlement representative license pursuant to this section. Except for the
9 licensure provisions of this section, nothing in this section otherwise amends or
10 supersedes any provision of G.S. 58-58-42.

11 (f) Notwithstanding any other provision of this section, a person licensed as a
12 limited line credit insurance producer or other type of insurance producer in that
13 person's home state shall receive a nonresident limited lines producer license pursuant
14 to the provisions of this section, granting the same scope of authority as granted under
15 the license issued by the producer's home state. For the purposes of this subsection,
16 limited lines insurance is any authority granted by the home state that restricts the
17 authority of the license to less than the total authority prescribed in the associated major
18 lines under G.S. 58-33-25(c).

19 (g) An individual who applies for an insurance producer license in this State who
20 was previously licensed for the same kinds of insurance in that individual's home state
21 shall not be required to complete any prelicensing education or examination. This
22 exemption is available only if:

- 23 (1) The applicant is currently licensed in the applicant's home state; or
- 24 (2) The application is received within 90 days after the cancellation of the
25 applicant's previous license and the applicant's home state issues a
26 certification that, at the time of cancellation, the applicant was in good
27 standing in that state; or
- 28 (3) The home state's producer database records, maintained by the NAIC
29 or affiliates or subsidiaries of the NAIC, indicate that the producer is
30 or was licensed in good standing for the kind of insurance requested.

31 A person licensed as an insurance producer in another state who moves to this State
32 shall make application within 90 days after establishing legal residence to become a
33 resident licensee pursuant to G.S. 58-33-31. No prelicensing education or examination
34 shall be required of that person to obtain a license for any kind of insurance previously
35 held in the prior state except where the Commissioner determines otherwise by
36 administrative rule.

37 (h) The Commissioner shall not assess a greater fee for an insurance license or
38 related service to a nonresident producer based solely on the fact that the producer does
39 not reside in this State.

40 (i) The Commissioner shall waive any license application requirements for a
41 nonresident license applicant with a valid license from the applicant's home state, except
42 the requirements imposed by subsection (c) of this section, if the applicant's home state
43 awards nonresident licenses to residents of this State on the same basis.

1 (j) A nonresident producer's satisfaction of the nonresident producer's home
2 state's continuing education requirements for licensed insurance producers shall
3 constitute satisfaction of this State's continuing education requirements if the
4 nonresident producer's home state recognizes the satisfaction of its continuing education
5 requirements imposed upon producers from this State on the same basis.

6 (k) A producer shall report to the Commissioner any administrative action taken
7 against the producer in another state or by another governmental agency in this State
8 within 30 days after the final disposition of the matter. This report shall include a copy
9 of the order or consent order and other relevant legal documents.

10 (l) Within 30 days after the initial pretrial hearing date, a producer shall report to
11 the Commissioner any criminal prosecution of the producer taken in any state. The
12 report shall include a copy of the initial complaint filed, the order resulting from the
13 hearing, and any other relevant legal documents."

14 **SECTION 14.** G.S. 58-33-40(e) reads as rewritten:

15 "(e) An appointment shall continue in effect as long as the appointed agent is
16 properly licensed and the appointing insurer is authorized to transact business in this
17 State, unless the appointment is cancelled. ~~Upon the cancellation of an appointment the~~
18 ~~insurer shall, within 30 days, file written notice of cancellation with the Commissioner~~
19 ~~in a form prescribed by him indicating the date of cancellation. A copy shall be~~
20 ~~provided to the agent by the insurer."~~

21 **SECTION 15.** G.S. 58-33-45 is repealed.

22 **SECTION 16.** Article 33 of Chapter 58 of the General Statutes is amended
23 by adding a new section to read:

24 **"§ 58-33-46. Suspension, probation, revocation, or nonrenewal of licenses.**

25 (a) The Commissioner may place on probation, suspend, revoke, or refuse to
26 renew any license issued under this Article, in accordance with the provisions of Article
27 3A of Chapter 150B, for any one or more of the following causes:

- 28 (1) Providing incorrect, misleading, incomplete, or materially untrue
29 information in the license application.
- 30 (2) Violating any insurance laws, or violating any administrative rule,
31 subpoena, or order of the Commissioner or of another state's insurance
32 regulator.
- 33 (3) Obtaining or attempting to obtain a license through misrepresentation
34 or fraud.
- 35 (4) Improperly withholding, misappropriating, or converting any monies
36 or properties received in the course of doing insurance business.
- 37 (5) Intentionally misrepresenting the terms of an actual or proposed
38 insurance contract or application for insurance.
- 39 (6) Having been convicted of a felony or a misdemeanor involving
40 dishonesty or a breach of trust.
- 41 (7) Having admitted or been found to have committed any insurance
42 unfair trade practice or fraud.

- 1 (8) Using fraudulent, coercive, or dishonest practices, or demonstrating
2 incompetence, untrustworthiness, or financial irresponsibility in the
3 conduct of business in this State or elsewhere.
- 4 (9) Having an insurance producer license, or its equivalent, denied,
5 suspended, or revoked in any other state, province, district or territory.
- 6 (10) Forging another's name to an application for insurance or to any
7 document related to an insurance transaction.
- 8 (11) Improperly using notes or any other reference material to complete an
9 examination for an insurance license or for a prelicensing or
10 continuing education course.
- 11 (12) Knowingly accepting insurance business from an individual who is not
12 licensed.
- 13 (13) Failing to comply with an administrative or court order imposing a
14 child support obligation.
- 15 (14) Failing to pay State income tax or comply with any administrative or
16 court order directing payment of State income tax.
- 17 (15) Cheating on an examination for an insurance license or for a
18 prelicensing or continuing education course.
- 19 (16) Willfully overinsuring property.
- 20 (17) Any cause for which issuance of the license could have been refused
21 had it then existed and been known to the Commissioner at the time of
22 issuance.

23 (b) The license of a business entity may be suspended, revoked, or refused if the
24 Commissioner finds, after giving notice and an opportunity for a hearing, that an
25 individual licensee's violation was known or should have been known by one or more
26 of the directors, principals, partners, officers, or managers acting on behalf of the
27 business entity and the violation was neither reported to the Commissioner nor was
28 corrective action taken.

29 (c) G.S. 58-2-50 applies to any investigation under this section. G.S. 58-2-70
30 applies to any person subject to licensure under this Article.

31 (d) Upon the filing for protection under the United States Bankruptcy Code by
32 any person licensed under this Article, or by any insurance agency in which such
33 licensed person holds a position of employment, management, or ownership, such
34 person shall notify the Commissioner of the filing for protection within three business
35 days after the filing. Upon the appointment of a receiver by a court of this State for any
36 person licensed under this Article, or for any insurance agency in which that licensed
37 person holds a position of employment, management, or ownership, the person shall
38 notify the Commissioner of the appointment within three business days thereafter. The
39 willful failure to notify the Commissioner within three business days after the filing for
40 protection or the appointment of a receiver shall, after hearing, cause the license of any
41 person failing to make notification to be suspended for a period of not less than 60 days
42 nor more than three years, in the discretion of the Commissioner.

43 (e) If the Commissioner refuses to grant a license, or suspends or revokes a
44 license, any appointment of the applicant or licensee shall likewise be revoked. No

1 individual whose license is revoked shall be issued another license without first
2 complying with all requirements of this Article.

3 (f) No person shall be issued a license or appointment to enter the employment
4 of any agency or person, which agency or person is at that time found by the
5 Commissioner to be in violation of any of the insurance laws of this State, or which has
6 been in any manner disqualified under the laws of this State to engage in the insurance
7 business.

8 (g) The Commissioner shall retain the authority to enforce the provisions of, and
9 impose any penalty or remedy authorized by, this Chapter against any person who is
10 under investigation for or charged with a violation of this Chapter even if the person's
11 license or registration has been surrendered or has lapsed by operation of law."

12 **SECTION 17.** G.S. 58-33-55 is repealed.

13 **SECTION 18.** Article 33 of Chapter 58 of the General Statutes is amended
14 by adding a new section to read:

15 **"§ 58-33-56. Notification to Commissioner of termination.**

16 (a) An insurer or authorized representative of the insurer that terminates the
17 appointment, employment, contract, or other insurance business relationship with a
18 producer shall notify the Commissioner within 30 days after the effective date of the
19 termination, using a format prescribed by the Commissioner, if the reason for
20 termination is one of the reasons set forth in G.S. 58-33-46 or the insurer has knowledge
21 the producer was found by a court, government body, or self-regulatory organization
22 authorized by law to have engaged in any of the activities in G.S. 58-33-46. Upon the
23 written request of the Commissioner, the insurer shall provide additional information,
24 documents, records, or other data pertaining to the termination or activity of the
25 producer.

26 (b) An insurer or authorized representative of the insurer that terminates the
27 appointment, employment, or contract with a producer for any reason not set forth in
28 G.S. 58-33-46, shall notify the Commissioner within 30 days after the effective date of
29 the termination, using a format prescribed by the Commissioner. Upon written request
30 of the Commissioner, the insurer shall provide additional information, documents,
31 records, or other data pertaining to the termination.

32 (c) The insurer or the authorized representative of the insurer shall promptly
33 notify the Commissioner in a format acceptable to the Commissioner if, upon further
34 review or investigation, the insurer discovers additional information that would have
35 been reportable to the Commissioner in accordance with subsection (a) of this section
36 had the insurer then known of its existence.

37 (d) Within 15 days after making the notification required by subsections (a), (b),
38 and (c) of this section, the insurer shall mail a copy of the notification to the producer at
39 the producer's last known address. If the producer is terminated for cause for any of the
40 reasons listed in G.S. 58-33-46, the insurer shall provide a copy of the notification to the
41 producer at the producer's last known address by certified mail, return receipt requested,
42 postage prepaid, or by overnight delivery using a nationally recognized carrier.

43 (e) Within 30 days after the producer has received the original or additional
44 notification, the producer may file written comments concerning the substance of the

1 notification with the Commissioner. The producer shall, by the same means,
2 simultaneously send a copy of the comments to the reporting insurer, and the comments
3 shall become a part of the Commissioner's file and accompany every copy of a report
4 distributed or disclosed for any reason about the producer as permitted under subsection
5 (h) of this section.

6 (f) In the absence of actual malice, an insurer, the authorized representative of
7 the insurer, a producer, the Commissioner, or an organization of which the
8 Commissioner is a member, and that compiles the information and makes it available to
9 other commissioners or regulatory or law enforcement agencies, shall not be subject to
10 civil liability and a civil cause of action of any nature shall not arise against these
11 entities or their respective agents or employees, as a result of:

12 (1) Any statement or information required by or provided pursuant to this
13 section;

14 (2) Any information relating to any statement that may be requested in
15 writing by the Commissioner, from an insurer or producer; or

16 (3) A statement by a terminating insurer or producer to an insurer or
17 producer limited solely and exclusively to whether a termination for
18 cause under subsection (a) of this section was reported to the
19 Commissioner only if the propriety of any termination for cause under
20 subsection (a) of this section is certified in writing by an officer or
21 authorized representative of the insurer or producer terminating the
22 relationship.

23 (g) In any action brought against a person that may have immunity under
24 subsection (f) of this section for making any statement required by this section or for
25 providing any information relating to any statement that may be requested by the
26 Commissioner, the party bringing the action shall plead specifically in any allegation
27 that subsection (f) of this section does not apply because the person making the
28 statement or providing the information did so with actual malice. Subsection (f) or (g)
29 of this section does not abrogate or modify any existing statutory or common law
30 privileges or immunities.

31 (h) Any documents, materials, or other information in the control or possession
32 of the Department that is furnished by an insurer, producer, or an employee or agent
33 thereof acting on behalf of the insurer or producer, or obtained by the Commissioner in
34 an investigation under this section shall be confidential by law and privileged, is not
35 subject to G.S. 58-2-100 or Chapter 132 of the General Statutes, is not subject to
36 subpoena, and is not subject to discovery or admissible in evidence in any private civil
37 action. However, the Commissioner is authorized to use the documents, materials, or
38 other information in the furtherance of any regulatory or legal action brought as a part
39 of the Commissioner's duties. Neither the Commissioner nor any person who received
40 documents, materials, or other information while acting under the authority of the
41 Commissioner shall be permitted or required to testify in any private civil action
42 concerning any confidential documents, materials, or information subject to subsection
43 (f) of this section.

1 (i) In order to assist in the performance of the Commissioner's duties under this
2 Article, the Commissioner may:

3 (1) Share documents, materials, or other information, including the
4 confidential and privileged documents, materials, or information
5 subject to subsection (f) of this section, with other state, federal, and
6 international regulatory agencies, with the NAIC, its affiliates or
7 subsidiaries, and with state, federal, and international law enforcement
8 authorities, provided that the recipient agrees to maintain the
9 confidentiality and privileged status of the document, material, or other
10 information;

11 (2) Receive documents, materials, or information, including otherwise
12 confidential and privileged documents, materials, or information, from
13 the NAIC, its affiliates or subsidiaries and from regulatory and law
14 enforcement officials of other foreign or domestic jurisdictions, and
15 shall maintain as confidential or privileged any document, material, or
16 information received with notice or the understanding that it is
17 confidential or privileged under the laws of the jurisdiction that is the
18 source of the document, material, or information; and

19 (3) Enter into agreements governing sharing and use of information
20 consistent with this subsection.

21 (j) No waiver of any applicable privilege or claim of confidentiality in the
22 documents, materials, or information shall occur as a result of disclosure to the
23 Commissioner under this section or as a result of sharing as authorized in subsection (i)
24 of this section.

25 (k) Nothing in this Article prohibits the Commissioner from releasing final,
26 adjudicated actions including for cause terminations that are open to public inspection
27 under G.S. 58-2-100 to a database or other clearinghouse service maintained by the
28 NAIC, its affiliates, or subsidiaries of the NAIC.

29 (l) An insurer, the authorized representative of the insurer, or producer that fails
30 to report as required under this section or that is found to have reported with actual
31 malice by a court of competent jurisdiction may, after notice and hearing, have its
32 license suspended or revoked and may be fined in accordance with G.S. 58-2-70."

33 **SECTION 19.** G.S. 58-33-65 is repealed.

34 **SECTION 20.** Article 33 of Chapter 58 of the General Statutes is amended
35 by adding a new section to read:

36 "**§ 58-33-66. Temporary licensing.**

37 (a) The Commissioner may issue a temporary insurance producer license for a
38 period not to exceed 180 days without requiring an examination if the Commissioner
39 deems that the temporary license is necessary for the servicing of an insurance business
40 in any of the following cases:

41 (1) To the surviving spouse or court-appointed personal representative of a
42 licensed insurance producer who dies or becomes mentally or
43 physically disabled to allow adequate time for the sale of the insurance
44 business owned by the producer or for the recovery or return of the

1 producer to the business or to provide for the training and licensing of
2 new personnel to operate the producer's business.

3 (2) To a member or employee of a business entity licensed as an insurance
4 producer, upon the death or disability of an individual designated in
5 the business entity application or the license.

6 (3) To the designee of a licensed insurance producer entering active
7 service in the armed forces of the United States of America.

8 (4) In any other circumstance where the Commissioner deems that the
9 public interest will be served best by the issuance of this license.

10 (b) The Commissioner may by order limit the authority of any temporary
11 licensee in any way deemed necessary to protect insureds and the public. The
12 Commissioner may require the temporary licensee to have a suitable sponsor who is a
13 licensed producer or insurer and who assumes responsibility for all acts of the
14 temporary licensee and may impose other similar requirements designed to protect
15 insureds and the public. The Commissioner may by order revoke a temporary license if
16 the interest of insureds or the public are endangered. A temporary license may not
17 continue after the owner or the personal representative disposes of the business.

18 (c) An individual requesting a temporary license on account of death or disability
19 of an agent or broker shall be licensed to represent only those insurers that had
20 appointed such agent at the time of death or commencement of disability."

21 **SECTION 21.** G.S. 58-33-75 reads as rewritten:

22 "**§ 58-33-75. Twisting with respect to insurance policies; penalties.**

23 No licensee shall make or issue, or cause to be issued, any written or oral statement
24 that willfully misrepresents or willfully makes an incomplete comparison as to the
25 terms, conditions, or benefits contained in any policy of insurance for the purpose of
26 inducing or attempting to induce a policyholder in any way to terminate or surrender,
27 exchange, or convert any insurance policy. Any person who violates this section is
28 subject to the provisions of G.S. 58-2-70 and ~~58-33-45~~.58-33-46."

29 **SECTION 22.** G.S. 58-33-76(c) reads as rewritten:

30 "(c) Any person who violates this section is subject to the provisions of G.S.
31 58-2-70 and ~~G.S. 58-33-45~~.G.S. 58-33-46."

32 **SECTION 23.** Article 33 of Chapter 58 of the General Statutes is amended
33 by adding a new section to read:

34 "**§ 58-33-82. Commissions.**

35 (a) An insurance company or insurance producer shall not pay a commission,
36 service fee, brokerage, or other valuable consideration to a person for selling, soliciting,
37 or negotiating insurance in this State if that person is required to be licensed under this
38 Article and is not so licensed.

39 (b) A person shall not accept a commission, service fee, brokerage, or other
40 valuable consideration for selling, soliciting, or negotiating insurance in this State if that
41 person is required to be licensed under this Article and is not so licensed.

42 (c) Renewal or other deferred commissions may be paid to a person for selling,
43 soliciting, or negotiating insurance in this State if the person was required to be licensed

1 under this Article at the time of the sale, solicitation, or negotiation and was so licensed
2 at that time.

3 (d) An insurer or insurance producer may pay or assign commissions, service
4 fees, brokerages, or other valuable consideration to an insurance agency or to persons
5 who do not sell, solicit, or negotiate insurance in this State, unless the payment would
6 violate G.S. 58-33-85, 58-33-90, or 58-63-15(8).

7 (e) Only agents who are duly licensed with appropriate company appointments,
8 licensed brokers, or licensed limited representatives may accept, directly or indirectly,
9 any commission, brokerage, or other valuable consideration. However, any individual
10 duly appointed and licensed under this Article may pay that individual's commissions or
11 assign that individual's commissions, or direct that that individual's commissions be
12 paid to a partnership of which the individual is a member, employee, or agent, or to a
13 corporation of which the individual is an officer, employee, or agent. This section does
14 not prevent payment or receipt of renewal or other deferred commissions to or by any
15 person entitled thereto under this section."

16 **SECTION 24.** Article 33 of Chapter 58 of the General Statutes is amended
17 by adding a new section to read:

18 **"§ 58-33-83. Assumed names.**

19 An insurance producer doing business under any name other than the producer's
20 legal name shall notify the Commission before using the assumed name."

21 **SECTION 25.** G.S. 58-33-85(b) reads as rewritten:

22 "(b) No insurer, agent, broker, or limited representative shall knowingly charge to
23 or demand or receive from an applicant for insurance any money or other consideration
24 in return for the processing of applications or other forms or for the rendering of
25 services associated with a contract of insurance, which money or other consideration is
26 in addition to the premium for such contract, unless the applicant consents in writing
27 before any services are rendered. This subsection does not apply to the charging or
28 collection of any fees otherwise provided for by law."

29 **SECTION 26.** G.S. 58-3-180(c) reads as rewritten:

30 "(c) Any person who violates this section is subject to the applicable provisions of
31 G.S. 58-2-70 and ~~G.S. 58-33-45~~, G.S. 58-33-46, provided that the maximum civil
32 penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is two
33 thousand dollars (\$2,000)."

34 **SECTION 27.** G.S. 58-9-2(5) reads as rewritten:

35 "(5) "Intermediary" means any person who acts as a broker, as defined in
36 ~~G.S. 58-33-10(e)~~, G.S. 58-33-10(3), in soliciting, negotiating, or
37 procuring the making of any reinsurance contract or binder on behalf
38 of a ceding insurer; or acts as a broker, as defined in ~~G.S. 58-33-10(e)~~,
39 G.S. 58-33-10(3), in accepting any reinsurance contract on behalf of an
40 assuming insurer. "Intermediary" includes a broker or a manager, as
41 those terms are defined in this section."

42 **SECTION 28.** G.S. 58-21-40(d) reads as rewritten:

43 "(d) Each resident surplus lines licensee shall maintain active membership in an
44 advisory organization as a condition of continued licensure under this Article."

1 **SECTION 29.** If any section or provision of this act is declared
2 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
3 validity of the act as a whole or any part other than the part so declared to be
4 unconstitutional, preempted, or otherwise invalid.

5 **SECTION 30.** This act becomes effective July 1, 2002.