

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 482*
Committee Substitute Favorable 4/26/91
Senate Insurance Committee Substitute Adopted 6/13/91
Fourth Edition Engrossed 6/28/91

Short Title: TPA Law Rewrite.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS ON THIRD PARTY ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. Article 56 of Chapter 58 of the General Statutes is amended by adding the following new sections:

"§ 58-56-2. Definitions.

The following definitions apply in this Article:

- (1) Affiliate. Any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.
- (2) Control. Defined in G.S. 58-19-5(2).
- (3) Insurance. Any coverage offered or provided by an insurer.
- (4) Insurer. A person who undertakes to provide life or health insurance or benefits in this State that are subject to this Chapter. The term 'insurer' does not include a bona fide employee benefit plan established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974.
- (5) Third party administrator. A person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State, or residents

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1 of another state from offices in this State, in connection with life or
2 health insurance or annuities, except any of the following:

3 a. An employer on behalf of its employees or the employees of
4 one or more of its affiliates.

5 b. A union on behalf of its members.

6 c. An insurer that is licensed under Articles 1 through 67 of this
7 Chapter or that is acting as an insurer with respect to a policy
8 lawfully issued and delivered by it and pursuant to the laws of a
9 state in which the insurer is licensed to write insurance.

10 d. An agent or broker who is licensed by the Commissioner to sell
11 life or health insurance and whose activities are limited
12 exclusively to the sale of insurance.

13 e. A creditor on behalf of its debtors with respect to insurance
14 covering a debt between the creditor and its debtors.

15 f. A trust and its trustees, agents, and employees acting pursuant
16 to the trust established in conformity with 29 U.S.C. § 186.

17 g. A trust exempt from taxation under section 501(a) of the
18 Internal Revenue Code and its trustees and employees acting
19 pursuant to the trust, or a custodian and the custodian's agents
20 or employees acting pursuant to a custodian account that meets
21 the requirements of section 401(f) of the Internal Revenue
22 Code.

23 h. A financial institution subject to supervision or examination by
24 federal or state banking authorities, or a mortgage lender, to the
25 extent the financial institution or mortgage lender collects and
26 remits premiums to licensed insurance agents or authorized
27 insurers in connection with loan payments.

28 i. An attorney-at-law who adjusts or settles claims in the normal
29 course of business as an attorney-at-law and who does not
30 collect charges or premiums in connection with life or health
31 insurance or annuities.

32 j. An adjuster licensed by the Commissioner whose activities are
33 limited to adjustment of claims.

34 k. A person who acts solely as a TPA of one or more bona fide
35 employee benefit plans established by an employer, an
36 employee organization, or both, for which the insurance laws of
37 this State are preempted pursuant to the Employee Income
38 Security Act of 1974. The person shall comply with the
39 requirements of G.S. 58-56-51(f).

40 l. A person licensed as a managing general agent in this State,
41 whose activities are limited exclusively to the scope of activities
42 conveyed under the license.

43 (6) TPA. A third party administrator.

1 (7) Underwriting. This term includes the acceptance of employer or
2 individual applications for coverage of individuals in accordance with
3 the written rules of the insurer, the planning and coordination of an
4 insurance program, and the ability to procure bonds and excess
5 insurance.

6 **"§ 58-56-6. Written agreement necessary.**

7 (a) No TPA may act as a TPA without a written agreement between the TPA and
8 the insurer. The written agreement shall be retained as part of the official records of
9 both the insurer and the TPA for the duration of the agreement and for five years
10 thereafter. The agreement shall contain all provisions required by this Article, to the
11 extent those requirements apply to the functions performed by the TPA.

12 (b) The agreement shall include a statement of duties that the TPA is expected to
13 perform on behalf of the insurer and the kinds of insurance the TPA is to be authorized
14 to administer. The agreement shall provide for underwriting or other standards
15 pertaining to the business underwritten by the insurer.

16 (c) The insurer or TPA may, with written notice, terminate the agreement for
17 cause as provided in the agreement. The insurer may suspend the underwriting
18 authority of the TPA during the pendency of any dispute regarding the cause for
19 termination of the agreement. The insurer must fulfill any lawful obligations with
20 respect to policies affected by the agreement, regardless of any dispute between the
21 insurer and the TPA.

22 **"§ 58-56-11. Payment to TPA.**

23 If an insurer uses the services of a TPA, the payment to the TPA of any premiums or
24 charges for insurance by or on behalf of the insured party is considered payment to the
25 insurer. The payment of return premiums or claim payments forwarded by the insurer
26 to the TPA is not considered payment to the insured party or claimant until the
27 payments are received by the insured party or claimant. This section does not limit any
28 right of the insurer against the TPA resulting from the failure of the TPA to make
29 payments to the insurer, insured parties, or claimants.

30 **"§ 58-56-16. Records to be kept.**

31 (a) Every TPA shall maintain and make available to the insurer complete books
32 and records of all transactions performed on behalf of the insurer. The books and
33 records shall be maintained in accordance with prudent standards of insurance record
34 keeping and must be maintained for a period of at least five years after the date of their
35 creation.

36 (b) The Commissioner shall have access to books and records maintained by a
37 TPA for the purposes of examination, audit, and inspection. The Commissioner shall
38 keep confidential any trade secrets contained in those books and records, including the
39 identity and addresses of policyholders and certificate holders, except that the
40 Commissioner may use the information in any judicial or administrative proceeding
41 instituted against the TPA.

42 (c) The insurer shall own the records generated by the TPA pertaining to the
43 insurer, but the TPA shall retain the right to continuing access to books and records to

1 permit the TPA to fulfill all of its contractual obligations to insured parties, claimants,
2 and the insurer.

3 (d) In the event the insurer and the TPA cancel their agreement, notwithstanding
4 the provisions of subsection (a) of this section, the TPA may, by written agreement with
5 the insurer, transfer all records to a new TPA rather than retain them for five years. In
6 this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining
7 the records of the prior TPA as required in subsection (a) of this section.

8 **"§ 58-56-21. Approval of advertising.**

9 A TPA may use only the advertising pertaining to the business underwritten by an
10 insurer that has been approved in writing by the insurer in advance of its use.

11 **"§ 58-56-26. Responsibilities of the insurer.**

12 (a) If an insurer uses the services of a TPA, the insurer is responsible for
13 determining the benefits, premium rates, underwriting criteria, and claims payment
14 procedures applicable to the coverage and for securing reinsurance, if any. The rules
15 pertaining to these matters must be provided, in writing, by the insurer to the TPA. The
16 responsibilities of the TPA as to any of these matters shall be set forth in the agreement
17 between the TPA and the insurer.

18 (b) It is the sole responsibility of the insurer to provide for competent
19 administration of its programs.

20 (c) In cases where a TPA administers benefits for more than 100 certificate
21 holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review
22 of the operations of the TPA. At least one semiannual review shall be an on-site audit
23 of the operations of the TPA.

24 **"§ 58-56-31. Premium collection and payment of claims.**

25 (a) All insurance charges or premiums collected by a TPA on behalf of or for an
26 insurer, and the return of premiums received from that insurer, shall be held by the TPA
27 in a fiduciary capacity. These funds shall be immediately remitted to the person entitled
28 to them or shall be deposited promptly in a fiduciary account established and
29 maintained by the TPA in a federally or State insured financial institution. The
30 agreement between the TPA and the insurer shall require the TPA to periodically render
31 an accounting to the insurer detailing all transactions performed by the TPA pertaining
32 to the business underwritten by the insurer.

33 (b) If charges or premiums deposited in a fiduciary account have been collected
34 on behalf of or for one or more insurers, the TPA shall keep records clearly recording
35 the deposits in and withdrawals from the account on behalf of each insurer. The TPA
36 shall keep copies of all the records and, upon request of an insurer, shall furnish the
37 insurer with copies of the records pertaining to the deposits and withdrawals.

38 (c) The TPA shall not pay any claim by withdrawals from a fiduciary account in
39 which premiums or charges are deposited. Withdrawals from this account shall be
40 made only as provided in the agreement between the TPA and the insurer. The
41 agreement shall address, but not be limited to, the following:

42 (1) Remittance to an insurer entitled to remittance.

43 (2) Deposit in an account maintained in the name of the insurer.

1 (3) Transfer to and deposit in a claims-paying account, with claims to be
2 paid as provided in subsection (d) of this section.

3 (4) Payment to a group policyholder for remittance to the insurer entitled
4 to the remittance.

5 (5) Payment to the TPA of its commissions, fees, or charges.

6 (6) Remittance of a return premium to the person entitled to the return
7 premium.

8 (d) All claims paid by the TPA from funds collected on behalf of or for an
9 insurer shall be paid only on drafts or checks of and as authorized by the insurer.

10 **"§ 58-56-36. Compensation to the TPA.**

11 A TPA shall not enter into any agreement or understanding with an insurer that
12 makes the amount of the TPA's commissions, fees, or charges contingent upon savings
13 effected in the adjustment, settlement, and payment of losses covered by the insurer's
14 obligations. This section does not prohibit a TPA from receiving performance-based
15 compensation for providing hospital or other auditing services and does not prevent the
16 compensation of a TPA from being based on premiums or charges collected or the
17 number of claims paid or processed.

18 **"§ 58-56-41. Notice to covered individuals; disclosure of charges and fees.**

19 (a) When the services of a TPA are used, the TPA shall provide a written notice
20 approved by the insurer to covered individuals advising them of the identity of, and
21 relationship among, the TPA, the policyholder, and the insurer.

22 (b) When a TPA collects funds, the reason for collection of each item must be
23 identified to the insured party and each item must be shown separately from any
24 premium. Additional charges may not be made for services to the extent the services
25 have been paid for by the insurer.

26 (c) The TPA shall disclose to the insurer all charges, fees and commissions
27 received from all services in connection with the provision of administrative services for
28 the insurer, including any fees or commissions paid by insurers providing reinsurance.

29 **"§ 58-56-46. Delivery of materials to covered individuals.**

30 Any policies, certificates, booklets, termination notices, and other written
31 communications delivered by the insurer to the TPA for delivery to insured parties or
32 covered individuals shall be delivered by the TPA promptly after receipt of instructions
33 from the insurer to deliver them.

34 **"§ 58-56-51. License required.**

35 (a) No person shall act as, offer to act as, or hold himself or herself out as a TPA
36 in this State without a valid TPA license issued by the Commissioner. Licenses shall be
37 renewed annually.

38 (b) Each application for the issuance or renewal of a license shall be made upon a
39 form prescribed by the Commissioner and shall be accompanied by a nonrefundable
40 filing fee of one hundred dollars (\$100.00) and evidence of maintenance of a fidelity
41 bond, errors and omissions liability insurance, or other security, of a type and in an
42 amount to be determined by rules of the Commissioner. Applications for issuance of
43 licenses shall include or be accompanied by the following information and documents:

- 1 (1) All organizational documents of the TPA, including any articles of
2 incorporation, articles of association, partnership agreement, trade
3 name certificate, or trust agreement, any other applicable documents,
4 and all amendments to these documents.
- 5 (2) The bylaws, rules, regulations, or similar documents regulating the
6 internal affairs of the TPA.
- 7 (3) The names, addresses, official positions, and professional
8 qualifications of the individuals who are responsible for the conduct of
9 affairs of the TPA, including all (i) members of the board of directors,
10 board of trustees, executive committee, or other governing board or
11 committee, (ii) the principal officers in the case of a corporation or the
12 partners or members in the case of a partnership or association, (iii) all
13 shareholders holding directly or indirectly ten percent (10%) or more
14 of the voting securities of the TPA, and (iv) any other person who
15 exercises control or influence over the affairs of the TPA.
- 16 (4) Annual financial statements or reports for the two most recent years
17 that prove that the applicant is solvent and any other information the
18 Commissioner may require in order to review the current financial
19 condition of the applicant.
- 20 (5) A general description of the business operations, including information
21 on staffing levels and activities proposed in this State and nationwide.
22 The description must provide details setting forth the TPA's capability
23 for providing a sufficient number of experienced and qualified
24 personnel in the areas of claims processing, record keeping, and
25 underwriting.
- 26 (6) If the applicant will be managing the solicitation of new or renewal
27 business, evidence that it employs or has contracted with an agent
28 licensed by this State for soliciting and taking applications. Any
29 applicant that intends to directly solicit insurance contracts or to
30 otherwise act as an insurance agent must provide proof of having a
31 license as an insurance agent in this State.
- 32 (7) Any other pertinent information required by rules of the
33 Commissioner.

34 The information required by subdivisions (1) through (7) of this subsection,
35 including any trade secrets, shall be kept confidential; provided that the Commissioner
36 may use that information in any judicial or administrative proceeding instituted against
37 the TPA. Applications for renewals of licenses shall include or be accompanied by any
38 changes in the information required by subdivisions (1) through (7) of this subsection.

39 (c) Each applicant shall make available for inspection by the Commissioner
40 copies of all contracts with insurers or other persons using the services of the TPA.

41 (d) The Commissioner may refuse to issue a license if the Commissioner
42 determines that the TPA, or any individual responsible for the conduct of affairs of the
43 TPA as defined in subdivision (b)(3) of this section, is not competent, trustworthy,
44 financially responsible in accordance with subsection (b) of this section, or of good

1 personal and business reputation, or has had an insurance or a TPA license denied,
2 suspended, or revoked for cause by any state.

3 (e) A TPA is not required to be licensed as a TPA in this State if all of the
4 following conditions are met:

5 (1) The TPA's principal place of business is in another state.

6 (2) The TPA is not soliciting business as a TPA in this State.

7 (3) In the case of any group policy or plan of insurance serviced by the
8 TPA, no more than either five percent (5%) or 100 certificate holders,
9 whichever is fewer, reside in this State.

10 (f) A person is not required to be licensed as a TPA in this State if the person
11 provides services exclusively to one or more bona fide employee benefit plans each of
12 which is established by an employer, an employee organization, or both, and for which
13 the insurance laws of this State are preempted pursuant to the Employee Retirement
14 Income Security Act of 1974. Persons who are not required to be licensed shall register
15 with the Commissioner annually, verifying their status as described in this subsection.

16 (g) A TPA shall notify the Commissioner of any material change in its
17 ownership, control, or other fact or circumstance affecting its qualification for a license
18 in this State, within 10 business days after the change.

19 (h) No bonding shall be required by the Commissioner of any TPA whose
20 business is restricted solely to benefit plans that are either fully insured by an authorized
21 insurer or that are bona fide employee benefit plans established by an employer, any
22 employee organization, or both, for which the insurance laws of this State are
23 preempted pursuant to the Employee Retirement Income Security Act of 1974.

24 **"§ 58-56-56. Waiver of application for license.**

25 Upon request from a TPA, the Commissioner may waive the application
26 requirements of G.S. 58-56-51(b) if the TPA has a valid license as a TPA issued in a
27 state that has standards for TPAs that are at least as stringent as those contained in this
28 Article.

29 **"§ 58-56-61. Reserved.**

30 **"§ 58-56-66. Grounds for suspension or revocation of license.**

31 (a) The Commissioner shall, after notice and opportunity for hearing, suspend or
32 revoke the license of a TPA if the Commissioner finds that either of the following apply
33 to the TPA:

34 (1) The TPA is using methods or practices in the conduct of its business
35 that render its further transaction of business in this State hazardous or
36 injurious to insured persons or the public.

37 (2) The TPA has failed to pay any judgment rendered against it in this
38 State within 60 days after the judgment has become final.

39 (b) The Commissioner may, after notice and opportunity for hearing, suspend or
40 revoke the license of a TPA if the Commissioner finds that any of the following apply to
41 the TPA:

42 (1) The TPA has violated a rule or an order of the Commissioner or any
43 provision of this Chapter.

- 1 (2) The TPA has refused to be examined or to produce its accounts,
2 records, and files for examination, or any of its officers has refused to
3 give information with respect to its affairs or has refused to perform
4 any other legal obligation as to that examination, when required by the
5 Commissioner.
- 6 (3) The TPA has, without just cause, refused to pay proper claims or
7 perform services arising under its contracts or has, without just cause,
8 caused covered individuals to accept less than the amount due them or
9 caused covered individuals to employ attorneys or bring suit against
10 the TPA to secure full payment or settlement of the claims.
- 11 (4) The TPA is an affiliate of or under the same general management,
12 interlocking directorate, or ownership as another TPA or insurer that
13 unlawfully transacts business in this State without having a license.
- 14 (5) The TPA at any time fails to meet any qualification for which issuance
15 of the license could have been refused had the failure then existed and
16 been known to the Commissioner at the time of the application.
- 17 (6) The TPA has been convicted of, or has entered a plea of guilty or **nolo**
18 **contendere** to, a felony without regard to whether judgment was
19 withheld.
- 20 (7) The TPA is under suspension or revocation in another state.
- 21 (c) The Commissioner may without advance notice or hearing immediately
22 suspend the license of any TPA if the Commissioner finds that any of the following
23 apply to the TPA:
- 24 (1) The TPA is insolvent or financially impaired. 'Financially impaired'
25 means that the TPA is unable or potentially unable to fulfill its
26 contractual obligations.
- 27 (2) A proceeding for receivership, conservatorship, rehabilitation, or other
28 delinquency proceeding regarding the TPA has been commenced in
29 any state.
- 30 (3) The financial condition or business practices of the TPA otherwise
31 pose an imminent threat to the public health, safety, or welfare of the
32 residents of this State."
- 33 Sec. 2. G.S. 58-56-1, 58-56-10, 58-56-15, 58-56-20, 58-56-25, 58-56-30, 58-
34 56-35, 58-56-40, 58-56-45, 58-56-50, 58-56-55, and 58-56-60 are repealed.
- 35 Sec. 3. This act becomes effective October 1, 1991.