

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 334

Short Title: TPA Law Rewrite.

(Public)

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Sponsors: Senator Johnson.

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Referred to: Insurance.

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March 28, 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.**

- (1) 'Affiliate' or 'affiliated' means any person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.
- (2) 'Control' has the same meaning found in G.S. 58-19-5(2).
- (3) 'Insurance' or 'insurance coverage' means any coverage offered or provided by an insurer.
- (4) 'Insurer' means any person undertaking to provide life or health insurance or workers' compensation insurance coverage in this State that is subject to this Chapter or Chapter 97 of the General Statutes. 'Insurer' does not include a bona fide employee benefit plan established by an employer or 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' or 'TPA' means 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 of another state from offices in this State, in

1 connection with life or health insurance coverage or annuities, except  
2 any of the following:

3 a. An employer on behalf of its employees or the employees of  
4 one or more subsidiaries or affiliated corporations of such  
5 employer;

6 b. A union on behalf of its members;

7 c. An insurer that is authorized to transact insurance in this State  
8 with respect to a policy lawfully issued and delivered in and  
9 pursuant to the laws of this State or another state;

10 d. An agent or broker licensed to sell life or health insurance by  
11 the Commissioner whose activities are limited exclusively to  
12 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 to  
16 such 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, its trustees and employees acting  
19 pursuant to such 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 credit union or a financial institution that is subject to  
24 supervision or examination by federal or state banking  
25 authorities, or a mortgage lender, to the extent they collect and  
26 remit premiums to licensed insurance agents or authorized  
27 insurers in connection with loan payments;

28 i. A person who adjusts or settles claims in the normal course of  
29 his practice or employment as an attorney-at-law and who does  
30 not collect charges or premiums in connection with life or  
31 health insurance coverage 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 or 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. Such person shall comply with the  
39 requirements of G.S. 58-56-51(f); or

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 such license.

43 (6) 'Underwrites' or 'underwriting' includes the acceptance of employer or  
44 individual applications for coverage of individuals in accordance with

1 the written rules of the insurer; the overall planning and coordinating  
2 of an insurance program; and the ability to procure bonds and excess  
3 insurance.

4 **"§ 58-56-6. Written agreement necessary.**

5 (a) No TPA shall act as such without a written agreement between the TPA and  
6 the insurer; and such written agreement shall be retained as part of the official records  
7 of both the insurer and the TPA for the duration of the agreement and for five years  
8 thereafter. The agreement shall contain all provisions required by this Article, except  
9 insofar as those requirements do not apply to the functions performed by the TPA.

10 (b) The written agreement shall include a statement of duties that the TPA is  
11 expected to perform on behalf of the insurer and the kinds of insurance for which the  
12 TPA is to be authorized to administer. The agreement shall make provision with respect  
13 to underwriting or other standards pertaining to the business underwritten by such  
14 insurer.

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

21 **"§ 58-56-11. Payment to TPA.**

22 If an insurer utilizes the services of a TPA, the payment to the TPA of any premiums  
23 or charges for insurance by or on behalf of the insured party shall be deemed to have  
24 been received by the insurer, and the payment of return premiums or claim payments  
25 forwarded by the insurer to the TPA shall not be deemed to have been paid to the  
26 insured party or claimant until such payments are received by the insured party or  
27 claimant. This section does not limit any right of the insurer against the TPA resulting  
28 from the failure of the TPA to make payments to the insurer, insured parties, or  
29 claimants.

30 **"§ 58-56-16. Maintenance of information.**

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 not less than five years from the date of  
35 their 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. Any trade secrets  
38 contained in such books and records, including the identity and addresses of  
39 policyholders and certificate holders, shall be kept confidential; provided that the  
40 Commissioner may use such 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; provided that the TPA shall retain the right to continuing access to books and

1 records to permit the TPA to fulfill all of its contractual obligations to insured parties,  
2 claimants, 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 such cases, the new TPA shall acknowledge, in writing, that it is responsible for  
7 retaining 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 such advertising pertaining to the business underwritten by an  
10 insurer as 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 utilizes the services of a TPA, the insurer shall be responsible for  
13 determining the benefits, premium rates, underwriting criteria, and claims payment  
14 procedures applicable to such 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 written  
17 agreement 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 such review shall be an on-site audit of the  
23 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 or insurers, and the return of premiums received from that insurer or insurers,  
27 shall be held by the TPA in a fiduciary capacity. Such funds shall be immediately  
28 remitted to the person or persons entitled to them or shall be deposited promptly in a  
29 fiduciary account established and maintained by the TPA in a federally or State insured  
30 financial institution. The written agreement between the TPA and the insurer shall  
31 provide for the TPA to periodically render an accounting to the insurer detailing all  
32 transactions performed by the TPA pertaining to the business underwritten by the  
33 insurer.

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

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

43 (1) Remittance to an insurer entitled to remittance;

44 (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 for in subsection (d) of this section;  
3           (4) Payment to a group policyholder for remittance to the insurer entitled  
4 to such remittance;  
5           (5) Payment to the TPA of its commissions, fees or charges; or  
6           (6) Remittance of return premium to the person or persons entitled to such  
7 return 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) A TPA shall not enter into any agreement or understanding with an insurer in  
12 which the effect is to make the amount of the TPA's commissions, fees, or charges  
13 contingent upon savings effected in the adjustment, settlement and payment of losses  
14 covered by the insurer's obligations.

15           (b) This section does not prohibit a TPA from receiving performance-based  
16 compensation for providing hospital or other auditing services and does not prevent the  
17 compensation of a TPA from being based on premiums or charges collected or the  
18 number of claims paid or processed.

19 **"§ 58-56-41. Notice to covered individuals; disclosure of charges and fees.**

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

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

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

30 **"§ 58-56-46. Delivery of materials to covered individuals.**

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

35 **"§ 58-56-51. License required.**

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

39           (b) Each application for the issuance or renewal of a license shall be  
40 accompanied by a nonrefundable filing fee of one hundred dollars (\$100.00) and shall  
41 be made upon a form prescribed by the Commissioner. Applications for issuance of  
42 licenses shall include or be accompanied by the following information and documents:

- 43           (1) All basic organizational documents of the TPA, including any articles  
44 of incorporation, articles of association, partnership agreement, trade

- 1           name certificate, trust agreement, shareholder agreement and other  
2           applicable documents and all amendments to such documents;  
3           (2)   The bylaws, rules, regulations or similar documents regulating the  
4           internal affairs of the TPA;  
5           (3)   The names, addresses, official positions and professional qualifications  
6           of the individuals who are responsible for the conduct of affairs of the  
7           TPA; including all members of the board of directors, board of  
8           trustees, executive committee or other governing board or committee;  
9           the principal officers in the case of a corporation or the partners or  
10          members in the case of a partnership or association; shareholders  
11          holding directly or indirectly ten percent (10%) or more of the voting  
12          securities of the TPA; and any other person who exercises control or  
13          influence over the affairs of the TPA;  
14          (4)   Annual financial statements or reports for the two most recent years  
15          that prove that the applicant is solvent and such information as the  
16          Commissioner may require in order to review the current financial  
17          condition of the applicant;  
18          (5)   A statement describing the business plan including information on  
19          staffing levels and activities proposed in this State and nationwide.  
20          The plan must provide details setting forth the TPA's capability for  
21          providing a sufficient number of experienced and qualified personnel  
22          in the areas of claims processing, record keeping, and underwriting;  
23          (6)   If the applicant will be managing the solicitation of new or renewal  
24          business, proof that it employs or has contracted with an agent licensed  
25          by this State for solicitation and taking of applications. Any applicant  
26          that intends to directly solicit insurance contracts or to otherwise act as  
27          an insurance agent must provide proof that it has a license as an  
28          insurance agent in this State;  
29          (7)   Such other pertinent information as may be required by the  
30          Commissioner.  
31   Applications for renewals of licenses shall include or be accompanied by any changes in  
32   the information required by subdivisions (1) through (7) of this subsection.  
33          (c)   Each applicant shall make available for inspection by the Commissioner  
34          copies of all contracts with insurers or other persons utilizing the services of the TPA.  
35          (d)   The Commissioner may refuse to issue a license if he determines that the  
36          TPA, or any individual responsible for the conduct of affairs of the TPA as defined in  
37          subdivision (b)(3) of this section, is not competent, trustworthy, financially responsible,  
38          or of good personal and business reputation, or has had an insurance or a TPA license  
39          denied, suspended, or revoked for cause by any state.  
40          (e)   A TPA is not required to hold a license as a TPA in this State if all of the  
41          following conditions are met:  
42                  (1)   The TPA has its principal place of business in another state;  
43                  (2)   The TPA is not soliciting business as a TPA in this State;

1           (3) In the case of any group policy or plan of insurance serviced by the  
2           TPA, the lesser of five percent (5%) or 100 certificate holders reside in  
3           this State.

4           (f) A person is not required to hold a license as a TPA in this State if the person  
5 exclusively provides services to one or more bona fide employee benefit plans each of  
6 which is established by an employer or an employee organization, or both, and for  
7 which the insurance laws of this State are preempted pursuant to the Employee  
8 Retirement Income Security Act of 1974. Such persons shall register with the  
9 Commissioner annually, verifying their status as described in this subsection.

10          (g) A TPA shall immediately notify the Commissioner of any material change in  
11 its ownership, control, or other fact or circumstance affecting its qualification for a  
12 license in this State.

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

18 **"§ 58-56-56. Waiver of application for license.**

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

23 **"§ 58-56-61. Annual report and filing fee.**

24          (a) Each TPA shall file an annual report for the preceding calendar year with the  
25 Commissioner on or before March 1 of each year, or within such extension of time  
26 therefor as the Commissioner for good cause may grant. The report shall be in the form  
27 and contain such matters as the Commissioner prescribes and shall be verified by at  
28 least two officers of the TPA.

29          (b) The annual report shall include the complete names and addresses of all  
30 insurers with which the TPA had an agreement during the preceding fiscal year.

31          (c) At the time of filing its annual report, the TPA shall pay a filing fee as  
32 required by rules adopted by the Commissioner.

33 **"§ 58-56-66. Grounds for suspension or revocation of license**

34          (a) The license of a TPA shall be suspended or revoked if the Commissioner  
35 finds that the TPA:

36               (1) Is in an unsound financial condition;

37               (2) Is using such methods or practices in the conduct of its business so as  
38 to render its further transaction of business in this State hazardous or  
39 injurious to insured persons or the public; or

40               (3) Has failed to pay any judgment rendered against it in this State within  
41 60 days after the judgment has become final.

42          (b) The Commissioner may, in his discretion, suspend or revoke the license of a  
43 TPA if the Commissioner finds that the TPA:

- 1           (1) Has violated any lawful rule or order of the Commissioner or any  
2 provision of this Chapter;
- 3           (2) Has refused to be examined or to produce its accounts, records and  
4 files for examination, or if any of its officers has refused to give  
5 information with respect to its affairs or has refused to perform any  
6 other legal obligation as to such examination, when required by the  
7 Commissioner;
- 8           (3) Has, without just cause, refused to pay proper claims or perform  
9 services arising under its contracts or has, without just cause, caused  
10 covered individuals to accept less than the amount due them or caused  
11 covered individuals to employ attorneys or bring suit against the TPA  
12 to secure full payment or settlement of such claims;
- 13           (4) Is affiliated with or under the same general management or  
14 interlocking directorate or ownership as another TPA or insurer that  
15 unlawfully transacts business in this State without having a license;
- 16           (5) At any time fails to meet any qualification for which issuance of the  
17 license could have been refused had such failure then existed and been  
18 known to the Commissioner;
- 19           (6) Has been convicted of, or has entered a plea of guilty or **nolo**  
20 **contendere** to, a felony without regard to whether judgment was  
21 withheld; or
- 22           (7) Is under suspension or revocation in another state.
- 23       (c) The Commissioner may, in his discretion and without advance notice or  
24 hearing thereon, immediately suspend the license of any TPA if the Commissioner finds  
25 that one or more of the following circumstances exist:
- 26           (1) The TPA is insolvent or financially impaired;
- 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.