GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 678
SENATE BILL 626

AN ACT TO ADOPT RISK-BASED CAPITAL REQUIREMENTS FOR LIFE AND HEALTH INSURANCE COMPANIES, TO MAKE CORRECTIONS AND TECHNICAL AMENDMENTS IN THE INSURANCE LAWS, AND TO AMEND THE SCHOLARSHIP PROVISIONS OF THE FIREMEN'S RELIEF FUND IN THE INSURANCE CODE.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 58 of the General Statutes is amended by adding the following sections:

"**§ 58-12-2. Definitions.**

As used in this Article, the following terms have the following meanings:

(1) Adjusted Risk-Based Capital Report. – A risk-based capital report that has been adjusted by the Commissioner under G.S. 58-12-6(c).

(2) Corrective Order. – An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.

(3) Domestic Insurer. – Any life or health insurance company organized in this State under Article 7 of this Chapter.

(4) Foreign Insurer. – Any life or health insurance company that is admitted to do business in this State under Article 16 of this Chapter but is not domiciled in this State.

(5) Negative Trend. – A negative trend over a period of time, as determined in accordance with the 'Trend Test Calculation' included in the risk-based capital instructions.

(6) Risk-Based Capital Instructions. – The risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(7) Risk-Based Capital Level. – An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:

a. 'Company Action Level Risk-Based Capital' means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.

b. 'Regulatory Action Level Risk-Based Capital' means the product of 1.5 and its authorized control level risk-based capital.

c. 'Authorized Control Level Risk-Based Capital' means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. 'Mandatory Control Level Risk-Based Capital' means the product of .70 and the authorized control level risk-based capital.

(8) Risk-Based Capital Plan. – A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the 'Revised Risk-Based Capital Plan'.

(9) Risk-Based Capital Report. – The report required in G.S. 58-12-6.

(10) Total Adjusted Capital. – The sum of:

a. An insurer's statutory capital and surplus; and

b. Such other items, if any, as the risk-based capital instructions may provide.

"**§ 58-12-6. Risk-Based Capital Reports.**

(a) Every domestic insurer shall, on or before each March 15 (the 'filing date'), prepare and submit to the Commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

(1) With the NAIC in accordance with the risk-based capital instructions; and

(2) With the insurance regulator in any state in which the insurer is authorized to do business, if the Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

a. Fifteen days after the receipt of notice to file its risk-based capital report with that state; or

b. The filing date.

(b) An insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based instructions. The formula shall take into account (and may adjust for the covariance between):

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

These risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(c) If a domestic insurer files a risk-based capital report that in the judgment of the Commissioner is inaccurate, the Commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report as adjusted is referred to as an 'adjusted risk-based capital report'.

"**§ 58-12-11. Company Action Level Event.**

(a) 'Company Action Level Event' means any of the following events:

(1) The filing of a risk-based capital report by an insurer that indicates that:

a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

b. The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend.

(2) The notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

(3) If the insurer challenges an adjusted risk-based capital report that indicates the event in sub-subdivision (1)a. or b. of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge.

(b) In the event of a company action level event, the insurer shall prepare and submit to the Commissioner a comprehensive financial plan that:

(1) Identifies the conditions in the insurer that contribute to the company action level event.

(2) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event.

(3) Provides forecasts of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including forecasts of statutory operating income, net income, capital, or surplus (the forecasts for both new and renewal business should include separate forecasts for each major line of business and separately identify each significant income, expense, and benefit component).

(4) Identifies the key assumptions affecting the insurer's forecasts and the sensitivity of the forecasts to the assumptions.

(5) Identifies the quality of, and problems associated with, the insurer's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.

(c) The risk-based capital plan shall be submitted:

(1) Within 45 days after the company action level event; or

(2) If the insurer challenges an adjusted risk-based capital report pursuant to G.S. 58-12-30, within 45 days after notification to the insurer that the Commissioner has rejected the insurer's challenge.

(d) Within 60 days after the submittal by an insurer of a risk-based capital plan to the Commissioner, the Commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the Commissioner. Upon notification from the Commissioner, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the revised risk-based capital plan to the Commissioner:

(1) Within 45 days after notification from the Commissioner; or

(2) If the insurer challenges the notification from the Commissioner under G.S. 58-12-30, within 45 days after a notification to the insurer that the Commissioner has rejected the insurer's challenge.

(e) In the event of a notification by the Commissioner to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the Commissioner may, subject to the insurer's right to a hearing under G.S. 58-12-30, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the Commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance regulator in any state in which the insurer is authorized to do business if:

(1) That state has a risk-based capital provision substantially similar to G.S. 58-12-21(a); and

(2) The insurance regulator of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:

a. Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

b. The date on which the risk-based capital plan or revised risk-based capital plan is filed under G.S. 58-12-30(c).

"**§ 58-12-16. Regulatory Action Level Event.**

(a) 'Regulatory Action Level Event' means, with respect to any insurer, any of the following events:

(1) The filing of a risk-based capital plan report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital.

(2) The notification by the Commissioner to an insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection, if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

(3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the insurer's challenge.

(4) The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the Commissioner and has cured the failure within 10 days after the filing date.

(5) The failure of the insurer to submit a risk-based capital plan to the Commissioner within the time period set forth in G.S. 58-12-11(c).

(6) Notification by the Commissioner to the insurer that:

a. The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the Commissioner, unsatisfactory; and

b. The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under G.S. 58-12-30.

(7) If the insurer challenges a determination by the Commissioner under subdivision (6) of this subsection pursuant to G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.

(8) Notification by the Commissioner to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan; but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the Commissioner has so stated in the notification, provided the insurer has not challenged the determination under G.S. 58-12-30.

(9) If the insurer challenges a determination by the Commissioner under subdivision (8) of this subsection pursuant to G.S. 58-12-30, the notification by the Commissioner to the insurer that the Commissioner has rejected the challenge (unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no

substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer).

(b) In the event of a regulatory action level event the Commissioner shall:

(1) Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan.

(2) Perform such examination or analysis, as the Commissioner deems necessary, of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan.

(3) After the examination or analysis, issue an order specifying such corrective actions as the Commissioner shall determine are required (a 'Corrective Order').

(c) In determining corrective actions, the Commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the Commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

(1) Within 45 days after the occurrence of the regulatory action level event;

(2) If the insurer challenges an adjusted risk-based capital report pursuant to G.S. 58-12-30 and the challenge is not in the judgment of the Commissioner frivolous, within 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge; or

(3) If the insurer challenges a revised risk-based capital plan under G.S. 58-12-30, within 45 days after notification to the insurer that the Commissioner has rejected the challenge.

(d) The Commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the Corrective Order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the Commissioner.

"**§ 58-12-21. Authorized Control Level Event.**

(a) 'Authorized Control Level Event' means any of the following events:

(1) The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital.

(2) The notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

(3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.

(4) The failure of the insurer to respond, in a manner satisfactory to the Commissioner, to a Corrective Order if the insurer has not challenged the Corrective Order under G.S. 58-12-30.

(5) If the insurer has challenged a Corrective Order under G.S. 58-12-30 and the Commissioner has rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the Commissioner, to the Corrective Order after the rejection or modification by the Commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the Commissioner shall:

(1) Take such actions as are required under G.S. 58-12-30 regarding an insurer with respect to which a regulatory action level event has occurred; or

(2) If the Commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter. If the Commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions under this subdivision pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings.

"**§ 58-12-25. Mandatory Control Level Event.**

(a) 'Mandatory Control Level Event' means any of the following events:

(1) The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital.

(2) Notification by the Commissioner to the insurer of an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

(3) If the insurer challenges an adjusted risk-based capital report that indicates the event in subdivision (1) of this subsection under G.S. 58-12-30, notification by the Commissioner to the insurer that the Commissioner has rejected the challenge.

(b) In the event of a Mandatory Control Level Event, the Commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control under Article 30 of this Chapter. The Mandatory Control Level Event is sufficient grounds for the Commissioner to take action under Article 30 of this Chapter, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Article 30 of this Chapter. If the Commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of Article 30 of this Chapter pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90-day period.

"**§ 58-12-30. Hearings.**

Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, and the notification constitutes a regulatory action level Event with respect to the insurer; or (iii) notification to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or (iv) notification to an insurer by the Commissioner of a Corrective Order with respect to the insurer, the insurer has a right to a hearing, at which the insurer may challenge any determination or action by the Commissioner. The insurer shall notify the Commissioner of its request for a hearing within five days after the notification by the Commissioner under this section. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which date shall be no less than 10 days nor more than 30 days after the date of the insurer's request.

"**§ 58-12-35. Confidentiality and prohibition on announcements.**

(a) All risk-based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and the risk-based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the Commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer that are filed with the Commissioner constitute information that shall be kept confidential by the Commissioner. This information shall not be made public or be subject to subpoena, other than by the Commissioner, and then only for the purpose of enforcement actions taken by the Commissioner under this Article or any other provision of this Chapter.

(b) The General Assembly finds that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this Article, the making, publishing, disseminating, circulating, or placing before the public,

or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation by any insurer, agent, broker, or other person engaged in any manner in the insurance business is prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurers' risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the Commissioner, with substantial proof, the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

"**§ 58-12-40. Supplemental provisions.**

The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

"**§ 58-12-45. Foreign insurers.**

(a) Any foreign insurer shall, upon written request of the Commissioner, submit to the Commissioner a risk-based capital report as of the end of the calendar year just ended the later of:

(1) The date a risk-based capital report would be required to be filed by a domestic insurer under this Article; or

(2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the Commissioner, promptly submit to the Commissioner a copy of any risk-based capital plan that is filed with the insurance regulator of any other state.

(b) In the event of a company action level event or regulatory action level Event with respect to any foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or if no risk-based capital provision is in force in that state under the provisions of this Article, if the insurance regulator of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital statute or, if no risk-based capital provision is in force in that state, under G.S. 58-12-11, the Commissioner may require the foreign insurer to file a risk-based capital plan with the Commissioner. In that event the failure of the foreign insurer to file a risk-based capital plan with the Commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this State.

(c) In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation or liquidation statutes of the state or domicile of the foreign insurer, the Commissioner may make application to the Superior Court of Wake County

as permitted under Article 30 of this Chapter with respect to the liquidation of property of foreign insurers found in this State; and the occurrence of the Mandatory Control Level Event is an adequate ground for the application.

"**§ 58-12-50. Notices.**

All notices by the Commissioner to an insurer that may result in regulatory action under this Article are effective upon dispatch if transmitted by registered or certified mail; or in the case of any other transmission are effective upon the insurer's receipt of the notice.

"**§ 58-12-55. Phase-in provision.**

For risk-based capital reports required to be filed with respect to 1994, the following requirements apply in lieu of the provisions of G.S. 58-12-11:

(1) In the event of a company action level event with respect to a domestic insurer, the Commissioner shall take no regulatory action hereunder.

(2) In the event of a regulatory action level Event under G.S. 58-12-16(a)(1), (2), or (3) the Commissioner shall take the actions required under G.S. 58-12-11.

(3) In the event of a regulatory action level Event under G.S. 58-12-16(a)(4), (5), (6), (7), (8), or (9) or an authorized control level event, the Commissioner shall take the actions required under G.S. 58-12-16 with respect to the insurer.

(4) In the event of a Mandatory Control Level Event with respect to an insurer, the Commissioner shall take the actions required under G.S. 58-12-21 with respect to the insurer."

Sec. 2. The heading of Article 12 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 12.

~~"Guaranty Fund for Domestic Companies.~~

"Risk-Based Capital Requirements."

Sec. 3. G.S. 58-2-105 reads as rewritten:

"**§ 58-2-105. Confidentiality of medical records.**

All ~~privileged~~ patient medical records in the possession of the Department ~~shall be~~ are confidential and ~~shall not be~~ are not public records pursuant to G.S. 58-2-100 or G.S. 132-1. As used in this section, 'patient medical records' includes personal information that relates to an individual's physical or mental condition, medical history, or medical treatment, and that has been obtained from the individual patient, a health care provider, or from the patient's spouse, parent, or legal guardian."

Sec. 4. G.S. 58-3-75 reads as rewritten:

"**§ 58-3-75. Loss and loss expense reserves of fire and marine insurance companies.**

In any determination of the financial condition of any fire or marine or fire and marine insurance company authorized to do business in this State, such company shall be charged, in addition to its unearned premium liability as prescribed in ~~G.S. 58-3-70,~~ G.S. 58-3-71, with a liability for loss reserves in an amount equal to the aggregate of the estimated amounts payable on all outstanding claims reported to it which arose out of any contract of insurance or reinsurance made by it, and in addition thereto an amount

fairly estimated as necessary to provide for unreported losses incurred on or prior to the date of such determination, as defined in G.S. 58-3-81(a), and including, both as to reported and unreported claims, an amount estimated as necessary to provide for the expense of adjusting such claims, and there shall be deducted, in determining such liability for loss reserves, the amount of reinsurance recoverable by such company, in respect to such claims, from assuming insurers in accordance with G.S. 58-7-21. Such loss and loss expense reserves shall be calculated in accordance with any method adopted or approved by the NAIC, unless the Commissioner determines that another more conservative method is appropriate."

Sec. 5. G.S. 58-3-90 reads as rewritten:

"**§ 58-3-90. Revocation of license of foreign company; publication of notice.**

If the Commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound ~~condition,~~ condition; or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities; or that ~~it~~ the company has failed to comply with the ~~law, or if it, its officers or agents,~~ statutes, rules, or orders applicable to it; or if the company, its officers, employees, agents, or other representatives refuse to submit to examination or to perform any legal obligation in relation ~~thereto,~~ to an examination, he shall revoke or suspend all ~~certificates of authority granted to it~~ licenses and authority to do business granted to the company or its agents, and shall ~~cause notification thereof to be published in one or more newspapers published~~ give written notification of the revocation or suspension to all of the company's agents in this State; and no new business may thereafter be done by ~~it~~ the company or its agents in this State ~~while such default or disability continues, or until its~~ until the company's license and authority to do business is restored by the Commissioner."

Sec. 6. G.S. 58-3-172(a) reads as rewritten:

"(a) For all claims denied for ~~heath~~ health care provider services under health benefit plans, written notification of the denied claim shall be given to the insured and to the health care provider submitting the claim if the health care provider would otherwise be eligible for payment."

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

"**§ 58-5-71. Liens of policyholders; subordination.**

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims."

Sec. 8. G.S. 58-7-21(b)(4)a. reads as rewritten:

"(4) a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC

Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000). In the case of a group of insurers, which includes individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent certified public accountants."

Sec. 9. G.S. 58-7-31(b)(7)a. reads as rewritten:

"(7) a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision (7)b. of this ~~section~~ section) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner that legally segregates, by contract or contractual provisions, the underlying ~~assets.)~~ assets."

Sec. 10. The catch line of G.S. 58-7-150 reads as rewritten:

"**§ 58-7-150. ~~Merger or consolidation.~~ Consolidation.**"

Sec. 11. G.S. 58-7-163(6) reads as rewritten:

"(6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost ~~of~~ or carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter."

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

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

An insurer that, as of October 1, 1993, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, 1994, a plan to bring the amount of mortgage investments ~~with that person~~ into compliance with the limitations by January 1, 2001."

Sec. 13. G.S. 58-13-10 reads as rewritten:

"**§ 58-13-10. Scope.**

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under Articles 1 through 66 of this Chapter. Foreign insurers are to comply in substance with the requirements and limitations of this section. This Article does not apply to variable contracts for which separate accounts are required to be maintained nor to statutory deposits that are required to be maintained by insurance ~~regulator~~ regulatory agencies as a requirement for doing business in such jurisdictions."

Sec. 14. G.S. 58-19-25(a) reads as rewritten:

"(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to the registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and G.S. 58-19-30(a), 58-19-30(b), 58-19-30(c), and 58-19-30(d), or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition. The insurer shall also file a copy of its registration statement and any amendments to the statement in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March 1 of each year for the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within the extended time. All registration statements shall contain a summary, on a form prescribed by the Commissioner, outlining all items in the current registration statement representing changes from the prior registration statement. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulator of its domiciliary jurisdiction."

Sec. 15. G.S. 58-21-20(a)(2)b. reads as rewritten:

"b. In the case of any Lloyd's plans or other similar unincorporated group of insurers, which includes individual insurers, maintains a trust fund of not less than fifty million dollars ($50,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and".

Sec. 16. G.S. 58-21-35 reads as rewritten:

"**§ 58-21-35. Duty to file evidence of insurance and affidavits.**

Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall execute and file with the Commissioner:

(1) A written report regarding the insurance and including the following information:
   a. The name and address of the insured;
   b. The identity of the insurer or insurers;
   c. A description of the subject and location of the risk;
   d. The amount of premium charged for the insurance; and
   e. Such other pertinent information as the Commissioner may reasonably require; and

(2) An affidavit as to the efforts to place the coverage with admitted insurers and the results thereof in accordance with G.S. 58-21-15. The report and affidavit required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the ~~Commissioner.~~ Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

Sec. 17. G.S. 58-30-275(b) reads as rewritten:

"(b) The Court may issue an order appointing an ancillary receiver in whatever terms it deems to be ~~appropriate.~~ appropriate, including provisions for payment of the reasonable and necessary expenses of the proceedings. The filing or recording of the order with a register of deeds in this State imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds."

Sec. 18. G.S. 58-33-130(f) is repealed.

Sec. 19. G.S. 58-34-2(d)(9) reads as rewritten:

"(9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or by any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under subsection ~~(m)~~ (f) of this section."

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

"**§ 58-35-100. Fees are nonrefundable.**

All fees that are imposed and collected under this Article are nonrefundable."

Sec. 21. G.S. 58-40-140(a) reads as rewritten:

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

(1) That in the event of a cancellation permitted by G.S. 58-41-15 or nonrenewal effective under G.S. 58-41-20, there shall be a 30-day period ~~before~~ after the effective date of the cancellation or nonrenewal

during which the insured may elect to purchase coverage for the extended reporting period.

(2) That the limit of liability in the policy aggregate for the extended reporting period shall be one hundred percent (100%) of the expiring policy aggregate.

(3) Within 45 days after the mailing or delivery of the written request of the insured, the insurer shall mail or deliver the following loss information covering a three-year period:

a. Aggregate information on total closed claims, including date and description of occurrence, and any paid losses;

b. Aggregate information on total open claims, including date and description of occurrence, and amounts of any payments;

c. Information on notice of any occurrence, including date and description of occurrence."

Sec. 22. G.S. 58-41-10(a) reads as rewritten:

"(a) Except as otherwise provided, this Article applies to all kinds of insurance authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all insurance companies licensed by the Commissioner to write those kinds of insurance. This Article does not apply to insurance written under Articles 21, 36, 37, 45 or 46 of this Chapter; insurance ~~written under G.S. 58-7-15(7),(13), or (14) when burglary and theft insurance or personal injury or property damage insurance is~~ written for residential risks in conjunction with insurance written under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to personal inland marine insurance; to aviation insurance; to policies issued in this State covering risks with multistate locations, except with respect to coverages applicable to locations within this State; to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State; nor to domestic insurance companies, associations, orders, or fraternal benefit societies doing business in this State on the assessment plan."

Sec. 23. G.S. 58-48-95 reads as rewritten:

"**§ 58-48-95. Use of deposits made by insolvent insurer.**

(a) Notwithstanding any other provision ~~of Articles 1 through 64~~ of this Chapter pertaining to the use of deposits made by insurance companies for the protection of policyholders, ~~the Commissioner shall deliver to the Association, and~~ the Association ~~is hereby authorized to~~ shall receive, upon its request, from the Commissioner and may expend, any deposit or deposits ~~previously or hereinafter~~ made, whether or not required by statute, by an insolvent insurer to the extent those deposits are needed by the Association first to pay the covered claims as required by this Article and then to the extent those deposits are needed to pay all expenses of the Association relating to the insurer: Provided that ~~before delivering any deposit to the Association~~ the Commissioner may retain and use an amount of the deposit up to ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-5-70. ~~As used in this section, the term 'administrative~~

~~costs' does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-30-60(c), 58-30-75, or 58-30-120.~~

(b) ~~However, in~~ In, however the case of a deposit made by an insolvent domestic insurer, the Association shall receive, upon its request, from the Commissioner, the portions of the deposit made for the protection of policyholders having covered ~~claims shall be delivered by the Commissioner to the Association.~~ claims. As for the general deposit, ~~said~~ those portions shall be in the proportions that the insolvent domestic insurer's domestic net direct written premiums for the preceding calendar year on the kinds of insurance in the account bears to its total net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

(c) The Association shall account to the Commissioner and the insolvent insurer for all deposits received from the Commissioner ~~hereunder~~ under this section, and shall repay to the Commissioner a portion of the deposits ~~received~~ received, which shall be equal to the total amount of the claims against the insolvent insurer that are not covered claims under this Article solely by reason that the amount of the claim is fifty dollars ($50.00) or less. ~~Said~~ This repayment ~~shall in no way~~ does not prejudice the rights of the Association with regard to the portion of the deposit repaid to the Commissioner. After ~~all of~~ the deposits of the insolvent insurer received by the Association under this section have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article."

Sec. 24. G.S. 58-50-130(a)(4a) reads as rewritten:

"(4a) A carrier may continue to enforce reasonable employer participation and contribution requirements on small employers applying for coverage; however, participation and contribution requirements may vary among small employers only by the size of the small employer group and shall not differ because of the health benefit plan involved. In applying minimum participation requirements to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether an applicable participation level is met. 'Qualifying existing coverage' means benefits or coverage provided under: (i) Medicare, Medicaid, and other government funded programs; or (ii) an employer-based health insurance or health benefit arrangement, including a self-insured plan, that provides benefits similar to or in excess of benefits provided under the basic health care plan. An accountable health carrier shall not enforce participation or contribution requirements on member small employers, as defined in G.S. 143-622(18), unless those requirements meet with the standards adopted by the ~~North Carolina Health~~ State Health Plan Purchasing Alliance Board."

Sec. 25. G.S. 58-50-130(a)(5) reads as rewritten:

"(5) Notwithstanding any other provision of this Chapter, no small employer carrier, insurer, subsidiary or an insurer, or controlled

individual of ~~a~~ an insurance holding company shall act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of ~~a~~ an insurance holding company shall provide stop loss, catastrophic, or reinsurance coverage to small ~~groups which, if they were purchased, would be subject to this section.~~ employers that does not comply with the underwriting, rating, and other applicable standards in this Act."

Sec. 26. Article 62 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-62-77. Actions not precluded.**

Nothing in this Article precludes any resident from bringing any action against the Association in any court of competent jurisdiction with respect to any contractual obligation arising under covered policies."

Sec. 27. G.S. 58-62-92 is repealed.

Sec. 28. G.S. 58-62-95 reads as rewritten:

"**§ 58-62-95. Use of deposits made by impaired insurer.**

Notwithstanding any other provision of ~~Articles 1 through 64 of~~ this Chapter pertaining to the use of deposits made by insurance companies for the protection of policyholders, ~~the Commissioner shall deliver to the Association, and~~ the Association ~~is hereby authorized to~~ shall receive, upon its request, from the Commissioner and may expend, any deposit or deposits ~~previously or hereinafter~~ made, whether or not made pursuant to statute, by an insurer determined to be impaired under this Article to the extent those deposits are needed by the Association to pay contractual obligations of that impaired insurer owed under covered policies as required by this Article, and to the extent those deposits are needed to pay all expenses of the Association relating to the impaired insurer: Provided that ~~before delivering any deposit to the Association~~ the Commissioner may retain and use an amount of the deposit up to ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) to defray administrative costs to be incurred by the Commissioner in carrying out his powers and duties with respect to the insolvent insurer, notwithstanding G.S. 58-5-70. ~~As used in this section, the term "administrative costs"does not include any salary or expenses paid to or on behalf of any State employee or to any person appointed or employed pursuant to G.S. 58-30-60(c), 58-30-75, or 58-30-120.~~ The Association shall account to the Commissioner and the impaired insurer for all deposits received from the Commissioner ~~hereunder.~~ under this section. After ~~all of~~ the deposits of the impaired insurer received by the Association under this section have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article."

Sec. 29. G.S. 58-64-33(a) reads as rewritten:

"(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual statement filed with the

Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by cash, invested cash, ~~commercial paper,~~ or by investment grade securities, including bonds, stocks, U.S. Treasury obligations, or obligations of U.S. government agencies."

Sec. 30. G.S. 58-69-40 reads as rewritten:

"**§ 58-69-40. Disposition of fees.**

~~In the event an application for license filed hereunder is not approved, the Commissioner shall retain ten dollars ($10.00) of the fee paid in connection with the application and return the balance to the applicant.~~ All fees collected by the Commissioner under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25."

Sec. 31. G.S. 58-70-65(a) reads as rewritten:

"(a) Each permit holder shall deposit, no later than two banking days ~~from~~ after receipt, in a separate trust account in any bank located in ~~a~~ North Carolina or ~~other~~ in any other bank approved by the Commissioner, sufficient funds to pay all moneys due or ~~owing~~ owed to all collection creditors or forwarders. ~~Said~~ The funds shall remain in the trust account until remitted to the creditor or forwarder, and shall not be commingled with any other operating funds. The trust account shall be used only for the purpose of:

(1) Remitting to collection creditors or forwarders the proceeds to which they are entitled.
(2) Remitting to the collection agency the commission that is due the collection agency.
(3) Reimbursing consumers for overpayments.
(4) Making adjustments to the trust account balance for bank service charges."

Sec. 32. G.S. 58-71-71 reads as rewritten:

"**§ 58-71-71. Examination; educational requirements; penalties.**

(a) In order to be eligible to take the examination required to be licensed as a runner or bail bondsman under G.S. 58-71-70, each person shall complete at least 20 hours of education in subjects pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and regulations related to being a runner or bail bondsman.

(b) Each year every licensee shall complete at least 10 hours of continuing education in subjects related to the duties and responsibilities of a runner or bail

bondsman before renewal of the license. This continuing education shall not include a written or oral examination. A person who receives his first license on or after January 1 of any year does not have to comply with this subsection until the period between his first and second license renewals.

(c) Any person licensed as a runner or bail bondsman before January 1, 1994, is not subject to the prelicensing education requirement of this section, but is subject to the continuing education requirement of this section. A licensed runner or bail bondsman who is 65 years of age or older and who has been licensed as a runner or bail bondsman for 15 years or more is exempt from both the prelicensing education and continuing education requirements of this section.

(d) ~~The North Carolina Bail Agents Association shall provide education for bail bondsman licensure as required by this section.~~ The Commissioner shall approve the educational courses offered under this section and ensure that ~~the education meets the general standards for education otherwise established by the Commissioner.~~ they enhance the professional competence and professional responsibility of bail bondsmen and runners. No person shall offer, sponsor, or conduct any course under the auspices of this section unless the Commissioner has authorized that person to do so.

(e) Any person who falsely represents to the Commissioner that the requirements of this section have been met is subject, after notice and opportunity for hearing, to G.S. 58-2-70.

(f) The Commissioner may adopt rules for the effective administration of this section."

Sec. 33. G.S. 58-85-1 reads as rewritten:

"**§ 58-85-1. Application of fund.**

The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the 'Firemen's Relief Fund' of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this Article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to grant educational scholarships to

members and the children of members, to subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association, and to provide accidental death and dismemberment insurance for members of those fire departments not eligible for benefits pursuant to standards of certification adopted by the State Firemen's Association for the use of local relief funds."

Sec. 34. G.S. 143-143.14(b) reads as rewritten:

"(b) Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written ~~demand upon the Board~~ request for a review by a member of the Department staff designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the ~~Board~~ applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the ~~Board~~ applicant may make a written ~~demand upon the Commissioner~~ request for a hearing under Article 3A of Chapter 150B of the General Statutes if the ~~Board~~ applicant disagrees with the outcome."

Sec. 35. G.S. 143-151.15 reads as rewritten:

"**§ 143-151.15. Return of certificate to Board; reissuance by Board.**

A certificate issued by the Board ~~pursuant to~~ under this Article ~~shall remain valid only so~~ is valid as long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official. When the person certified leaves ~~such~~ that employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board ~~shall~~ may reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. ~~The provisions of this section shall not affect the Board's power to suspend or revoke any certificate pursuant to~~ This section does not affect the Board's powers under G.S. 143-151.17."

Sec. 36. G.S. 143-151.17(d) reads as rewritten:

"(d) The Board may deny an application for a certificate for any of the grounds ~~for suspension, revocation, or refusal to grant~~ that are described in subsection (a) of this section. Within 30 days after receipt of a notification that an application for a certificate has been denied, the applicant may make a written ~~demand upon the Board~~ request for a review by a ~~member of the Department staff~~ committee designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the ~~Board~~ applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the ~~Board~~ applicant may make a written ~~demand upon the Commissioner~~ request for a hearing under Article 3A of Chapter 150B of the General Statutes if the ~~Board~~ applicant disagrees with the outcome."

Sec. 37. Sections 1, 2, and 25 of this act become effective January 1, 1995. Section 24 of this act becomes effective January 2, 1995. Sections 17, 23, 26, 27, and

28 of this act apply to delinquency proceedings pending on the effective date of this act. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

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Dennis A. Wicker
President of the Senate

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Daniel Blue, Jr.
Speaker of the House of Representatives