

Article 13.

Asset Protection Act.

§ 58-13-1. Title.

This Article shall be known and may be cited as the "Asset Protection Act." (1985, c. 327, s. 1.)

§ 58-13-5. Purposes.

The purposes of this Article are to require insurers to maintain unencumbered assets in amounts equal to policyholder-related liabilities and minimum required capital and minimum required surplus; to provide preferential claims against insurers' assets in favor of owners, beneficiaries, assignees, and holders of insurance policies and certificates; and to prevent the pledging, hypothecation, or encumbrance of assets without a prior written order of the Commissioner. (1985, c. 327, s. 1; 1991, c. 681, s. 30.1; 1993, c. 504, s. 7.)

§ 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 68 of this Chapter. Foreign insurers shall comply in substance with the requirements and limitations of this Article. This Article does not apply to the following:

- (1) Variable contracts or guaranteed investment contracts for which separate accounts are required to be maintained.
- (2) Statutory deposits that are required by insurance regulatory agencies to be maintained as a requirement for doing business in such jurisdictions.
- (3) Real estate, authorized under G.S. 58-7-187, encumbered by a mortgage loan with a first lien. (1985, c. 327, s. 1; 1991, c. 681, s. 30.2; 1993, c. 452, s. 25; 1993 (Reg. Sess., 1994), c. 678, s. 13; 1999-244, s. 4; 2001-223, s. 13.1; 2002-187, s. 2.8.)

§ 58-13-15. Definitions.

As used in this Article:

- (1) "Assets" means all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer.
- (2) "Claimants" means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Article.
- (3) "Reserve assets" means those assets of an insurer that are authorized investments for policy reserves in accordance with this Chapter.
- (4) "Policyholder-related liabilities" means those liabilities that are required to be established by an insurer for all of its outstanding insurance policies in accordance with this Chapter. (1985, c. 327, s. 1; 1993, c. 504, s. 8; 2001-223, ss. 13.2, 13.3.)

§ 58-13-20. Exception.

(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those policyholder-related liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

- (1) The ceding insurer and the reinsurer are both licensed to transact business in this State;
- (2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the policyholder-related liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in trust account for that purpose and under those conditions with a qualified United States financial institution.

(b) The Commissioner has the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with his authority to make examinations of insurers as conferred by other provisions of this Chapter.

(c) For purposes of subdivision (a)(2) of this section, "qualified United States financial institution" means an institution that:

- (1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions who serve as trustees. (1985, c. 327, s. 1; 1993, c. 504, s. 9; 2001-223, s. 13.4; 2005-215, s. 25.)

§ 58-13-25. Prohibition of hypothecation.

(a) Every insurer subject to this Article shall at all times have and maintain free and unencumbered reserve assets equal to an amount that is the total of its policyholder-related liabilities and its required minimum capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber those reserve assets. The Commissioner, upon application made to the Commissioner, may issue a written order approving the pledging, hypothecation, or encumbrance of any of the assets of an insurer not otherwise prohibited upon a finding that the pledging, hypothecation, or encumbrance will not adversely affect the insurer's solvency.

(b) Every insurer shall file, along with any statement filed under G.S. 58-2-165, a statement sworn to by the chief executive officer of the insurer that: (i) Title to assets in an amount equal to the policyholder-related liabilities and minimum required capital and minimum required surplus of the insurer that are not pledged, hypothecated, or otherwise encumbered is vested in the insurer; (ii) the only assets of the insurer that are pledged, hypothecated, or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged, hypothecated, or otherwise encumbered; and (iii) the terms and provisions of the transaction of the pledge, hypothecation, or encumbrance are as reported in the sworn statement.

(c) Any person that accepts a pledge, hypothecation, or encumbrance of any asset of an insurer, as security for a debt or other obligation of the insurer, not in accordance with this Article, is deemed to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of claimants: Provided, that said lien does not apply to the assets of an insurer in a

delinquency proceeding under Article 30 of this Chapter if the Commissioner or the court, whichever is appropriate, approves the pledge, hypothecation, or encumbrance of the assets.

(d) In the event of the liquidation of any insurer subject to this Article, claimants of the insurer shall have a prior and preferential claim against all assets of the insurer except those that have been pledged, hypothecated, or encumbered in accordance with this Article. Subject to Article 30 of this Chapter, all claimants have equal status; and their prior and preferential claims are superior to any claim or cause of action against the insurer by any other person. (1985, c. 327, s. 1; 1989, c. 452, s. 4; 1991, c. 681, s. 30.3; 1993, c. 504, s. 10; 2002-187, s. 2.9.)