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(Public)

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April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES IN THE LAWS GOVERNING THE FINANCIAL OPERATIONS OF INSURANCE COMPANIES AND THE ROLE OF THE DEPARTMENT OF INSURANCE IN MONITORING THE SOLVENCY OF INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-3-100 reads as rewritten:

"§ 58-3-100. Revocation, ~~suspension~~ suspension, restriction, and or refusal to renew license.

(a) ~~The Commissioner may revoke, suspend, or refuse to renew the license of any insurer if:~~ The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, restrict, or refuse to renew the license of any insurer if:

- (1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.
- (2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

1 (3) The insurer has published or made to the Department or to the public
2 any false statement or report.

3 (4) ~~The insurer refuses~~ insurer or any of the insurer's officers, directors,
4 employees, agents, or other representatives refuse to submit to any
5 examination authorized by law. ~~law~~ or refuse to perform any legal
6 obligation in relation to an examination.

7 (5) The insurer is found to make a practice of unduly engaging in litigation
8 or of delaying the investigation of claims or the adjustment or payment
9 of valid claims.

10 (b) Any suspension, revocation or refusal to renew an insurer's license under this
11 section may also be made applicable to the license or registration of any ~~natural person~~
12 individual regulated under this Chapter who is a party to any of the causes for licensing
13 sanctions listed in subsection (a) of this section.

14 (c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an insurer
15 fails to acknowledge a claim within 30 days after receiving written notice of the claim,
16 but only if the notice contains sufficient information for the insurer to identify the
17 specific coverage involved. Acknowledgement of the claim shall be made to the claimant
18 or his legal representative advising that the claim is being investigated; or shall be a
19 payment of the claim; or shall be a bona fide written offer of settlement; or shall be a
20 written denial of the claim.

21 (d) If a foreign insurance company's license is suspended or revoked, the
22 Commissioner shall give written notification of the revocation or suspension to all of the
23 company's agents in this State. Until the Commissioner restores the company's license
24 and authority to do business in this State, the company shall not write any new business
25 in this State.

26 (e) The Commissioner may, after considering the standards under G.S. 58-30-
27 60(b), restrict an insurer's license by prohibiting or limiting the kind or amount of
28 insurance written by that insurer. For a foreign insurer, this restriction relates to the
29 insurer's business conducted in this State. The Commissioner shall remove any
30 restriction under this subsection once the Commissioner determines that the operations of
31 the insurer are no longer hazardous to the public or to the insurer's policyholders or
32 creditors."

33 Section 2. Article 7 of Chapter 58 of the General Statutes is amended by
34 adding a new section to read:

35 "**§ 58-7-37. Background of incorporators and proposed management personnel.**

36 (a) Before a license is issued to a new domestic insurance company, each key
37 person must furnish the Commissioner a complete set of the applicant's fingerprints and a
38 recent passport-size, full-face photograph of the applicant. The applicant's fingerprints
39 shall be certified by an authorized law enforcement officer. The fingerprints of every
40 applicant shall be forwarded to the State Bureau of Investigation for a search of the
41 applicant's criminal history record file, if any. If warranted, the State Bureau of
42 Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation

1 for a national criminal history record check. An applicant shall pay the cost of the State
2 and any national criminal history record check of the applicant.

3 (b) As used in this section, 'key person' means a proposed officer, director, or any
4 other individual who will be in a position to influence the operating decisions of a
5 domestic insurance company.

6 (c) The Commissioner may refuse to approve the formation or initial license of a
7 new domestic insurance company under this Article if, after notice to the applicant and an
8 opportunity for a hearing, the Commissioner finds as to the incorporators or other key
9 person any one or more of the following conditions:

10 (1) Any untrue material statement regarding the background or experience
11 of any incorporator or other key person.

12 (2) Violation of or noncompliance with any insurance laws or any rule or
13 order of the Commissioner or of the insurance regulator of another state
14 by any incorporator or other key person.

15 (3) Obtaining or attempting to obtain any license through misrepresentation
16 or fraud.

17 (4) An incorporator or other key person has been convicted of a felony.

18 (5) An incorporator or other key person has been found to have committed
19 any unfair trade practice or fraudulent act or omission.

20 (6) An incorporator or other key person has used fraudulent, coercive, or
21 dishonest practices; or has acted in a manner that is incompetent,
22 untrustworthy, or financially irresponsible.

23 (7) An incorporator or other key person has held such a position in another
24 insurance company that has had its license suspended or revoked by any
25 state.

26 (d) If the Commissioner disapproves a company formation or initial license, the
27 Commissioner shall notify the applicant and advise the applicant in writing of the reasons
28 for the disapproval. Within 30 days after date of receipt of the written disapproval, the
29 applicant may make a written request for a hearing, which shall be scheduled within 30
30 days after the date of receipt of the request.

31 (e) For investigations under this section, the Commissioner has all of the authority
32 in G.S. 58-3-125.

33 (f) The Commissioner may adopt rules to set standards for obtaining background
34 information on each incorporator or other key person of a proposed new domestic
35 insurance company."

36 Section 3. G.S. 58-7-55(3)d. reads as rewritten:

37 "d. That if at any time the Commissioner finds that the conditions
38 justifying the maintenance of such offices, records, and assets
39 outside of this State no longer exist, or that the insurer has
40 willfully and knowingly violated any of the conditions stated in
41 sub-subdivisions b. and c., the Commissioner may order the
42 return of such offices, records, and assets to this State within
43 such reasonable time, not less than six months, as may be

1 specified in the order; and that for failure to comply with such order,
2 as thereafter modified or extended, if any, the Commissioner shall
3 suspend or revoke the insurer's certificate of authority. and the
4 Commissioner may, for good cause shown, extend the time for
5 compliance in the order."

6 Section 4. G.S. 58-7-130 reads as rewritten:

7 "**§ 58-7-130. Payment of dividends impairing financial soundness of company or**
8 **detrimental to policyholders. Dividends and distributions to stockholders.**

9 (a) Each domestic insurance company in North Carolina shall be restricted by the
10 Commissioner from the payment of any dividends or other distributions to its
11 stockholders whenever the Commissioner determines from examination of such
12 company's financial condition that the payment of future dividends or other distributions
13 would cause a hazardous financial condition, impair the financial soundness of the
14 company or be detrimental to its policyholders, and ~~such those~~ restrictions shall continue
15 in force until ~~such future date when the Commissioner may specifically permit~~ permits the
16 payment of dividends or other distributions to stockholders by the company through a
17 written authorization. ~~Nothing contained in this section and no action taken by the~~
18 ~~Commissioner shall in any way restrict the liability of stockholders under G.S. 58-7-125.~~

19 (b) No domestic stock insurance company shall declare dividends to its
20 stockholders except from the unassigned surplus of the company as reflected in the
21 company's most recent financial statement filed with the Commissioner under G.S. 58-2-
22 165.

23 (c) A transfer out of paid-in and contributed surplus to common or preferred
24 capital stock will be permitted on a case-by-case basis, with the Commissioner's prior
25 approval, depending on the necessity for a company to make the transfer.

26 (d) Nothing in this section and no action taken by the Commissioner in any way
27 restricts the liabilities of stockholders under G.S. 58-7-125.

28 (e) Dividends and other distributions paid to stockholders are subject to the
29 requirements and limitations of G.S. 58-19-25(d) and G.S. 58-19-30(c)."

30 Section 5. G.S. 58-7-170(c) reads as rewritten:

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

41 An insurer that, as of October 1, 1993, has mortgage investments that exceed the
42 aggregate limitation specified in this subsection shall submit to the Commissioner no
43 later than January 31, 1994, a plan to bring the amount of mortgage investments into

1 compliance with the limitations by January 1, 2001. The cost of investments made by an
2 insurer in mortgage loans authorized by G.S. 58-7-179, with any one person, or in
3 mortgage pass-through securities and derivatives of mortgage pass-through securities
4 authorized by G.S. 58-7-173(1), (2), (8), or (17), backed by a single collateral package,
5 shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not
6 invest in additional mortgage loans or mortgage pass-through securities and derivatives
7 of mortgage pass-through securities without the Commissioner's consent if the admitted
8 value of all such investments held by the insurer exceeds an aggregate of sixty percent
9 (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%)
10 limitation, the admitted value of all mortgage pass-through securities and derivatives of
11 mortgage pass-through securities permitted by G.S. 58-7-173(17) shall not exceed
12 twenty-five percent (25%) of the admitted assets of the insurer. The admitted value of
13 other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of
14 the admitted assets of the insurer. Mortgage pass-through securities authorized by G.S.
15 58-7-173(1), (2), or (8) shall only be subject to the single collateral package limitation
16 and the sixty percent (60%) aggregate limitation. An insurer that has mortgage
17 investments that exceed the limitations specified in this subsection shall submit to the
18 Commissioner no later than January 31, 1998, a plan to bring the amount of mortgage
19 investments into compliance with the limitations by January 1, 2003."

20 Section 6. G.S. 58-7-185(a) reads as rewritten:

21 "(a) In addition to investments excluded under other provisions of this Chapter,
22 except with prior approval by the Commissioner, an insurer shall not directly or indirectly
23 invest in or lend its funds upon the security of:

24 (1) Issued shares of its own capital stock, except in connection with a plan
25 for purchase of the shares by the insurer's officers, employees, or agents.
26 No such stock shall, however, constitute an asset of the insurer in any
27 determination of its financial condition.

28 (2) Except with the Commissioner's consent, securities issued by any
29 corporation or enterprise, the controlling interest of which is or will
30 after acquisition by the insurer be held directly or indirectly by the
31 insurer or any combination of the insurer and the insurer's directors,
32 officers, parent corporation, subsidiaries, or controlling stockholders.
33 Investments in subsidiaries under G.S. 58-7-177 are not subject to this
34 provision.

35 (3) ~~Any note or other evidence of indebtedness of any director, officer, or~~
36 ~~controlling stockholder of the insurer, except as to policy loans~~
37 ~~authorized under G.S. 58-7-175 and loans authorized under G.S. 58-7-~~
38 ~~200(e)."~~

39 Section 7. G.S. 58-7-187(c) reads as rewritten:

40 "~~An insurer may acquire and hold real property for investment, subject to the~~
41 ~~following conditions: An insurer may, subject to the limitations and conditions set out in~~
42 ~~subdivisions (1) through (4) of this subsection, acquire, improve, develop, manage, lease,~~
43 ~~mortgage, and dispose of real estate, other than real estate to be used primarily for mining~~

1 or development of oil or mineral resources, situated in any state of the United States or
2 province of Canada either directly or indirectly through limited partnership interest,
3 general partnership interests, provided that in the case of general partnership interests, all
4 other partners in the partnership are subsidiaries of the insurer, limited liability
5 companies, joint ventures, stock of an investment subsidiary, trust certificates, or other
6 similar instruments. The real estate shall be income-producing or to be improved or
7 developed for investment purposes under an existing program, in which case the property
8 shall be deemed to be income-producing. The real estate may be subject to mortgages,
9 liens, or other encumbrances, the amount of which shall, to the extent that the obligations
10 secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be
11 deducted from the amount of the investment of the insurer in the real estate for purposes
12 of determining compliance with this subsection and G.S. 58-7-187(d). As used in this
13 subsection, 'investment subsidiary' means a subsidiary of an insurer engaged or organized
14 to engage exclusively in real estate investments authorized in this subsection.

15 (1) The amount shall not exceed in the aggregate the lesser of five percent
16 (5%) of the insurer's admitted assets or fifteen percent (15%) of the
17 insurer's capital and surplus.

18 (2) The amount in any one property shall not exceed one percent (1%) of
19 the insurer's admitted assets.

20 (3) The amount in unimproved land shall not exceed one-half of one
21 percent (0.5%) of the insurer's admitted assets.

22 (4) There shall be no time limit for the disposal of investment real estate."

23 Section 8. G.S. 58-7-200(c) reads as rewritten:

24 "~~(c) No insurer shall make any direct or indirect loan to any of its directors,~~
25 ~~officers, or controlling stockholders; nor shall the insurer make any loan to any other~~
26 ~~person in which the officer, director, or stockholder is substantially interested; nor shall~~
27 ~~any such director, officer, or stockholder directly or indirectly accept any such loan. No~~
28 ~~insurer shall directly or indirectly invest in or lend its funds to any of its directors,~~
29 ~~officers, stockholders, or any other person in which an officer, director, or stockholder is~~
30 ~~interested substantially, nor shall any director, officer, or stockholder directly or~~
31 ~~indirectly accept such funds."~~

32 Section 9. G.S. 58-8-10 reads as rewritten:

33 "**§ 58-8-10. Policyholders are members of mutual companies.**

34 Every person insured by a mutual insurance company is a member while ~~his~~-that
35 person's policy is in force, is entitled to one vote for each policy ~~he~~-that person holds, and
36 must be notified of the time and place of holding its meetings by a written notice or by an
37 imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

38 The insured is hereby notified that by virtue of this policy ~~he~~-the insured is a
39 member of the insurance company, and that the annual meetings of the
40 company are held at its home office on the day of, in each year,
41 at o'clock.

42 The blanks shall be duly filled in print and are a sufficient notice. A corporation ~~which~~
43 that becomes a member of ~~such a~~-mutual insurance company may authorize any person to

1 represent ~~it, the corporation;~~ and this representative has all the rights of an individual
2 member. A person holding property in trust may insure it in ~~such a~~ mutual insurance
3 company, and as trustee assume the liability and be entitled to the rights of a ~~member,~~
4 member; but that person is not personally liable upon the contract of insurance. Members
5 may vote by proxies, dated and executed within three ~~months,~~ months after receipt, and
6 returned and recorded on the books of the company three days or more before the
7 meeting at which they are to be used; ~~but no person as proxy or otherwise may cast more than~~
8 20 votes. ~~used."~~

9 Section 10. Article 10 of Chapter 58 of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 58-10-10. Conversion to stock insurer.**

12 (a) A domestic mutual insurer may convert to a domestic stock insurer under a
13 plan that is approved in advance by the Commissioner.

14 (b) The Commissioner shall not approve the plan unless:

15 (1) It is fair and equitable to the insurer's policyholders.

16 (2) It is adopted by the insurer's board of directors in accordance with the
17 insurer's bylaws and approved by a vote of not less than two-thirds of
18 the insurer's members voting on it in person, by proxy, or by mail at a
19 meeting called for the purpose of voting on the plan, pursuant to
20 reasonable notice and procedure as approved by the Commissioner. If
21 the company is a life insurer, the right to vote may be limited, as its
22 bylaws provide, to members whose policies are other than term or group
23 policies and have been in effect for more than one year.

24 (3) Each policyholder's equity in the insurer is determinable under a fair
25 and reasonable formula approved by the Commissioner. The equity
26 shall be based upon the insurer's entire statutory surplus after deducting
27 certificates of contribution, guaranty capital certificates, and similar
28 evidences of indebtedness included in an insurer's statutory surplus.

29 (4) The policyholders entitled to vote on the plan and participate in the
30 purchase of stock or distribution of assets include all policyholders on
31 the date the plan was adopted by the insurer's board of directors.

32 (5) The plan provides that each policyholder specified in subdivision (4) of
33 this subsection receives a preemptive right to acquire a proportionate
34 part of all of the proposed capital stock of the insurer or of all of the
35 stock of a corporation affiliated with the insurer within a designated
36 reasonable period as the part is determinable under the plan of
37 conversion; and to apply toward the purchase of the stock the amount of
38 the policyholder's equity in the insurer under subdivision (3) of this
39 subsection. The plan must provide for an equitable distribution of
40 fractional interests.

41 (6) The plan provides for payment to each policyholder of the
42 policyholder's entire equity in the insurer; with that payment to be
43 applied toward the purchase of stock to which the policyholder is

1 entitled preemptively or to be made in cash, or both. The cash payment
2 may not exceed fifty percent (50%) of each policyholder's equity. The
3 stock purchased, together with the cash payment, if any, shall constitute
4 full payment and discharge of the policyholder's equity as an owner of
5 the mutual insurer.

6 (7) Shares are to be offered to policyholders at a price not greater than that
7 of shares to be subsequently offered to others.

8 (8) The Commissioner finds that the insurer's management has not, through
9 reduction of volume of new business written, through policy
10 cancellations, or through any other means, sought to (i) reduce, limit, or
11 affect the number or identity of the insurer's members entitled to
12 participate in the plan or (ii) secure for the individuals constituting
13 management any unfair advantage through the plan.

14 (9) The plan, when completed, provides that the insurer's capital and
15 surplus are not less than the minimum required of a domestic stock
16 insurer transacting the same kinds of insurance, are reasonable in
17 relation to the insurer's outstanding liabilities, and are adequate to meet
18 its financial needs.

19 (c) With respect to an insurer with a guaranty capital, the conversion plan shall be
20 approved by a vote of not less than two-thirds of the insurer's guaranty capital
21 shareholders and policyholders as provided for in subdivision (b)(2) of this section. The
22 plan may provide for the issuance of stock in exchange for outstanding guaranty capital
23 shares at their redemption value subject to the conditions in subsection (b) of this section.

24 (d) The Commissioner may schedule a public hearing on the proposed conversion
25 plan.

26 (e) The Commissioner may retain, at the mutual insurer's expense, any attorneys,
27 actuaries, economists, accountants, or other experts not otherwise a part of the
28 Commissioner's staff as may be reasonably necessary to assist the Commissioner in
29 reviewing the proposed conversion plan.

30 (f) The corporate existence of the mutual company continues in the stock
31 company created under this section. All assets, rights, franchises, and interests of the
32 former mutual insurer, in and to real or personal property, are deemed to be transferred to
33 and vested in the stock insurer, without any other deed or transfer; and the stock insurer
34 simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

35 (g) The Commissioner may adopt rules to carry out the provisions of this section."

36 Section 11. G.S. 58-16-5 reads as rewritten:

37 "**§ 58-16-5. Conditions of admission-licensure.**

38 A foreign or alien insurance company may be ~~admitted and authorized~~ licensed to do
39 business when it:

40 (1) Deposits with the Commissioner a certified copy of its charter or
41 certificate of organization and a statement of its financial condition and
42 business, in ~~such the~~ form and detail as he that the Commissioner
43 requires, signed and sworn to by its president and secretary or other

- 1 proper officer, and pays for the filing of this statement the sum required
2 by law.
- 3 (2) Satisfies the Commissioner that it is fully and legally organized under
4 the laws of its state or government to do the business it proposes to
5 ~~transact,~~ transact as direct insurance or assumed reinsurance and that it
6 has been successful in the conduct of ~~such~~ that business; that it has, if a
7 stock company, a free surplus and a fully paid-up and unimpaired
8 capital, exclusive of stockholders' obligations of any description of an
9 amount not less than that required for the organization of a domestic
10 company writing the same kinds of business; and if a mutual company
11 that its free surplus is not less than that required for the organization of a
12 domestic company writing the same kind of business, and that ~~such~~ the
13 capital, surplus, and other funds are invested in substantial accordance
14 with the requirements of ~~Articles 1 through 64~~ of this Chapter.
- 15 (3) Repealed by Session Laws 1995, c. 517, s. 6.
- 16 (4) Repealed by Session Laws 1987, c. 629, s. 20.
- 17 (5) Files with the Commissioner a certificate that it has complied with the
18 laws of the state or government under which it was organized and is
19 authorized to make contracts of insurance.
- 20 (6) Satisfies the Commissioner that it is in substantial compliance with ~~the~~
21 ~~provisions of~~ G.S. 58-7-21, 58-7-26, 58-7-30, and 58-7-31 and Article 13
22 of this Chapter.
- 23 (7) Satisfies the Commissioner that it is in compliance with the company
24 name requirements of G.S. 58-7-35.
- 25 (8) Satisfies the Commissioner that it is in substantial compliance with the
26 requirements of G.S. 58-7-37 pertaining to the background of its
27 officers and directors.
- 28 (9) Files with the Commissioner an instrument appointing the
29 Commissioner as the company's agent on whom any legal process under
30 G.S. 58-16-30 may be served. This appointment is irrevocable as long
31 as any liability of the company remains outstanding in this State. A
32 copy of this instrument, certified by the Commissioner, is sufficient
33 evidence of this appointment; and service upon the Commissioner is
34 sufficient service upon the company."

35 Section 12. G.S. 58-16-6 reads as rewritten:

36 "**§ 58-16-6. Conditions of continued licensure.**

37 In order for a foreign insurance company to continue to be licensed, it shall report any
38 changes in the documents filed under ~~G.S. 58-16-5(1) or G.S. 58-16-5(5),~~ G.S. 58-16-5,
39 maintain the amounts of capital and surplus specified in G.S. 58-16-5(2), and remain in
40 substantial compliance with the statutes listed in G.S. 58-16-5(6) ~~and G.S. 58-16-5(7).~~
41 through G.S. 58-16-5(8)."

42 Section 13. G.S. 58-19-25(a) reads as rewritten:

1 "(a) Every insurer that is licensed to do business in this State and that is a member
2 of an insurance holding company system shall register with the Commissioner, except a
3 foreign insurer subject to the registration requirements and standards adopted by statute
4 or regulation in the jurisdiction of its domicile that are substantially similar to those
5 contained in this section and G.S. 58-19-30 or a provision such as the following: Each registered
6 insurer shall keep current the information required to be disclosed in its registration statement by
7 reporting all material changes or additions within 15 days after the end of the month in which it
8 learns of each change or addition. The insurer shall also file a copy of its registration statement
9 and any amendments to the statement in each state in which that insurer is authorized to do
10 business if requested by the insurance regulator of that state in:

11 (1) This section.

12 (2) G.S. 58-19-30(a), 58-19-30(c), and 58-19-30(d).

13 (3) G.S. 58-19-30(b) or a provision such as the following: Each registered
14 insurer shall keep current the information required to be disclosed in its
15 registration statement by reporting all material changes or additions
16 within 15 days after the end of the month in which it learns of each
17 change or addition. The insurer shall also file a copy of its registration
18 statement and any amendments to the statement in each state in which
19 that insurer is authorized to do business, if requested by the insurance
20 regulator of that state.

21 Any insurer that is subject to registration under this section shall register within 30 days
22 after it becomes subject to registration, and an amendment to the registration statement
23 shall be filed by March 1 of each year for the previous calendar year; unless the
24 Commissioner for good cause shown extends the time for registration or filing, and then
25 within the extended time. All registration statements shall contain a summary, on a form
26 prescribed by the Commissioner, outlining all items in the current registration statement
27 representing changes from the prior registration statement. The Commissioner may
28 require any insurer that is a member of a holding company system that is not subject to
29 registration under this section to furnish a copy of the registration statement or other
30 information filed by the insurance company with the insurance regulator of its
31 domiciliary jurisdiction."

32 Section 14. G.S. 58-19-30(b) reads as rewritten:

33 "(b) The following transactions involving a domestic insurer and any person in its
34 holding company system may not be entered into unless the insurer has notified the
35 Commissioner in writing of its intention to enter into the transaction at least 30 days
36 before the transaction, or such shorter period as the Commissioner permits, and the
37 Commissioner has not disapproved it within that period:

38 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees,
39 or investments, provided the transactions equal or exceed: (i) with
40 respect to nonlife insurers, the lesser of three percent (3%) of the
41 insurer's admitted assets or twenty-five percent (25%) of surplus as
42 regards policyholders; (ii) with respect to life insurers, three percent

- 1 (3%) of the insurer's admitted assets; each as of the preceding December
2 31.
- 3 (2) Loans or extensions of credit to any person who is not affiliated, where
4 the insurer makes the loans or extensions of credit with the agreement or
5 understanding that the proceeds of the transactions, in whole or in
6 substantial part, are to be used to make loans or extensions of credit to,
7 to purchase assets of, or to make investments in, any affiliate of the
8 insurer making the loans or extensions of credit provided the
9 transactions equal or exceed: (i) with respect to nonlife insurers, the
10 lesser of three percent (3%) of the insurer's admitted assets or twenty-
11 five percent (25%) of surplus as regards policyholders; (ii) with respect
12 to life insurers, three percent (3%) of the insurer's admitted assets; each
13 as of the preceding December 31.
- 14 (3) Reinsurance agreements or modifications to the agreements in which the
15 reinsurance premium or a change in the insurer's liabilities equals or
16 exceeds five percent (5%) of the insurer's surplus as regards
17 policyholders, as of the preceding December 31, including those
18 agreements that may require as consideration the transfer of assets from
19 an insurer to a nonaffiliate, if an agreement or understanding exists
20 between the insurer and nonaffiliate that any portion of the assets will
21 be transferred to one or more affiliates of the insurer.
- 22 (4) All management agreements, service contracts, guarantees, or cost-
23 sharing arrangements.
- 24 (4a) Direct or indirect acquisitions or investments in a person that controls
25 the insurer or an affiliate of the insurer in an amount which, together
26 with its present holdings in the investments, exceeds two and one-half
27 percent (2.5%) of the insurer's surplus to policyholders. Direct or
28 indirect acquisitions or investments in subsidiaries acquired under G.S.
29 58-19-10, or in nonsubsidiary insurance affiliates that are subject to the
30 provisions of this Article, are exempt from this requirement.
- 31 (5) Any material transactions, specified by rule, that the Commissioner
32 determines may adversely affect the interests of the insurer's
33 policyholders."

34 Section 15. G.S. 58-26-25 reads as rewritten:

35 "**§ 58-26-25. Amount of unearned premium reserve.**

36 (a) The unearned premium reserve of every domestic title insurance company shall
37 consist of the aggregate of:

- 38 (1) The amount of the unearned premium reserve held as of January 1,
39 1974-1998.
- 40 (2) The amount of all additions required to be made to such reserve by this
41 section, less the reduction of such aggregate amount required hereby.

42 (b) On each contract of title insurance issued by a domestic title insurance
43 company on and after January 1, 1974-1998, there shall be reserved initially as an

1 unearned premium reserve a sum equal to ten ~~per centum~~ percent (10%) of the original
2 risk premium charged therefor.

3 (c) The aggregate of the amounts set aside in unearned premium reserves in any
4 calendar year, ~~pursuant to~~ under subsection (b) of this section, shall be reduced annually at
5 the end of each calendar year following the year in which the policy is issued, ~~at the~~
6 ~~annual rate of one twentieth of the aggregate of such amounts, over a period of 20 years,~~
7 according to the following: twenty percent (20%) the first year; ten percent (10%) for
8 years two and three; five percent (5%) for years four through 10; three percent (3%) for
9 years 11 through 15; and two percent (2%) for years 16 through 20.

10 (d) The entire amount of the unearned premium reserve held as of January 1, ~~1974,~~
11 1998, shall be added to the reserve as of that date and shall be released from ~~said~~ the
12 reserve and restored to net profits ~~at the annual rate of one twentieth of the said entire amount,~~
13 ~~beginning in the next ensuing calendar year.~~ in accordance with percentages reflected in G.S.
14 58-26-25(c).

15 (e) ~~If substantially the entire outstanding liability under all policies, contracts of~~
16 ~~title insurance or reinsurance agreements of any such title insurance company shall be~~
17 ~~reinsured, the value of the consideration received by a reinsuring title insurance company~~
18 ~~authorized to transact the business of title insurance in this State, shall constitute, in its~~
19 ~~entirety, unearned portions of original premiums and be added to its unearned premium~~
20 ~~reserve and deemed, for recovery purposes, to have been provided for liabilities assumed~~
21 ~~during the year of such reinsurance. The amount of such addition to the unearned~~
22 ~~premium reserve of such assuming title insurance company shall be not less, however,~~
23 ~~than two thirds of the amount of the unearned premium reserve required to be maintained~~
24 ~~by the ceding title insurance company at the time of such reinsurance. A supplemental~~
25 ~~reserve shall be established in accordance with the instructions of the annual statement~~
26 ~~required under G.S. 58-27-15 consisting of the reserves necessary, when taken in~~
27 ~~combination with the reserves required by G.S. 58-26-25(a) through (d), to cover the~~
28 ~~company's liabilities with respect to all losses, claims, and loss adjustment expenses.~~

29 (f) Each title insurer subject to this Article shall file with its annual statement
30 required under G.S. 58-27-15 an actuarial certification of a member in good standing of
31 the American Academy of Actuaries. The actuarial certification shall conform to the
32 NAIC annual statement instructions for title insurers.

33 (g) If substantially the entire outstanding liability under all policies, contracts of
34 title insurance, or reinsurance agreements of any title insurance company is reinsured, the
35 value of the consideration received by a ceding title insurance company authorized to
36 transact title insurance in this State shall constitute, in its entirety, unearned portions of
37 original premiums, shall be added to its unearned premium reserve, and shall be deemed,
38 for recovery purposes, to have been provided for liabilities assumed during the year of
39 the reinsurance. The amount of the addition to the unearned premium reserve of the
40 assuming title insurance company shall be not less than two-thirds of the amount of the
41 unearned premium reserve required to be maintained by the ceding title insurance
42 company at the time of the reinsurance."

43 Section 16. G.S. 58-34-2(a) is amended by adding a new subdivision to read:

1 "(1a) 'Custodial agreement' means any agreement or contract under which any
2 person is delegated authority to safekeep assets of the insurer."

3 Section 17. G.S. 58-34-10 reads as rewritten:

4 "**§ 58-34-10. Management ~~contracts.~~ contracts or custodial agreements.**

5 (a) Subject to G.S. 58-19-30(b)(4), any domestic insurer that enters into a
6 management contract or custodial agreement must file that contract or agreement with the
7 Commissioner on or before its effective date. As used in this section, 'management
8 contract' means any agreement or contract under which any person is delegated
9 management duties or control of an insurer, or transfers a substantial part of any major
10 function of an insurer, such as adjustment of losses, production of business, investment of
11 assets, or general servicing of the insurer's business.

12 (b) Any domestic insurer that has a management contract or custodial agreement
13 shall file a statement with the initial filing of that contract that discloses (i) criteria on
14 which charges to the insurer are based for that contract; (ii) whether management
15 personnel or other employees of the insurer are to be performing management functions
16 and receiving any remuneration therefor through that contract in addition to the
17 compensation by way of salary received directly from the insurer for their services; (iii)
18 whether the contract transfers substantial control of the insurer or any of the powers
19 vested in the board of directors, by statute, articles of incorporation, or bylaws, or
20 substantially all of the basic functions of the insurer's management; (iv) biographical
21 information for each officer and director of the management firm; and (v) other
22 information concerning the contract or the management or custodian firm as may be
23 included from time to time in any registration forms adopted or approved by the
24 Commissioner. ~~Such~~ The statement shall be filed on a form prescribed by the
25 Commissioner.

26 (c) Any domestic insurer that amends or cancels a management contract or
27 custodial agreement filed ~~pursuant to~~ under subsection (a) of this section shall notify the
28 Commissioner ~~thereof~~ within 15 business days after the amendment or cancellation. If the
29 contract is amended, the notice shall provide a copy of the amended contract and shall
30 disclose if the amendment affects any of the items in subsection (b) of this section. The
31 Commissioner may prescribe a form to be used to provide notice under this subsection.

32 (d) Any domestic insurer that has a management contract or custodial agreement
33 shall file a statement on or before March 1 of each year, for the preceding calendar year,
34 disclosing (i) total charges incurred by the insurer under the contract; (ii) any salaries,
35 commissions, or other valuable consideration paid by the insurer directly to any officer,
36 director, or shareholder of the management or custodian firm; and (iii) other information
37 concerning the contract or the management or custodian firm as may be included from
38 time to time in any registration forms adopted or approved by the Commissioner. The
39 Commissioner may prescribe a form to be used to provide the information required by
40 this subsection.

41 (e) Any domestic insurer that has a management contract may request an
42 exemption from the filing requirements of this section if the contract is for a group of
43 affiliated insurers on a pooled funds basis or service company management basis, where

1 costs to the individual member insurers are charged on an actually incurred or closely
2 estimated basis. The request for an exemption must be in writing, must explain the basis
3 for the exemption, and must be received by the Commissioner on or before the effective
4 date of the contract. As used in this subsection, 'affiliated' has the same meaning as in
5 G.S. 58-19-5(1). Management contracts exempted under this subsection must still be
6 reduced to written form."

7 Section 18. G.S. 58-34-15 reads as rewritten:

8 **"§ 58-34-15. Grounds for disapproval.**

9 (a) The Commissioner must disapprove any management contract or custodial
10 agreement filed under G.S. 58-34-10 if, at any time, the Commissioner finds:

11 (1) That the service or management charges are based upon criteria
12 unrelated either to the managed insurer's profits or to the reasonable
13 customary and usual charges for ~~such~~ the services or are based on
14 factors unrelated to the value of ~~such~~ the services to the insurer; or

15 (2) That management personnel or other employees of the insurer are to be
16 performing management functions and receiving any remuneration
17 ~~therefor~~ for those functions through the management or service contract
18 in addition to the compensation by way of salary received directly from
19 the insurer for their services; or

20 (3) That the contract would transfer substantial control of the insurer or any
21 of the powers vested in the board of directors, by statute, articles of
22 incorporation, or bylaws, or substantially all of the basic functions of the
23 insurance company management; or

24 (4) That the contract contains provisions that would be clearly detrimental
25 to the best interest of policyholders, stockholders, or members of the
26 insurer; or

27 (5) That the officers and directors of the management or custodial firm are
28 of known bad character or have been affiliated, directly or indirectly,
29 through ownership, control, management, reinsurance transactions, or
30 other insurance or business relations with any person known to have
31 been involved in the improper manipulation of assets, accounts, or
32 reinsurance.

33 (6) That the custodial agreement is not substantially the same as the form
34 adopted by the Commissioner.

35 (b) If the Commissioner disapproves any management contract or custodial
36 agreement, notice of ~~such action~~ the disapproval shall be given to the insurer assigning the
37 reasons ~~therefor~~ for the disapproval in writing. The Commissioner shall grant any party to
38 the contract a hearing ~~upon request according to G.S. 58-2-50.~~ if the party requests a
39 hearing."

40 Section 19. G.S. 58-65-95 reads as rewritten:

41 **"§ 58-65-95. Investments and reserves.**

42 ~~No~~ (a) Except as provided in subsection (e) of this section, no -corporation subject to
43 this Article shall invest in any securities other than securities permitted ~~by the laws of this~~

1 ~~State by Article 7 of this Chapter for the investment of assets of life insurance companies,~~
2 ~~banks, trust companies, executors, administrators and guardians assets.~~

3 (b) ~~Every such corporation after the first full year of doing business after the passage of~~
4 ~~this Article and Article 66 of this Chapter subject to this Article shall accumulate and~~
5 ~~maintain, in addition to proper reserves for current administrative liabilities and whatever~~
6 ~~reserves are deemed to be adequate and proper by the Commissioner of Insurance for~~
7 ~~unpaid hospital and/or medical and/or hospital, medical, or dental bills, and unearned~~
8 ~~membership dues, a special contingent surplus or reserve at the following rates annually~~
9 ~~of its gross annual collections from membership dues, exclusive of receipts from cost~~
10 ~~plus plans, until said the reserve shall equal equals an amount that is three times its~~
11 ~~average monthly expenditures for hospital and/or medical and/or dental claims and~~
12 ~~administrative and selling expenses:~~

- 13 (1) First \$200,000 4%
14 (2) Next \$200,000 2%
15 (3) All above \$400,000 1%

16 (c) ~~Any such corporation subject to this Article may accumulate and maintain a~~
17 ~~contingent reserve in excess of the reserve hereinabove provided for, reserve required in~~
18 ~~subsection (b) of this section, not to exceed an amount equal to six times the average~~
19 ~~monthly expenditures for hospital and/or medical and/or dental claims and administrative~~
20 ~~and selling expenses.~~

21 (d) ~~In the event If the Commissioner of Insurance finds that special conditions exist~~
22 ~~warranting an increase or decrease in the reserves or schedule of reserves, hereinabove~~
23 ~~provided for, it may be modified by reserves in subsection (b) of this section, the~~
24 ~~Commissioner of Insurance accordingly, may modify them accordingly. provided Provided,~~
25 ~~however, when special conditions exist warranting an increase in said the schedule of~~
26 ~~reserves, said the schedule shall not be increased by the Commissioner of Insurance until a~~
27 ~~reasonable length of time shall have has elapsed after the Commissioner gives notice of~~
28 ~~such the increase.~~

29 (e) ~~The cost of investments made by service corporations in mortgage loans,~~
30 ~~authorized by G.S. 58-7-179, with any one person, shall not exceed the lesser of five~~
31 ~~percent (5%) of the service corporation's admitted assets of ten percent (10%) of the~~
32 ~~service corporation's capital and surplus. A service corporation shall not invest in~~
33 ~~additional mortgage loans without the Commissioner's consent if the admitted value of all~~
34 ~~such mortgage loans held by the service corporation exceeds an aggregate of sixty~~
35 ~~percent (60%) of the admitted assets of the service corporation, if (i) the admitted value~~
36 ~~of all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed~~
37 ~~twenty-five percent (25%) of the admitted assets of the service corporation and (ii) the~~
38 ~~admitted value of other mortgage loans permitted by G.S. 58-7-179 does not exceed forty~~
39 ~~percent (40%) of the admitted assets of the service corporation. A service corporation~~
40 ~~that, as of October 1, 1997, has mortgage investments that exceed the aggregate~~
41 ~~limitation specified in this subsection shall submit to the Commissioner no later than~~
42 ~~January 31, 1998, a plan to bring the amount of mortgage investments into compliance~~
43 ~~with the limitations by January 1, 2001."~~

1 Section 20. Article 65 of Chapter 58 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 58-65-102. Financial statements; examinations.**

4 (a) Every corporation organized under this Article is subject to G.S. 58-2-165.

5 (b) Service corporations organized under this Article shall be examined under G.S.
6 58-2-131, 58-2-132, and 58-2-133."

7 Section 21. Article 67 of Chapter 58 of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 58-67-56. Financial statements.**

10 Every HMO under this Chapter is subject to G.S. 58-2-165."

11 Section 22. G.S. 58-3-90, 58-65-100, 58-65-105, and 58-67-55 are repealed.

12 Section 23. This act becomes effective October 1, 1997.