

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 760

Senate Insurance and Consumer Protection Committee Substitute Adopted 9/30/02

Short Title: Insurance Amendments.

(Public)

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Sponsors:

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Referred to:

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March 26, 2001

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE MOTOR VEHICLE REINSURANCE FACILITY AND  
2 BEACH AND FAIR PLAN LAWS; AMEND LAWS REGARDING  
3 DEPARTMENT OF INSURANCE OVERSIGHT OF INSURANCE COMPANY  
4 SOLVENCY; AMEND THE MANAGED CARE EXTERNAL REVIEW LAW TO  
5 PROVIDE FOR CLARITY IN MAILING NOTICES, THE SAME IMMUNITY TO  
6 MEDICAL PROFESSIONALS ADVISING THE COMMISSIONER AS  
7 PROVIDED TO EXTERNAL REVIEWERS, AND CONFIDENTIALITY OF  
8 CREDENTIALING INFORMATION IN THE POSSESSION OF THE  
9 COMMISSIONER; EXTEND THE RATE HEARING TIMETABLES FOR  
10 HOMEOWNERS' AND WORKERS' COMPENSATION INSURANCE; CLARIFY  
11 THE NORTH CAROLINA HEALTH INSURANCE PORTABILITY AND  
12 ACCOUNTABILITY ACT; EXTEND THE TIME FOR PREMIUM FINANCE  
13 COMPANY PREMIUM REFUNDS FOR AUDITED POLICIES; AMEND THE  
14 TITLE INSURANCE RESERVE LAWS TO ENHANCE INSOLVENCY  
15 PROTECTION; AND REDUCE THE NONFORFEITURE INTEREST RATE FOR  
16 INDIVIDUAL ANNUITIES.  
17

18 The General Assembly of North Carolina enacts:

19 **PART I. REINSURANCE FACILITY AND FAIR AND BEACH PLAN**  
20 **DEFINITION CLARIFICATIONS AND TECHNICAL AND SUBSTANTIVE**  
21 **CORRECTIONS.**

22 **SECTION 1.1.** G.S. 58-37-1(8) reads as rewritten:

23 "(8) 'Person' means every natural person, firm, partnership, association,  
24 trust, limited liability company, firm, corporation, or government or  
25 agency thereof, government, or governmental agency."

26 **SECTION 1.2.** G.S. 58-37-35(b)(2) reads as rewritten:

27 "(2) Additional ceding privileges for motor vehicle insurance shall be  
28 provided by the Board of Governors up to the following:

- 1 a. Bodily injury liability: one hundred thousand dollars (\$100,000)  
2 each person, three hundred thousand dollars (\$300,000) each  
3 accident;  
4 b. Property damage liability: fifty thousand dollars (\$50,000) each  
5 accident;  
6 c. Medical payments: two thousand dollars (\$2,000) each person;  
7 except that this coverage shall not be available for motorcycles;  
8 d. Underinsured motorist: one million dollars (\$1,000,000) each  
9 person and each accident for bodily injury liability; and  
10 e. Uninsured motorist: one million dollars (\$1,000,000) each  
11 person and each accident for bodily injury and fifty thousand  
12 dollars (\$50,000) each accident for property damage (one  
13 hundred dollars (\$100.00) deductible)."

14 **SECTION 1.3.** G.S. 58-37-35(b)(2a) reads as rewritten:

15 "(2a) For persons who must maintain liability coverage limits above those  
16 available under subdivision (2) of this subsection in order to obtain or  
17 continue coverage under personal excess liability or personal  
18 'umbrella' insurance policies, additional ceding privileges for motor  
19 vehicle insurance shall be provided by the Board of Governors up to  
20 the following:

- 21 a. Bodily injury liability: two hundred fifty thousand dollars  
22 (\$250,000) each person, five hundred thousand dollars  
23 (\$500,000) each accident.  
24 b. Property damage liability: one hundred thousand dollars  
25 (\$100,000) each accident.  
26 c. Medical payments: five thousand dollars (\$5,000) each ~~person-~~  
27 person; except that this coverage shall not be available for  
28 motorcycles.  
29 d. Uninsured motorist: one hundred thousand dollars (\$100,000)  
30 each accident for property damage (one hundred dollars  
31 (\$100.00) deductible)."

32 **SECTION 1.4.** G.S. 58-45-6 reads as rewritten:

33 **"§ 58-45-6. Persons who can be insured by the Association.**

34 As used in this Article, "person" includes the State of North Carolina and any  
35 county, city, or other political subdivision of the State of North Carolina."

36 **SECTION 1.5.** G.S. 58-46-2 reads as rewritten:

37 **"§ 58-46-2. Persons who can be insured by the Association.**

38 As used in this Article, "person" includes the State of North Carolina and any  
39 county, city, or other political subdivision of the State of North Carolina."

40 **PART II. FINANCIAL EVALUATION AND SOLVENCY PROTECTION.**

41 **SECTION 2.1.** G.S. 58-2-131(d) reads as rewritten:

42 "(d) The Commissioner may conduct an examination of any insurer whenever the  
43 Commissioner deems it to be prudent for the protection of policyholders but shall at a  
44 minimum conduct a ~~regular~~ financial examination of every domestic insurer not less

1 frequently than once every five years. In scheduling and determining the nature, scope,  
2 and frequency of examinations, the Commissioner shall consider such matters as the  
3 results of financial statement analyses and ratios, changes in management or ownership,  
4 actuarial opinions, reports of independent certified public accountants, and other criteria  
5 as set forth in the NAIC Examiners' Handbook."

6 **SECTION 2.2.** G.S. 58-2-131(i) reads as rewritten:

7 "(i) Every person from whom information is sought and its officers, directors, and  
8 agents must provide to the Commissioner timely, convenient, and free access, at all  
9 reasonable hours at its offices, to all data relating to the property, assets, business, and  
10 affairs of the ~~insurer~~-entity being examined. The officers, directors, employees, and  
11 agents of the ~~person~~-entity must facilitate and aid in the examination. The refusal of any  
12 ~~insurer, entity~~, by its officers, directors, employees, or agents, to submit to examination  
13 or to comply with any reasonable written request of the Commissioner or to knowingly  
14 or willfully make any false statement in regard to the examination or written request, is  
15 grounds for revocation, suspension, refusal, or nonrenewal of any license or authority  
16 held by the ~~insurer~~-entity to engage in an insurance or other business subject to the  
17 Commissioner's jurisdiction."

18 **SECTION 2.3.** G.S. 58-2-134 reads as rewritten:

19 "§ 58-2-134. **Cost of certain examinations.**

20 (a) An insurer shall reimburse the State Treasurer for the actual expenses  
21 incurred by the Department in any examination of those records or assets conducted  
22 under G.S. 58-2-131, 58-2-132, or 58-2-133 ~~when:~~ under any of the following  
23 circumstances:

- 24 (1) The insurer maintains part of its records or assets outside this State  
25 under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the  
26 records or assets outside this State.
- 27 (2) The insurer requests an examination of its records or assets.
- 28 (3) The Commissioner examines an insurer that is impaired or insolvent or  
29 is unlikely to be able to meet obligations with respect to known or  
30 anticipated claims or to pay other obligations in the normal course of  
31 business.
- 32 (4) The examination involves analysis of the company's investment  
33 portfolio, a material portion of which comprises a sophisticated  
34 derivatives program, material holdings of collateralized mortgage  
35 obligations with high flux scores, unusual real estate or limited  
36 partnership holdings, high or unusual portfolio turnover, material asset  
37 movement between related parties, or unusual securities lending  
38 activities.

39 (b) The amount paid by an insurer for an examination of records or assets under  
40 this section shall not exceed one hundred thousand dollars (\$100,000), unless the insurer  
41 and the Commissioner agree on a higher amount. The State Treasurer shall deposit all  
42 funds received under this section in the Insurance Regulatory Fund established under  
43 G.S. 58-6-25. Funds received under this section shall be used by the Department for

1 offsetting the actual expenses incurred by the Department for examinations under this  
2 section."

3           **SECTION 2.4.** Article 7 of Chapter 58 of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 58-7-73. Dissolutions of insurers.**

6           Upon reaching a determination of intent to dissolve and before filing articles of  
7 dissolution with the Office of the Secretary of State, a domestic insurer organized under  
8 this Chapter shall file a plan of dissolution for approval by the Commissioner. At such  
9 time the Commissioner may restrict the license of the insurer. In order to proceed with a  
10 dissolution, the plan must be approved by the Commissioner."

11           **SECTION 2.5.** G.S. 58-7-130(b) reads as rewritten:

12           "(b) No domestic stock insurance company shall declare or pay dividends to its  
13 stockholders except from the unassigned surplus of the company as reflected in the  
14 company's most recent financial statement filed with the Commissioner under G.S.  
15 58-2-165."

16           **SECTION 2.6.** G.S. 58-7-178(b) reads as rewritten:

17           "(b) An insurer, whether or not it is authorized to do business or has outstanding  
18 insurance contracts on lives or risks in any foreign country, may invest in bonds, notes,  
19 or stocks of any foreign country or alien corporation that are substantially of the same  
20 kinds, classes, and investment grades as those otherwise eligible for investment under  
21 this Chapter. The aggregate ~~amount~~ cost of investments under this subsection shall not  
22 exceed ten percent (10%) of the insurer's admitted assets, provided that the cost of  
23 investments in any foreign country pursuant to this subsection shall not exceed three  
24 percent (3%) of the insurer's admitted assets."

25           **SECTION 2.7.** G.S. 58-9-2(a)(9) reads as rewritten:

26           "(9) 'Reinsurer' means any ~~licensed~~ insurer that is licensed by the  
27 Commissioner and that is authorized to assume reinsurance."

28           **SECTION 2.8.** G.S. 58-13-10 reads as rewritten:

29 **"§ 58-13-10. Scope.**

30           This Article applies to all domestic insurers and to all kinds of insurance written by  
31 those insurers under Articles 1 through 68 of this Chapter. Foreign insurers shall comply  
32 in substance with the requirements and limitations of this Article. This Article does not  
33 apply to the following:

- 34           (1) Variable contracts or guaranteed investment contracts for which  
35           separate accounts are required to be maintained.
- 36           (2) Statutory deposits that are required by insurance regulatory agencies to  
37           be maintained as a requirement for doing business in such  
38           jurisdictions.
- 39           (3) Real estate, authorized under G.S. 58-7-187, encumbered by a  
40           mortgage loan with a first lien."

41           **SECTION 2.9.** G.S. 58-13-25(a) reads as rewritten:

42           "(a) Every insurer subject to this Article shall at all times have and maintain free  
43 and unencumbered reserve assets equal to an amount that is ~~at least ten percent (10%)~~  
44 ~~more than~~ the total of its policyholder-related liabilities and its required minimum

1 capital and minimum surplus and shall not pledge, hypothecate, or otherwise encumber  
2 those reserve assets. The Commissioner, upon application made to the Commissioner,  
3 may issue a written order approving the pledging, hypothecation, or encumbrance of  
4 any of the assets of an insurer not otherwise prohibited upon a finding that the pledging,  
5 hypothecation, or encumbrance will not adversely affect the insurer's solvency."

6 **SECTION 2.10.** G.S. 58-30-62(a) reads as rewritten:

7 "(a) As used in this section, an insurer has 'exceeded its powers' when it: has  
8 refused to permit examination of its books, papers, accounts, records or affairs by the  
9 Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers,  
10 accounts or records necessary for an examination of the insurer; has failed to comply  
11 promptly with applicable financial reporting statutes or rules and related Department  
12 requests; continues to transact the business of insurance after its license has been  
13 revoked, suspended, or not renewed by the Commissioner; by contract or otherwise, has  
14 unlawfully, or has in violation of an order of the Commissioner, or has without first  
15 having obtained any legally required written approval of the Commissioner, totally  
16 reinsured its entire outstanding business or merged or consolidated substantially its  
17 entire property or business with another insurer; has engaged in any transaction in  
18 which it is not authorized to engage under the laws of this State; has not complied with  
19 G.S. 58-7-73; or has refused to comply with a lawful order of the Commissioner. As  
20 used in this section, 'Commissioner' includes an authorized representative or designee of  
21 the Commissioner."

22 **PART III. EXTERNAL REVIEW CLARIFICATIONS.**

23 **SECTION 3.1.** G.S. 58-50-80(b)(3) reads as rewritten:

24 "(3) Notify in writing the covered person and the covered person's provider  
25 who performed or requested the service whether the request is  
26 complete and whether the request has been accepted for external  
27 review. If the request is complete and accepted for external review, the  
28 notice shall include a copy of the information that the insurer provided  
29 to the Commissioner pursuant to subdivision (b)(1) of this section, and  
30 inform the covered person that the covered person may submit to the  
31 assigned independent review organization in writing, within seven  
32 days after the ~~date~~ receipt of the notice, additional information and  
33 supporting documentation relevant to the initial denial for the  
34 organization to consider when conducting the external review. If the  
35 covered person chooses to send additional information to the assigned  
36 independent review organization, then the covered person shall at the  
37 same time and by the same means, send a copy of that information to  
38 the insurer."

39 **SECTION 3.2.** G.S. 58-50-80 is amended by adding a new subsection to  
40 read:

41 "(m) For the purposes of this section, a person is presumed to have received a  
42 written notice two days after the notice has been placed, first-class postage prepaid, in  
43 the United States mail addressed to the person. The presumption may be rebutted by  
44 sufficient evidence that the notice was received on another day or not received at all."

1           **SECTION 3.3.** G.S. 58-50-89 reads as rewritten:

2   "**§ 58-50-89. Hold harmless for ~~Commissioner~~ Commissioner, medical**  
3    **professionals, and independent review organizations.**

4    ~~The Commissioner or~~ Neither the Commissioner, a medical professional rendering  
5    ~~advice to the Commissioner under G.S. 58-50-82(b)(2), an independent review~~  
6    ~~organization or organization, nor a clinical peer reviewer working on behalf of an~~  
7    organization shall ~~not~~ be liable for damages to any person for any opinions rendered  
8    during or upon completion of an external review conducted under this Part, unless the  
9    opinion was rendered in bad faith or involved gross negligence."

10           **SECTION 3.4.** G.S. 58-2-105 reads as rewritten:

11   "**§ 58-2-105. Confidentiality of medical and credentialing records.**

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

18    (b) Under Part 4 of Article 50 of this Chapter, the Department may disclose  
19    patient medical records to an independent review organization, and the organization  
20    shall maintain the confidentiality of those records as required by this section, except as  
21    allowed by G.S. 58-39-75 and G.S. 58-39-76.

22    (c) Under Part 4 of Article 50 of this Chapter, all information related to the  
23    credentialing of medical professionals that is in the possession of the Commissioner is  
24    confidential and is a public record neither under this section nor under Chapter 132 of  
25    the General Statutes."

26   **PART IV. HOMEOWNERS' AND WORKERS' COMPENSATION INSURANCE**  
27   **RATE FILINGS.**

28           **SECTION 4.1.** G.S. 58-36-15(a) reads as rewritten:

29    "(a) The Bureau shall file with the Commissioner copies of the rates, loss costs,  
30    classification plans, rating plans and rating systems used by its members. Each rate or  
31    loss costs filing shall become effective on the date specified in the filing, but not earlier  
32    than ~~405~~ 210 days from the date the filing is received by the Commissioner: Provided  
33    that (1) rate or loss costs filings for workers' compensation insurance and employers'  
34    liability insurance written in connection therewith shall not become effective earlier  
35    than ~~420~~ 210 days from the date the filing is received by the Commissioner or on the  
36    date as provided in G.S. 58-36-100, whichever is earlier; and (2) any filing may become  
37    effective on a date earlier than that specified in this subsection upon agreement between  
38    the Commissioner and the Bureau."

39           **SECTION 4.2.** G.S. 58-36-20(a) reads as rewritten:

40    "(a) At any time within 50 days ~~from and~~ after the date of any filing, the  
41    Commissioner may give written notice to the Bureau specifying in what respect and to  
42    what extent ~~he~~ the Commissioner contends ~~such~~ the filing fails to comply with the  
43    requirements of this Article and fixing a date for hearing not less than 30 days from the  
44    date of mailing of such notice. At ~~such~~ the hearing the factors specified in G.S.

1 58-36-10 shall be considered. If the Commissioner after hearing finds that the filing  
2 does not comply with the provisions of this Article, he may issue his order determining  
3 wherein and to what extent such filing is deemed to be improper and fixing a date  
4 thereafter, within a reasonable time, after which ~~such the~~ filing shall no longer be  
5 effective. Any order of disapproval under this section must be entered within ~~105~~ 210  
6 days ~~of after~~ the date the filing is received by the Commissioner: ~~Provided that any~~  
7 ~~order of disapproval under this section with respect to workers' compensation insurance~~  
8 ~~and employers' liability insurance written in connection therewith shall be entered~~  
9 ~~within 150 days of the date the filing is received by the Commissioner."~~

10 **SECTION 4.3.** G.S. 58-36-65(c) reads as rewritten:

11 "(c) The classifications and Plan filed by the Bureau shall be subject to the filing,  
12 hearing, modification, approval, disapproval, review, and appeal procedures provided  
13 by law; provided that the ~~105 day~~ 210-day disapproval period in G.S. 58-36-20(a) and  
14 the 50-day deemer period in G.S. 58-36-20(b) do not apply to filings or modifications  
15 made under this section. The classifications or Plan filed by the Bureau and  
16 promulgated by the Commissioner shall of itself not be designed to bring about any  
17 increase or decrease in the overall rate level."

18 **PART V. HIPAA CLARIFICATIONS.**

19 **SECTION 5.1.** G.S. 58-68-25(b)(1) reads as rewritten:

20 "(1) Benefits not subject to requirements. –

- 21 a. Coverage only for accident or disability income insurance or  
22 any combination of these.
- 23 b. Coverage issued as a supplement to liability insurance.
- 24 c. Liability insurance, including general liability insurance and  
25 automobile liability insurance.
- 26 d. Workers' compensation or similar insurance.
- 27 e. Automobile medical payment insurance.
- 28 f. Credit-only insurance.
- 29 g. Coverage for on-site medical clinics.
- 30 h. Other similar insurance coverage, specified in federal  
31 regulations, under which benefits for medical care are  
32 secondary or incidental to other insurance benefits.
- 33 i. Short-term limited-duration health insurance policies as defined  
34 in Part 144 of Title 45 of the Code of Federal Regulations."

35 **SECTION 5.2.** G.S. 58-51-15(h) reads as rewritten:

36 "(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of  
37 this section does not apply to:

- 38 (1) Policies issued to eligible individuals under G.S. 58-68-60.
- 39 (2) Excepted benefits as described in ~~G.S. 58-68-25(b)(1), (2), and (4).~~  
40 G.S. 58-68-25(b)."

41 **PART VI. PREMIUM FINANCE COMPANY PREMIUM REFUNDS FOR**  
42 **AUDITED POLICIES.**

43 **SECTION 6.** G.S. 58-35-85(5) reads as rewritten:

1           "~~Whenever~~ When an insurance contract is cancelled in accordance with  
2 this section, the insurer shall promptly return ~~whatever~~ the gross  
3 unearned premiums that are due under the contract to the insurance  
4 premium finance company effecting the ~~cancellation~~ cancellation, for  
5 the benefit of the insured or insureds, no later than 30 days after the  
6 effective date of cancellation. ~~Whenever~~ When the return premium is  
7 ~~in excess of~~ more than the amount ~~due~~ the insured owes the insurance  
8 premium finance company ~~by the insured~~ under the agreement, the  
9 excess shall be promptly remitted ~~promptly~~ to the order of the insured,  
10 as provided in subdivision (8) of this section, subject to the minimum  
11 service charge provided for in this Article. ~~In the event that~~ If a  
12 premium is subject to an audit to determine the final premium amount,  
13 the amount to be refunded to the premium finance company shall be  
14 calculated upon the deposit ~~premium~~ premium, and the insurer shall  
15 return that amount to the premium finance company no later than ~~30~~  
16 90 days after the effective date of cancellation. This ~~provision shall~~  
17 subdivision does not limit any other remedies the insurer may have  
18 against the insured for additional premiums."

19 **PART VII. AMEND TITLE INSURANCE RESERVE LAWS.**

20           **SECTION 7.1.** G.S. 58-26-1(b) is repealed.

21           **SECTION 7.2.** G.S. 58-26-1 is amended by adding a new subsection to  
22 read:

23           "(b1) Domestic and foreign title insurance companies are subject to the same  
24 capital, surplus, and investment requirements that govern the formation and operation of  
25 domestic stock casualty companies. Domestic title insurance companies are subject to  
26 the same deposit requirements that govern the operation of other domestic casualty  
27 companies in this State. Foreign or alien title insurance companies are subject to an  
28 initial deposit pursuant to G.S. 58-26-31(b), based on the forecasted statutory premium  
29 reserve and the supplemental reserve for the first full year of operation in this State, but  
30 not less than two hundred thousand dollars (\$200,000)."

31           **SECTION 7.3.** G.S. 58-26-20 reads as rewritten:

32           "**§ 58-26-20. Unearned Statutory premium reserve.**

33           Every domestic title insurance company shall, in addition to other reserves, establish  
34 and maintain a reserve to be known as the 'unearned statutory premium reserve' for title  
35 insurance, which shall at all times and for all purposes be considered and constitute  
36 ~~unearned portions of the original risk premiums and shall be charged as a reserve~~  
37 ~~liability of such the title insurance company in determining its financial conditions. The~~  
38 ~~unearned premium reserve shall be withdrawn from the use of the insurer for its general~~  
39 ~~purposes and placed in a trust account, as approved by the Commissioner, in favor of~~  
40 ~~the holders of title policies and held available for reinsurance of the title policies in the~~  
41 ~~event of insolvency of the insurer. Nothing herein contained shall preclude such an~~  
42 ~~insurer from investing said reserve in investments authorized by law for such an insurer,~~  
43 ~~and the income from such invested reserve shall be included in the general income of~~  
44 ~~the insurer to be used by such insurer for any lawful purpose.~~ condition."



1           **SECTION 7.4.** G.S. 58-26-25(a) reads as rewritten:

2           "(a) The ~~unearned~~statutory premium reserve of every domestic title insurance  
3 company shall consist of the aggregate of:

4           (1) The amount of the unearned premium reserve held as of December 31,  
5 1998.

6           (2) The amount of all additions required to be made to such reserve by this  
7 section, less the reduction of ~~such~~the aggregate amount required  
8 ~~hereby.~~by this section."

9           **SECTION 7.5.** G.S. 58-26-25(b) reads as rewritten:

10          "(b) A domestic title insurance company on and after January 1, 1999, shall  
11 reserve initially as ~~an unearned~~a statutory premium reserve a sum equal to ten per  
12 cent~~um~~percent (10%) of the following items set forth in the title insurer's most recent  
13 annual statement on file with the Commissioner:

14          (1) Direct premiums ~~written; and~~ written.

15          (2) Premiums for reinsurance assumed less premiums for reinsurance  
16 ceded during the year."

17          **SECTION 7.6.** G.S. 58-26-25(c) reads as rewritten:

18          "(c) The aggregate of the amounts set aside in ~~unearned~~statutory premium  
19 reserves in any calendar year, ~~pursuant to~~under subsection (b) of this section, shall be  
20 reduced annually at the end of each calendar year following the year in which the policy  
21 is issued, over a period of 20 years, pursuant to the following: twenty percent (20%) the  
22 first year; ten percent (10%) for years two and three; five percent (5%) for years four  
23 through 10; three percent (3%) for years 11 through 15; and two percent (2%) for years  
24 16 through 20."

25          **SECTION 7.7.** G.S. 58-26-30 is repealed.

26          **SECTION 7.8.** Article 26 of Chapter 58 of the General Statutes is amended  
27 by adding a new section to read:

28          "**§ 58-26-31. Statutory premium reserve held in trust or as a deposit.**

29          (a) Each domestic title insurance company shall withdraw from use funds to be  
30 used by the Commissioner in the event of the insurer's insolvency, the funds being equal  
31 to the statutory premium reserve and the supplemental reserve pursuant to G.S.  
32 58-26-25. The amount shall be held in a trust account, as approved by the  
33 Commissioner. The trust account will be held in favor of the holders of title policies in  
34 the event of the insolvency of the insurer. Nothing in this section precludes the insurer  
35 from investing the reserve in investments authorized by law for that insurer, and the  
36 income from the invested reserve shall be included in the general income of the insurer  
37 to be used by the insurer for any lawful purpose.

38          (b) Each foreign or alien title insurance company shall withdraw from use funds  
39 to be used by the Commissioner in the event of the insurer's insolvency, the funds being  
40 equal to the statutory premium reserve and the supplemental reserve as calculated under  
41 G.S. 58-26-25 for North Carolina risks. The Commissioner shall hold the funds as a  
42 deposit in accordance with G.S. 58-5-20. Annually, the company shall file a statement  
43 of actuarial opinion consistent with the annual statement instructions for North Carolina  
44 risks, issued by a qualified actuary, in support of this deposit.

1       (c) A title insurance company shall have 30 days after notification by the  
2 Commissioner to increase the amounts held on deposit. If the amount held on deposit is  
3 greater than the amount required under subsection (b) of this section, the Commissioner  
4 shall release the excess within 30 days after a request by the insurer."

5               **SECTION 7.9.** G.S. 58-26-35 reads as rewritten:

6 "**§ 58-26-35. Maintenance of the ~~unearned statutory~~ premium reserve.**

7       If by reason of any cause, ~~other than depreciation in the market value of investments,~~  
8 the amount of the assets of a title insurance company held as ~~investments of its~~  
9 ~~unearned premium reserve~~ in trust or held by the Commissioner under G.S.  
10 ~~58-26-31~~ should on any date be less than the amount required to be ~~maintained by law in~~  
11 ~~such reserve, maintained,~~ and the deficiency ~~shall is not be~~ promptly cured, ~~such the~~ title  
12 insurance company shall ~~forthwith immediately~~ give written notice ~~thereof of the~~  
13 ~~deficiency~~ to the Commissioner and shall ~~make no further policies, contracts of title~~  
14 ~~insurance or reinsurance agreements of title insurance~~ not write or assume any title  
15 ~~insurance~~ until the deficiency shall ~~have has~~ been eliminated and until it shall ~~have has~~  
16 received written approval from the Commissioner authorizing it to again ~~issue such~~  
17 ~~policies, contracts of title insurance or agreements.~~ write and assume title insurance."

18               **SECTION 7.10.** G.S. 58-26-40 is repealed.

19 **PART VIII. ANNUITY NONFORFEITURE RATE CHANGE.**

20               **SECTION 8.** G.S. 58-58-60(d) reads as rewritten:

21       "(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any  
22 paid-up annuity, cash surrender or death benefits available under an annuity contract  
23 shall be based upon minimum nonforfeiture amounts as defined in this section.

24               (1) With respect to contracts providing for flexible considerations, the  
25 minimum nonforfeiture amount at any time at or prior to the  
26 commencement of any annuity payments shall be equal to an  
27 accumulation up to such time at a rate of interest of ~~three percent (3%)~~  
28 one and one-half percent (1½%) per annum of percentages of the net  
29 considerations (as hereinafter defined) paid prior to such time,  
30 decreased by the sum of:

- 31               (i) Any prior withdrawals from or partial surrenders of the contract  
32 accumulated at a rate of interest of ~~three percent (3%)~~ one and  
33 one-half percent (1½%) per annum; and  
34               (ii) The amount of any indebtedness to the company on the  
35 contract, including interest due and accrued, and increased by  
36 any existing additional amounts credited by the company to the  
37 contract.

38               The net considerations for a given contract year used to  
39 define the minimum nonforfeiture amount shall be an amount  
40 not less than zero and shall be equal to the corresponding gross  
41 considerations credited to the contract during that contract year  
42 less an annual contract charge of thirty dollars (\$30.00) and less  
43 a collection charge of one dollar and twenty-five cents (\$1.25)  
44 per consideration credited to the contract during that contract

1 year. The percentages of net considerations shall be sixty-five  
2 percent (65%) of the net consideration for the first contract year  
3 and eighty-seven and one-half (87 1/2%) of the net  
4 considerations for the second and later contract years.  
5 Notwithstanding the provisions of the preceding sentence, the  
6 percentage shall be sixty-five percent (65%) of the portion of  
7 the total net consideration for any renewal contract year which  
8 exceeds by not more than two times the sum of those portions  
9 of the net considerations in all prior contract years for which the  
10 percentage was sixty-five percent (65%).

11 (2) With respect to contracts providing for fixed scheduled considerations,  
12 minimum nonforfeiture amounts shall be calculated on the assumption  
13 that considerations are paid annually in advance and shall be defined  
14 as for contracts with flexible considerations which are paid annually  
15 with two exceptions:

16 (i) The portion of the net consideration for the first contract year to  
17 be accumulated shall be the sum of sixty-five percent (65%) of  
18 the net consideration for the first contract year plus twenty-two  
19 and one-half percent (22 1/2%) of the excess of the net  
20 consideration for the first contract year over the lesser of the net  
21 considerations for the second and third contract years.

22 (ii) The annual contract charge shall be the lesser of (i) thirty  
23 dollars (\$30.00) or (ii) ten percent (10%) of the gross annual  
24 considerations.

25 (3) With respect to contracts providing for a single consideration,  
26 minimum nonforfeiture amounts shall be defined as for contracts with  
27 flexible considerations except that the percentage of net consideration  
28 used to determine the minimum nonforfeiture amount shall be equal to  
29 ninety percent (90%) and the net consideration shall be the gross  
30 consideration less a contract charge of seventy-five dollars (\$75.00)."

31 **SECTION 9.** Section 8 of this act is effective when it becomes law and  
32 applies to policies issued on or after that date. The remainder of this act is effective  
33 when it becomes law.