

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SENATE BILL 318
RATIFIED BILL**

AN ACT TO REVISE THE LAWS ON LICENSING OF INSURANCE AGENTS AND BROKERS TO MAKE THEM CONFORM TO A MODEL UNIFORM INSURANCE PRODUCER LICENSING ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND THEREBY, ALONG WITH THE OTHER STATES, ACHIEVE NATIONAL UNIFORMITY IN LICENSING INSURANCE PRODUCERS, AS PROVIDED BY THE FEDERAL GRAMM-LEACH-BLILEY ACT, PUBLIC LAW 106-102.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-1 reads as rewritten:

"§ 58-33-1. Scope.

This Article governs the qualifications and procedures for the licensing of agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers. This Article applies to any and all kinds of insurance and insurers under ~~Articles 1 through 67~~ of this Chapter. ~~Except as provided in G.S. 58-33-125, this Article does not apply to the licensing of surplus lines licensees under Article 21 of this Chapter.~~ For purposes of this Article, all references to insurance include annuities, unless the context otherwise requires."

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

"§ 58-33-5. License required.

A person shall not sell, solicit, or negotiate insurance in this State unless the person is licensed for that kind of insurance in accordance with this Article."

SECTION 3. G.S. 58-33-10 reads as rewritten:

"§ 58-33-10. Definitions.

As used in this Article, the following definitions apply:

- (a)(1) 'Agent' means a person licensed to solicit applications for, or to negotiate a policy of, insurance. A person not duly licensed who solicits or negotiates a policy of insurance on behalf of an insurer is an agent within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which an agent of such company is subject, and such company by compensating such person through any of its officers, agents or employees for soliciting policies of insurance shall thereby accept and acknowledge such person as its agent in such transaction.
- (b)(2) 'Adjuster' means any individual who, for salary, fee, commission, or other compensation of any nature, investigates or reports to his principal relative to claims arising under insurance contracts other than life or annuity. An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession or an adjuster of marine losses is not deemed to be an adjuster for purposes of this Article. An individual may not simultaneously hold an agent's and an adjuster's license in this State.
- (c)(3) 'Broker' means a person who, being a licensed agent, procures insurance for a party other than himself through a duly authorized

agent of an insurer that is licensed to do business in this State but for which the broker is not authorized to act as agent. A person not duly licensed who procures insurance for a party other than himself is a broker within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which such licensed brokers are subject.

- (4) 'Business entity' means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity. 'Business entity' does not mean a sole proprietorship.
- (5) 'Home state' means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.
- (6) 'Insurance' means any of the kinds of insurance in G.S. 58-7-15.
- (7) 'Insurance producer' or 'producer' means a person required to be licensed under this Article to sell, solicit, or negotiate insurance. 'Insurance producer' or 'producer' includes an agent, broker, and limited representative.
- (8) 'License' means a document issued by the Commissioner authorizing a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.
- (9) 'Limited line credit insurance' includes any type of credit insurance written under Article 57 of this Chapter, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the Commissioner determines should be designated a form of limited line credit insurance.
- (10) 'Limited line credit insurance producer' means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.
- (11) 'Limited lines insurance' means motor vehicle physical damage insurance and title insurance, or any other kind of insurance that the Commissioner considers necessary to recognize for the purposes of complying with G.S. 58-33-32(f).
- (12) 'Limited lines producer' means a person authorized by the Commissioner to sell, solicit, or negotiate limited lines insurance.
- ~~(d)~~(13) 'Limited representative' means a person who is authorized by the Commissioner to solicit or negotiate contracts for the particular kinds of insurance identified in ~~G.S. 58-33-25(e)~~ G.S. 58-33-26(g) and which kinds of insurance are restricted in the scope of coverage afforded.
- ~~(e)~~(14) 'Motor vehicle damage appraiser' means an individual who, for salary, fee, commission, or other compensation of any nature, regularly investigates or advises relative to the nature and amount of damage to motor vehicles located in this State or the amount of money deemed necessary to effect repairs thereto and who is not:
 - ~~(1)~~a. An adjuster licensed to adjust insurance claims in this State;
 - ~~(2)~~b. An agent for an insurance company who is not required by law to be licensed as an adjuster;
 - ~~(3)~~c. An attorney at law who is not required by law to be licensed as an adjuster; or

- (4)d. An individual who, incident to his regular employment in the business of repairing defective or damaged motor vehicles, investigates and advises relative to the nature and amount of motor vehicle damage or the amount of money deemed necessary to effect repairs thereto.
- (15) 'Negotiate' means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, only if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers. 'Negotiate' does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.
- (16) 'Person' means an individual or a business entity, but does not mean a county, city, or other political subdivision of the State of North Carolina.
- (17) 'Sell' means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company. 'Sell' does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.
- (18) 'Solicit' means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company. 'Solicit' does not mean a referral to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.
- (19) 'Terminate' means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.
- (20) 'Uniform Business Entity Application' means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.
- (21) 'Uniform Application' means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.'

SECTION 4. G.S. 58-33-17(d) reads as rewritten:

"(d) In the event that any provision of this section is violated by a limited licensee, the Commissioner may:

- (1) Revoke or suspend a limited license issued under this section in accordance with the provisions of ~~G.S. 58-33-45~~; ~~G.S. 58-33-46~~; or
- (2) After notice and hearing, impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations of this Article have occurred, as the Commissioner deems to be necessary or convenient to carry out the purposes of this section."

SECTION 5. G.S. 58-33-25 is repealed.

SECTION 6. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-26. General license requirements.

(a) No person shall act as or hold himself or herself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed.

(b) No agent, broker, or limited representative shall make application for, procure, negotiate for, or place for others, any policies for any kinds of insurance as to which that person is not then qualified and duly licensed.

(c) An agent or broker may be licensed for the following kinds of insurance:

- (1) Life and health insurance, meaning:

- a. Life-insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
- b. Variable life and variable annuity products-insurance coverage provided under variable life insurance contracts and variable annuities.
- c. Accident and health or sickness-insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income.
- (2) Property and liability insurance, meaning:
 - a. Coverage for the direct or consequential loss or damage to property of every kind.
 - b. Coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.
- (3) Personal lines, meaning property and liability insurance coverage sold to individuals and families for primarily noncommercial purposes.
- (4) Medicare supplement insurance and long-term care insurance, as a supplement to a license for the kinds of insurance listed in subdivision (1) of this subsection.

(d) A property and liability insurance license does not authorize an agent to sell accident and health insurance. An agent must hold a life and health insurance license to sell accident and health insurance.

(e) A life and health insurance license authorizes a resident agent to sell variable contracts if the agent satisfies the Commissioner that the agent has met the National Association of Securities Dealers requirements of the Secretary of State of North Carolina.

(f) A life and health insurance license authorizes a resident agent to sell Medicare supplement and long-term care insurance policies as defined respectively in Articles 54 and 55 of this Chapter, provided that the licensee takes and passes a supplemental written examination for the insurance as provided in G.S. 58-33-30(e) and pays the supplemental registration fee provided in G.S. 58-33-125(c).

(g) A limited representative may receive qualification for one or more licenses without examination for the following kinds of insurance:

- (1) Dental services.
- (2) Limited line credit insurance.
- (3) Limited lines insurance.
- (4) Motor club.
- (5) Prearrangement insurance, as defined in G.S. 58-60-35(a)(2), when offered or sold by a preneed sales licensee licensed under Article 13D of Chapter 90 of the General Statutes.
- (6) Travel accident and baggage.
- (7) Vehicle service agreements and mechanical breakdown insurance.

(h) No licensed agent, broker, or limited representative shall solicit anywhere in the boundaries of this State, or receive or transmit an application or premium of insurance, for a company not licensed to do business in this State, except as provided in G.S. 58-28-5 and Article 21 of this Chapter.

(i) No agent shall place a policy of insurance with any insurer unless the agent has a current appointment as agent for the insurer in accordance with G.S. 58-33-40 or has a valid temporary license issued in accordance with G.S. 58-33-66.

(j) A business entity that sells, negotiates, or solicits insurance shall be licensed in accordance with G.S. 58-33-31(b). Every member of the partnership and every officer, director, stockholder, and employee of the business entity personally engaged in this State in soliciting or negotiating policies of insurance shall qualify as an individual licensee.

(k) The license shall state the name and social security number, or other identifying number of the licensee, date of issue, kind or kinds of insurance covered by the license, and any other information as the Commissioner deems to be proper.

(l) A license issued to an agent authorizes him to act until his license is otherwise suspended or revoked. Upon the suspension or revocation of a license, the licensee or any person having possession of such license shall return it to the Commissioner.

(m) A license of a broker, limited representative, adjuster, or motor vehicle damage appraiser shall be renewed on April 1 each year, and renewal fees shall be paid. The Commissioner is not required to print licenses for the purpose of renewing licenses. The Commissioner may establish for licenses 'staggered' license renewal dates that will apportion renewals throughout each calendar year. If the system of staggered licensing is adopted, the Commissioner may extend the licensure period for some licensees. License renewal fees prescribed by G.S. 58-33-125 shall be prorated to the extent they are commensurate with extensions.

(n) A license as an insurance producer is not required of the following:

(1) An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this State, except for indirect receipt of proceeds of commissions in the form of salary, benefits, or distributions, and:

a. The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or

b. The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

c. The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass-marketed property and casualty insurance; where no commission is paid to the person for the service.

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts.

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who are not

individually engaged in the sale, solicitation, or negotiation of insurance.

- (5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this State, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State.
- (6) A person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.
- (7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.
- (8) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without the involvement of a licensed agent.
- (9) A person indirectly receiving proceeds of commissions as part of the transfer of insurance business or in the form of retirement or similar benefits.

(o) Nothing in this Article requires an insurer to obtain an insurance producer license. In this subsection, 'insurer' does not include an insurer's officers, directors, employees, subsidiaries, or affiliates."

SECTION 7. G.S. 58-33-30(b) and (c) are repealed.

SECTION 8. G.S. 58-33-30(d)(3) reads as rewritten:

"(3) Each resident applicant for a Medicare supplement and long-term care insurance license shall furnish evidence satisfactory to the Commissioner of successful completion of 10 hours of instruction, which shall in all cases include the principles of Medicare supplement and long-term care insurance and federal and North Carolina law relating to such insurance. ~~An~~ A resident applicant who submits satisfactory evidence of having successfully completed an agent training course that has been approved by the Commissioner and that is offered by or under the auspices of ~~an admitted~~ a licensed life or health insurer or a professional insurance association satisfies the educational requirements of this subdivision."

SECTION 9. G.S. 58-33-30(e) reads as rewritten:

"(e) Examination.

- (1) After completion and filing of the application with the Commissioner, except as provided in G.S. 58-33-35, the Commissioner shall require each applicant for license as an agent or an adjuster to take ~~a written~~ an examination as to ~~his~~ the applicant's competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner.
- (2) The Commissioner may require any licensed agent, adjuster, or motor vehicle damage appraiser to take and successfully pass an examination in writing, testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been

found guilty of any violation of any provision of ~~Articles 1 through 67~~ of this Chapter. If an individual fails to pass such an examination, the Commissioner shall revoke all licenses issued in his name and no license shall be issued until such individual has passed an examination as provided in this Article.

- (3) Each examination shall be as the Commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of:
 - a. The terms and provisions of the policies or contracts of insurance ~~he the applicant~~ proposes to effect; or
 - b. The types of claims or losses ~~he the applicant~~ proposes to adjust; and
 - c. The duties and responsibilities of ~~such a the~~ license; and
 - d. The current laws of this State applicable to ~~such a the~~ license.
- (4) The answers of the applicant to ~~any such the~~ examination shall be ~~written provided~~ by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as ~~he deems the Commissioner considers~~ necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner ~~is authorized to may~~ contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner ~~is authorized to may~~ charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes.
- (5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he ~~deems considers~~ necessary for the applicants' proper preparation for ~~such exams examinations~~. The Commissioner ~~is empowered to may~~ contract directly with publishers and other suppliers for the production of ~~such the~~ preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes.
- (6) In addition to the examinations for the kinds of insurance specified in G.S. 58-33-25(c)(1) and (2), before any ~~person resident~~ may sell Medicare supplement or long-term care insurance policies defined respectively in Articles 54 and 55 of this Chapter, ~~he the resident~~ must take and pass a supplemental written examination according to requirements prescribed by the Commissioner.
- (7) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination."

SECTION 10. G.S. 58-33-30(g) reads as rewritten:

"(g) Denial of License. – If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and shall notify in writing the applicant and the appointing insurer, if any, of such denial, stating the grounds therefor. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under ~~G.S. 58-33-45(a)~~.G.S. 58-33-46. Within 30 days after service of the notification, the applicant may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the

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 applicant may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome."

SECTION 11. G.S. 58-33-30(i) reads as rewritten:

"(i) Retaliatory Provision. – Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this State who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this Article, the same such requirements shall be imposed upon such residents of such other state or jurisdiction. This subsection does not apply to fees charged to insurance producers."

SECTION 12. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-31. Application for license.

(a) A person applying for a resident insurance producer license shall make application to the Commissioner on the Uniform Application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the Commissioner shall find that the individual:

- (1) Is at least 18 years of age.
- (2) Has not committed any act that is a ground for probation, suspension, nonrenewal, or revocation set forth in G.S. 58-33-46.
- (3) Has satisfied any applicable requirements of G.S. 58-33-30(d).
- (4) Has paid the applicable fees set forth in G.S. 58-33-125.
- (5) Has successfully passed any examinations required by G.S. 58-33-30(e).

(b) A business entity selling, soliciting, or negotiating insurance shall obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the Commissioner shall find that:

- (1) The business entity has paid the applicable fees set forth in G.S. 58-33-125.
- (2) The business entity has designated a licensed producer, who is a natural person, responsible for the business entity's compliance with the insurance laws and administrative rules of this State and orders of the Commissioner.

(c) The Commissioner may require any documents reasonably necessary to verify the information contained in an application."

SECTION 13. G.S. 58-33-32 reads as rewritten:

"§ 58-33-32. Interstate reciprocity in producer licensing.

(a) The purpose of this section is to make North Carolina insurance producer licensing comply with the reciprocity requirements in the federal Gramm-Leach-Bliley Act, Public Law 106-102.

(b) As used in this section:

- ~~(1) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains a principal place of residence or principal place of business and is licensed to act as an insurance producer.~~
- ~~(2) "Insurance producer" or "producer" means a person required to be licensed under this Article to sell, solicit, or negotiate insurance.~~
- ~~(3) "License" means a document issued by the Commissioner authorizing a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create any~~

~~authority, actual, apparent, or inherent, in the holder to represent or commit to an insurance carrier.~~

- ~~(4) "Limited line credit insurance" includes any type of credit insurance written under Article 57 of this Chapter, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the Commissioner determines should be designated a form of limited line credit insurance.~~
- ~~(5) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.~~
- ~~(6) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.~~
- ~~(7) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.~~
- ~~(8) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.~~
- ~~(9) "Uniform Application" means the most recent version of the NAIC Uniform Application for resident and nonresident producer licensing.~~
- ~~(10) "Uniform Business Entity Application" means the most recent version of the NAIC Uniform Business Entity Application for a resident and a nonresident corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.~~

(c) Unless denied licensure under G.S. 58-33-30 or G.S. 58-33-50, a nonresident person shall receive a nonresident producer license if:

- (1) The person is currently licensed as a resident and in good standing in that person's home state;
- (2) The person has submitted the proper request for licensure in the form prescribed by the Commissioner and has paid the applicable fees required by G.S. 58-33-125;
- (3) The person has submitted or transmitted to the Commissioner a copy of the application for licensure that the person submitted to that person's home state, or in lieu of the same, a completed Uniform Application or Uniform Business Entity Application; and
- (4) The person's home state awards nonresident producer licenses to residents of this State on the same a reciprocal basis.

The Commissioner may verify the producer's licensing status through the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC.

~~(d) Notwithstanding any other provision of this section, a A person licensed as a surplus lines producer in that person's home state shall receive a nonresident surplus lines license pursuant to the provisions under subsection (c) of this section. Except for the licensure provisions of this section, nothing in this section otherwise amends or supersedes any provision of Article 21 of this Chapter.~~

~~(e) Notwithstanding any other provision of this section, a A person licensed or registered as a viatical settlement broker, viatical settlement provider, or viatical settlement representative, as defined in G.S. 58-58-42(a), in that person's home state shall receive a nonresident viatical settlement broker, viatical settlement provider, or viatical settlement representative license pursuant to under subsection (c) of this section.~~

Except for the licensure provisions of this section, nothing in this section otherwise amends or supersedes any provision of G.S. 58-58-42.

(f) ~~Notwithstanding any other provision of this section, a~~ A person licensed as a limited line credit insurance producer or other type of ~~insurance-limited lines~~ producer in that person's home state ~~shall may, under subsection (c) of this section, receive a nonresident limited lines producer license pursuant to the provisions of this section,~~ granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited lines insurance is any authority granted by the home state that restricts the authority of the license to less than the total authority prescribed in the associated major lines under G.S. 58-33-26(c)(1), 58-33-26(c)(2), 58-33-26(c)(3), and 58-33-26(c)(4).

(g) An individual who applies for an insurance producer license in this State who was previously licensed for the same kinds of insurance in that individual's home state shall not be required to complete any prelicensing education or examination. This exemption is available only if:

- (1) The applicant is currently licensed in the applicant's home state; or
- (2) The application is received within 90 days after the cancellation of the applicant's previous license and the applicant's home state issues a certification that, at the time of cancellation, the applicant was in good standing in that state; or
- (3) The home state's producer database records, maintained by the NAIC or affiliates or subsidiaries of the NAIC, indicate that the producer is or was licensed in good standing for the kind of insurance requested.

A person licensed as an insurance producer in another state who moves to this State and who wants to be licensed as a resident under G.S. 58-33-31 shall apply within 90 days after establishing legal residence.

(h) The Commissioner shall not assess a greater fee for an insurance license or related service to a nonresident producer based solely on the fact that the producer does not reside in this State.

(i) The Commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by subsection (c) of this section, if the applicant's home state awards nonresident licenses to residents of this State on the same basis.

(j) A nonresident producer's satisfaction of the nonresident producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this State's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this State on the same basis.

(k) A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other ~~relevant legal documents-information or documents filed in the proceeding necessary to describe the action.~~

(l) ~~Within 30 days after the initial pretrial hearing date, date or similar proceeding, a producer shall report to the Commissioner any criminal prosecution of the producer taken in any state. producer. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, hearing or similar proceeding, and any other relevant legal documents-information or documents filed in the proceeding necessary to describe the prosecution."~~

SECTION 14. G.S. 58-33-40(e) reads as rewritten:

"(e) An appointment shall continue in effect as long as the appointed agent is properly licensed and the appointing insurer is authorized to transact business in this State, unless the appointment is cancelled. ~~Upon the cancellation of an appointment the insurer shall, within 30 days, file written notice of cancellation with the Commissioner~~

~~in a form prescribed by him indicating the date of cancellation. A copy shall be provided to the agent by the insurer."~~

SECTION 15. G.S. 58-33-45 is repealed.

SECTION 16. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-46. Suspension, probation, revocation, or nonrenewal of licenses.

(a) The Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this Article, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, for any one or more of the following causes:

- (1) Providing materially incorrect, misleading, incomplete, or materially untrue information in the license application.
- (2) Violating any insurance laws, or violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator.
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud.
- (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (6) Having been convicted of a felony or of a misdemeanor involving dishonesty or a breach of trust.
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud.
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.
- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other jurisdiction for reasons substantially similar to those listed in this subsection.
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction.
- (11) Willfully failing to provide the notification required by subsection (c) of this section.
- (12) Knowingly accepting brokered insurance business from an individual who is not licensed to broker that kind of insurance.
- (13) Failing to comply with an administrative or court order imposing a child support obligation, after entry of a final judgment or order finding the violation to have been willful.
- (14) Failing to pay State income tax or comply with any administrative or court order directing payment of State income tax, after entry of a final judgment or order finding the violation to have been willful.
- (15) Cheating on an examination for an insurance license or for a prelicensing or continuing education course, including improperly using notes or any other reference material to complete an examination for an insurance license or for a prelicensing or continuing education course.
- (16) Willfully overinsuring property.
- (17) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance.

(b) G.S. 58-2-50 applies to any investigation under this section. G.S. 58-2-70 applies to any person subject to licensure under this Article.

(c) Any person licensed under this Article shall notify the Commissioner of the commencement of any bankruptcy, insolvency, or receivership proceeding affecting the person licensed, or upon making an assignment for the benefit of creditors of the person licensed. Each owner, manager, or officer of a business entity that is a licensed person shall be responsible for providing this notification. Any person responsible for notifying the Commissioner shall provide the notice within three business days after the commencement of the proceeding or the making of the assignment.

(d) If the Commissioner refuses to grant a license, or suspends or revokes a license, any appointment of the applicant or licensee shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements of this Article.

(e) No person shall be issued a license or appointment to enter the employment of any other person, which other person is at that time found by the Commissioner to be in violation of any of the insurance laws of this State, or which other person has been in any manner disqualified under any state or federal law to engage in the insurance business.

(f) The Commissioner shall retain the authority to enforce the provisions of, and impose any penalty or remedy authorized by, this Chapter against any person who is under investigation for or charged with a violation of this Chapter even if the person's license or registration has been surrendered or has lapsed by operation of law."

SECTION 17. G.S. 58-33-55 is repealed.

SECTION 18. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-56. Notification to Commissioner of termination.

(a) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the Commissioner within 30 days after the effective date of the termination, using a form prescribed by the Commissioner, if the reason for termination is for or related to one of the causes listed in G.S. 58-33-46(a) or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in G.S. 58-33-46(a). Upon the written request of the Commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason that is not for or related to one of the causes listed in G.S. 58-33-46(a) shall notify the Commissioner within 30 days after the effective date of the termination, using a form prescribed by the Commissioner. Upon written request of the Commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(c) The insurer or the authorized representative of the insurer shall promptly notify the Commissioner in a form acceptable to the Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Commissioner in accordance with subsection (a) of this section had the insurer then known of its existence.

(d) Within 15 days after making the notification required by subsections (a), (b), and (c) of this section, the insurer shall mail a copy of the notification to the producer at the producer's last known address. If the producer is terminated for cause for any of the reasons listed in G.S. 58-33-46(a), the insurer shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

(e) Within 30 days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the Commissioner. The producer shall, by the same means,

simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the Commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (h) of this section.

(f) In the absence of actual malice, neither an insurer, the authorized representative of the insurer, a producer, the Commissioner, an organization of which the Commissioner is a member, nor the respective employees and agents of such persons acting on behalf of such persons shall be subject to civil liability as a result of any statement or information provided pursuant to this section.

(g) In any action brought against a person that may have immunity under subsection (f) of this section for making any statement required by this section or for providing any information relating to any statement that may be requested by the Commissioner, the party bringing the action shall plead specifically in any allegation that subsection (f) of this section does not apply because the person making the statement or providing the information did so with actual malice. Subsections (f) and (g) of this section do not abrogate or modify any existing statutory or common law privileges or immunities.

(h) Notwithstanding any other provision of this Chapter, any documents, materials, or other information in the control or possession of the Commissioner or any organization of which the Commissioner is a member that is (i) furnished by an insurer, producer, or an employee or agent thereof acting on behalf of the insurer or producer under this section, or (ii) obtained by the Commissioner in an investigation under this section shall be confidential by law and privileged, shall not be subject to or public records under G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery in any civil action other than a proceeding brought by the Commissioner against a person to whom such documents, materials, or other information relate. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's duties. Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any civil action other than a proceeding brought by the Commissioner against a person to whom such documents, materials, or other information relate concerning any such documents, materials, or information.

(i) In order to assist in the performance of the Commissioner's duties under this Article, the Commissioner may:

- (1) Share documents, materials, or other information, including the confidential documents, materials, or information described in this section, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities. The Commissioner may condition such sharing on an agreement by the recipient to maintain the confidentiality and privileged status of the document, material, or other information;
- (2) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from other state, federal, and international regulatory agencies, from the NAIC, its affiliates or subsidiaries, and from state, federal, and international law enforcement authorities, and may agree to maintain the confidential and privileged status of the document, material, or other information received under the laws of the jurisdiction that is the source of the document, material, or information; and
- (3) Enter into agreements governing sharing and use of information consistent with this subsection.

(j) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (i) of this section.

(k) Nothing in this Article prohibits the Commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection under G.S. 58-2-100, to a database or other clearinghouse service maintained by the NAIC, its affiliates, or subsidiaries of the NAIC.

(l) An insurer, the authorized representative of the insurer, or producer that fails to report as required under this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license suspended or revoked and may be fined in accordance with G.S. 58-2-70."

SECTION 19. G.S. 58-33-65 is repealed.

SECTION 20. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-66. Temporary licensing.

(a) The Commissioner may issue a temporary insurance producer license for a period not to exceed 180 days or longer, for good cause, without requiring an examination if the Commissioner deems that the temporary license is necessary for the servicing of an insurance business in any of the following cases:

- (1) To the spouse or surviving spouse or court-appointed personal representative or guardian of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the transfer of the insurance business owned by the producer, for the recovery or return of the producer to the business, or for the training and licensing of new personnel to operate the producer's business.
- (2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.
- (3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America.
- (4) In any other circumstance where the Commissioner deems that the public interest will be served best by the issuance of this license.

(b) The Commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The Commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The Commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license terminates upon the transfer of the business.

(c) An individual requesting a temporary license on account of death or disability of an agent or broker shall be licensed to represent only those insurers that had appointed such agent at the time of death or commencement of disability."

SECTION 21. G.S. 58-33-75 reads as rewritten:

"§ 58-33-75. Twisting with respect to insurance policies; penalties.

No licensee shall make or issue, or cause to be issued, any written or oral statement that willfully misrepresents or willfully makes an incomplete comparison as to the terms, conditions, or benefits contained in any policy of insurance for the purpose of inducing or attempting to induce a policyholder in any way to terminate or surrender, exchange, or convert any insurance policy. Any person who violates this section is subject to the provisions of G.S. 58-2-70 and ~~58-33-45~~.G.S. 58-33-46."

SECTION 22. G.S. 58-33-76(c) reads as rewritten:

"(c) Any person who violates this section is subject to the provisions of G.S. 58-2-70 and ~~G.S. 58-33-45~~.G.S. 58-33-46."

SECTION 23. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-82. Commissions.

(a) An insurance company or insurance producer shall not pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed.

(b) A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed.

(c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if the person was required to be licensed under this Article at the time of the sale, solicitation, or negotiation and was so licensed at that time.

(d) Except as provided in subsection (e) of this section, only agents who are duly licensed with appropriate company appointments, licensed brokers, licensed limited lines producers, or licensed limited representatives may accept, directly or indirectly, any commission, fee, or other valuable consideration for the sale, solicitation, or negotiation of insurance.

(e) Commissions, fees, or other valuable consideration for the sale, solicitation, or negotiation of insurance may be assigned or directed to be paid in the following circumstances:

- (1) To a business entity by a person who is an owner, shareholder, member, partner, director, employee, or agent of that business entity.
- (2) To a producer in connection with renewals of insurance business originally sold by or through the licensed person or for other deferred commissions.
- (3) In connection with the indirect receipt of commissions in circumstances in which a license is not required under G.S. 58-33-26(m)."

SECTION 24. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-83. Assumed names.

An insurance producer doing business under any name other than the producer's legal name shall notify the Commission before using the assumed name."

SECTION 25. G.S. 58-33-85(b) reads as rewritten:

"(b) No insurer, agent, broker, or limited representative shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with a contract of insurance, which money or other consideration is in addition to the premium for such contract, unless the applicant consents in writing before any services are rendered. This subsection does not apply to the charging or collection of any fees otherwise provided for by law."

SECTION 26. G.S. 58-3-180(c) reads as rewritten:

"(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and ~~G.S. 58-33-45~~, G.S. 58-33-46, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is two thousand dollars (\$2,000)."

SECTION 27. G.S. 58-9-2(5) reads as rewritten:

"(5) "Intermediary" means any person who acts as a broker, as defined in ~~G.S. 58-33-10(e)~~, ~~G.S. 58-33-10(3)~~, in soliciting, negotiating, or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer; or acts as a broker, as defined in ~~G.S. 58-33-10(e)~~, ~~G.S. 58-33-10(3)~~, in accepting any reinsurance contract on

behalf of an assuming insurer. "Intermediary" includes a broker or a manager, as those terms are defined in this section."

SECTION 28. G.S. 58-21-40 reads as rewritten:

"§ 58-21-40. ~~Surplus lines advisory organizations.~~ **regulatory support organization.**

(a) A surplus lines ~~advisory~~ regulatory support organization of surplus lines licensees ~~may shall~~ be formed to:

- (1) Facilitate and encourage compliance by its members resident and nonresident surplus lines licensees with the laws of this State and the rules and regulations of the Commissioner relative to surplus lines insurance;
- (2) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market; and
- (3) Receive and disseminate to its members surplus lines licensees information relative to about surplus lines coverages insurance, including, without limitation, new electronic filing procedures approved by the Commissioner, changes in the list of eligible surplus lines insurers, and modifications in coverages, procedures, and requirements as may be requested by the Commissioner; and
- (4) Certify satisfactory evidence of current nonresident surplus lines licensure in this State by countersigning nonresident produced surplus lines coverages by means satisfactory to the Commissioner; and charge the nonresident surplus lines licensee a fee for the certification and countersignature as approved by the Commissioner.

(b) ~~Every such advisory~~ The regulatory support organization shall file with the Commissioner:

- (1) A copy of its constitution, articles of agreement or association, or certificate of incorporation;
- (2) A copy of its bylaws and rules governing its activities;
- (3) ~~A current~~ An annually updated list of its members; resident and nonresident licensees;
- (4) The name and address of a resident of this State upon whom notices or orders of the Commissioner or processes issued at his direction may be served; and
- (5) An agreement that the Commissioner may examine the advisory regulatory support organization in accordance with the provisions of subsection (c) of this section.

(c) The Commissioner may, at times deemed appropriate, make or cause to be made an examination of each ~~advisory~~ regulatory support organization; in which case the provisions of G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-180, 58-2-185, 58-2-190, 58-2-195, and 58-2-200 shall apply. If the Commissioner finds the ~~advisory~~ regulatory support organization or any ~~member thereof~~ surplus lines licensee, whether resident or nonresident, to be in violation of this Article, the Commissioner may issue an order requiring the discontinuance of the violation.

(d) Each resident surplus lines licensee shall maintain active membership in ~~an advisory~~ a regulatory support organization as a condition of continued licensure under this Article."

SECTION 29. G.S. 58-33-30(a) reads as rewritten:

"(a) Application. - ~~Application shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner.~~ The applicable license application requirements of G.S. 58-33-31 shall be satisfied."

SECTION 30. G.S. 58-39-15(3) reads as rewritten:

- "(3) 'Agent' ~~shall have~~ has the meaning as set forth in ~~Article 33 of this Chapter~~ G.S. 58-33-10, and ~~shall include~~ includes limited representatives, limited line credit insurance producers, limited lines producers, insurance producers, and surplus lines licensees, salesmen,

~~or representatives of a medical, surgical, hospital, dental, or optometric service plan, and salesmen or representatives of a health maintenance organization licensees.~~

SECTION 31. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 32. Section 28 of this act becomes effective October 1, 2001. Sections 25, 30, and this section are effective when they become law. The remaining sections of this act become effective July 1, 2002.

In the General Assembly read three times and ratified this the 5th day of June, 2001.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2001