

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE DRH10755-MH-99 (03/27)

Short Title: Insurance Law Changes.-AB

(Public)

Sponsors: Representatives Goforth and Wray (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING INSURANCE
3 PRODUCERS AND BROKERS, BAIL BONDSMEN, MOTOR CLUBS, PREMIUM
4 FINANCE COMPANIES, AND COLLECTION AGENCIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 58-33-10 is amended by adding a new subdivision to read:

7 "(4a) "FINRA" means the Financial Industry Regulatory Authority or any
8 successor entity."

9 **SECTION 2.** G.S. 58-33-26(e) reads as rewritten:

10 "(e) A variable life and variable annuity products license authorizes a resident agent to
11 sell, solicit, or negotiate variable contracts if the agent satisfies the Commissioner that the agent
12 has met the ~~National Association of Securities Dealers~~ FINRA requirements of the Secretary of
13 State of North Carolina."

14 **SECTION 3.** G.S. 58-33-26(m) is repealed.

15 **SECTION 4.** G.S. 58-33-26(p) reads as rewritten:

16 "(p) An individual shall not simultaneously hold ~~an agent's a property, casualty, or~~
17 personal lines insurance license and an adjuster's license in this State. An individual who holds
18 a ~~property and liability~~ property, casualty, or personal lines insurance license may apply for an
19 adjuster license without having to take the adjuster examination in G.S. 58-33-30(e) if the
20 individual applies for the adjuster license within 60 days after surrendering the ~~property and~~
21 liability ~~property, casualty, or personal lines~~ insurance license. An individual who holds an
22 adjuster license may apply for a property and liability insurance license without having to take
23 the property and liability insurance agent examination in G.S. 58-33-30(e) if the individual
24 applies for the ~~property and liability~~ property, casualty, or personal lines insurance license
25 within 60 days after surrendering the adjuster license."

26 **SECTION 5.** Article 33 of Chapter 58 of the General Statutes of North Carolina is
27 amended by adding a new section to read:

28 "**§ 58-33-48. Criminal history record checks.**

29 (a) The Department of Justice may provide a criminal record check to the
30 Commissioner for any person who has applied for or holds a license through the Commissioner
31 under this Article.

32 (b) In addition, if a person described in subsection (a) of this section is a corporation,
33 partnership, limited liability company, association, or trust, the Department of Justice may
34 provide a criminal history record check to the Commissioner for any person who has control of
35 that person, or who is the qualifying individual or a branch manager of that person.



1 (c) The Commissioner shall provide or cause to be provided to the Department of
2 Justice, along with the request, the fingerprints of the person, any additional information
3 required by the Department of Justice, and a form signed by the person consenting to the check
4 of the criminal record and to the use of the fingerprints and other identifying information
5 required by the State or national repositories. The person's fingerprints shall be forwarded to
6 the State Bureau of Investigation for a search of the State's criminal history record file, and the
7 State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of
8 Investigation for a national criminal history check. The Commissioner shall keep all
9 information pursuant to this section privileged, in accordance with applicable State law and
10 federal guidelines, and the information shall be confidential and shall not be a public record
11 under Chapter 132 of the General Statutes. The Department of Justice may charge a fee for
12 each person for conducting the checks of criminal history records authorized by this section.

13 (d) This section does not apply to a person applying for renewal or continuation of a
14 home state insurance producer license or a nonresident insurance producer license."

15 **SECTION 6.** G.S. 58-33-32(k) reads as rewritten:

16 (k) A producer shall report to the Commissioner any administrative action taken against
17 the producer in another state or by another governmental agency in this State within 30 days
18 after the final disposition of the matter. As used in this subsection, "administrative action"
19 includes enforcement action taken against the producer by the ~~National Association of~~
20 ~~Securities Dealers-FINRA~~. This report shall include a copy of the order or consent order and
21 other information or documents filed in the proceeding necessary to describe the action."

22 **SECTION 7.** G.S. 58-33-35 is repealed.

23 **SECTION 8.** G.S. 58-33-40(a) reads as rewritten:

24 (a) ~~No~~ Except as provided in subsection (b) of this section, no individual who holds a
25 valid insurance agent's license issued by the Commissioner shall, either directly or for an
26 insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the
27 individual has not been appointed."

28 **SECTION 9.** G.S. 58-33-40(b) reads as rewritten:

29 (b) Any insurer authorized to transact business in this State may appoint as its agent any
30 individual who holds a valid agent's license issued by the Commissioner. To appoint an
31 individual as its agent, the appointing insurer shall file, in a format approved by the
32 Commissioner, a notice of appointment with 15 days after the date the first insurance
33 application is submitted. ~~Upon the appointment, the~~The individual shall be authorized to act as
34 an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized
35 in this State and for which the appointed agent is licensed in this State, unless specifically
36 limited."

37 **SECTION 10.** G.S. 58-33-40 (c) and (h) are repealed.

38 **SECTION 11.** G.S. 58-33-46(a)(2) reads as rewritten:

39 (2) Violating any insurance law of this or any other state, violating any
40 administrative rule, subpoena, or order of the Commissioner or of another
41 state's insurance regulator, or violating any rule of the ~~National Association~~
42 ~~of Securities Dealers-FINRA~~."

43 **SECTION 12.** G.S. 58-21-65(f) reads as rewritten:

44 (f) A person licensed as a surplus lines licensee under the laws of a state bordering this
45 State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the
46 bordering state are substantially similar to the provisions of this Article and (ii) the bordering
47 state has a law or regulation substantially similar to this subsection that permits surplus lines
48 licensees licensed under this Article to be licensed by the bordering state and (iii) the person
49 complies with all requirements of this Article and submits himself or herself to the
50 Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance
51 with Article 33 of this Chapter."

1 **SECTION 13.** G.S. 58-71-50(a) reads as rewritten:

2 "(a) An applicant for a license as a bail bondsman or runner shall furnish the
3 Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the
4 Commissioner and a recent passport size full-face photograph of the applicant. The applicant's
5 fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of
6 every applicant shall be forwarded to the State Bureau of Investigation for a search of the
7 applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation
8 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national
9 criminal history record check. An applicant shall pay the cost of the State and any national
10 criminal history record check of the applicant."

11 **SECTION 14.** G.S. 58-71-70 reads as rewritten:

12 "**§ 58-71-70. Examination; fees.**

13 Each applicant for a license as a professional bondsman, surety bondsman, or runner shall
14 appear in person and take ~~a written~~ an examination prepared by the Commissioner testing the
15 applicant's ability and qualifications. Each applicant is eligible for examination 30 days after
16 the date the application is received by the Commissioner. If an applicant is unable to complete
17 the examination requirement within 30 days after notification from the Commissioner of the
18 applicant's eligibility to take the examination, the applicant shall again be subject to the
19 criminal history record check prescribed by G.S. 58-71-50(a) so that current information is
20 available for review with the application. Each examination shall be held at a time and place as
21 designated by the Commissioner. Each applicant shall be given notice of the designated time
22 and place no sooner than 15 days before the examination. The Commissioner may contract with
23 a person to process applications for the examination and administer and grade the examination
24 in the same manner as for agent examinations under Article 33 of this Chapter.

25 The fee for each examination is twenty-five dollars (\$25.00) plus an amount that offsets the
26 cost of any contract for examination services. This examination fee is nonrefundable.

27 An applicant who fails an examination may take a subsequent examination, but at least one
28 year must intervene between examinations."

29 **SECTION 15.** G.S. 58-71-30 reads as rewritten:

30 "**§ 58-71-30. Arrest of defendant for purpose of surrender.**

31 For the purpose of surrendering the defendant, the surety may arrest him before the
32 forfeiture of the ~~undertaking, or by his written authority endorsed on a certified copy of the~~
33 ~~undertaking, may request any judicial officer to order arrest of the defendant.~~undertaking."

34 **SECTION 16.** G.S. 58-71-45 reads as rewritten:

35 "**§ 58-71-45. Terms of licenses.**

36 A license issued to a bail bondsman or to a runner authorizes the licensee to act in that
37 capacity until the license is suspended or revoked. Upon the suspension or revocation of a
38 license, the licensee shall return the license to the Commissioner. A license of a bail bondsman
39 and a license of a runner shall be renewed on July 1 of each year upon payment of the
40 applicable renewal fee under G.S. 58-71-75. The Commissioner is not required to print renewal
41 licenses. After notifying the Commissioner in writing, a professional bondsman who employs a
42 runner may cancel ~~the runner's license and~~ the runner's authority to act for the professional
43 bondsman."

44 **SECTION 17.** G.S. 58-71-140(d) is repealed.

45 **SECTION 18.** G.S. 58-71-120 reads as rewritten:

46 "**§ 58-71-120. Bail bondsman to give notice of discontinuance of business; cancellation of**
47 **license.**

48 Any bail bondsman who discontinues writing bail bonds during the period for which he is
49 licensed shall ~~notify the clerks of the superior court with whom he is registered and~~ return his
50 license to the Commissioner for cancellation within 30 days after ~~such~~ the discontinuance."

51 **SECTION 19.** G.S. 58-70-5(k) reads as rewritten:

1 "(k) ~~A balance sheet as of the last day of the month prior to the date of submission of the~~
2 ~~application, certified true and correct by a corporate officer, partner, or proprietor,~~A GAAP
3 financial statement setting forth the current assets, fixed assets, current liabilities and positive
4 net worth of the applicant;"

5 **SECTION 20.** G.S. 58-70-5(q) reads as rewritten:

6 "(q) For purposes of this Article, the following definitions apply:

7 (1) "Alien corporation" means a company incorporated or organized under the
8 laws of any jurisdiction outside of the United States.

9 (2) "Foreign corporation" means a company incorporated or organized under the
10 laws of the United States or of any jurisdiction within the United States other
11 than this State.

12 (2a) "GAAP financial statement" means a financial statement as defined by
13 accounting principles generally accepted in the United States."

14 **SECTION 21.** G.S. 58-70-10 reads as rewritten:

15 "**§ 58-70-10. Application to Commissioner for permit renewal.**

16 Any person, firm, corporation or association desiring to renew a permit issued pursuant to
17 G.S. 58-70-5 shall make application to the Commissioner ~~of Insurance~~ not less than 30 days
18 ~~prior to~~before the expiration date of the then current permit. Such renewal applicant shall be
19 entitled to a renewal permit upon submission to the Commissioner of Insurance of all the
20 information as required by G.S. 58-70-5; provided, however, it shall be sufficient, wherever
21 applicable, to reference the prior year's application if there has been no change as to any of the
22 required information and it shall not be necessary to submit with a renewal application a new
23 director's resolution. In addition, the applicant shall submit to the Commissioner a copy of a
24 "continuation certificate" or paid receipt for renewal premiums for the collection agency bond
25 for the year for which the renewal permit is applied. The application shall include a calculation
26 in accordance with G.S. 58-70-20, and if the bond is increased, an endorsement by the surety.
27 With a renewal application, the applicant shall submit a ~~balance sheet~~GAAP financial
28 statement for the last fiscal year ending ~~prior to~~before the application, certified true and correct
29 by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets,
30 current liabilities and positive net worth of the applicant."

31 **SECTION 22.** G.S. 58-70-40(b) reads as rewritten:

32 "(b) If an individual proprietor, officer, or partner of the collection agency has been
33 convicted in any court of competent jurisdiction for any crime involving dishonesty or breach
34 of trust, the collection agency shall notify the Commissioner in writing of the conviction within
35 10 days after the date of the conviction. As used in this subsection, "conviction" includes an
36 adjudication of guilt, a plea of guilty, or a plea of nolo contendere. The conviction by a court of
37 competent jurisdiction of any permittee for a violation of this Article shall automatically have
38 the effect of suspending the permit of that permittee until such time that the permit is reinstated
39 by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt,
40 a plea of guilty, and a plea of nolo contendere."

41 **SECTION 23.** G.S. 58-70-40 is amended by adding a new subsection to read:

42 "(e) A collection agency shall report to the Commissioner any administrative action
43 taken against the collection agency by another state or by another governmental agency in this
44 State within 30 days after the final disposition of the matter. This report shall include a copy of
45 the order or consent order and other information or documents filed in the proceeding necessary
46 to describe the action."

47 **SECTION 24.** Article 35 of Chapter 58 of the General Statutes is amended by
48 adding a new section to read:

49 "**§ 58-69-60. Notification of criminal or administrative actions.**

50 (a) If an individual proprietor, officer, or partner of a motor club has been convicted in
51 any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the

1 motor club shall notify the Commissioner in writing of the conviction within 10 days after the
2 date of the conviction. As used in this subsection, "conviction" includes an adjudication of
3 guilt, a plea of guilty, or a plea of nolo contendere.

4 (b) A motor club shall report to the Commissioner any administrative action taken
5 against the motor club by another state or by another governmental agency in this State within
6 30 days after the final disposition of the matter. This report shall include a copy of the order or
7 consent order and other information or documents filed in the proceeding necessary to describe
8 the action."

9 **SECTION 25.** G.S. 58-35-1(2) reads as rewritten:

10 "(2) "Insurance premium finance agreement" means a promissory note or other
11 written agreement by which an insured promises or agrees to pay to, or to
12 the order of, an insurance premium finance company the amount advanced
13 or to be advanced under the agreement to an insurer ~~or to an insurance agent,~~
14 in payment of premiums on an insurance contract, together with a service
15 charge as authorized and limited by this Article."

16 **SECTION 26.** G.S. 58-35-5(b) reads as rewritten:

17 ~~"(b) Application for license required under this Article shall be in writing, and in the~~
18 ~~form prescribed by the Commissioner. An application for a license under this Article shall be in~~
19 writing, in a form prescribed by the Commissioner, and shall include a current GAAP financial
20 statement of the applicant that has been prepared by a certified public accountant or by a
21 qualified independent accountant who is engaged in the public practice of accounting. As used
22 in this subsection, "GAAP financial statement" means a financial statement as defined by
23 accounting principles generally accepted in the United States."

24 **SECTION 27.** Article 35 of Chapter 58 of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 58-35-22. Notification of criminal or administrative actions.**

27 (a) If an individual proprietor, officer, or partner of a premium finance company has
28 been convicted in any court of competent jurisdiction for any crime involving dishonesty or
29 breach of trust, the premium finance company shall notify the Commissioner in writing of the
30 conviction within 10 days after the date of the conviction. As used in this subsection,
31 "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

32 (b) A premium finance company shall report to the Commissioner any administrative
33 action taken against the premium finance company, including any branch office, by another
34 state or by another governmental agency in this State within 30 days after the final disposition
35 of the matter. This report shall include a copy of the order or consent order and other
36 information or documents filed in the proceeding necessary to describe the action."

37 **SECTION 28.** G.S. 58-33-46(a)(6) reads as rewritten:

38 **"§ 58-33-46. Suspension, probation, revocation, or nonrenewal of licenses.**

39 (a) The Commissioner may place on probation, suspend, revoke, or refuse to renew any
40 license issued under this Article, in accordance with the provisions of Article 3A of Chapter
41 150B of the General Statutes, for any one or more of the following causes:

42 ...

43 (6) ~~Having been convicted of a felony, felony or a misdemeanor involving~~
44 ~~dishonesty, a breach of trust, or a misdemeanor involving moral turpitude."~~

45 **SECTION 29.** G.S. 58-2-69(b) reads as rewritten:

46 (b) Every applicant for a license shall inform the Commissioner of the applicant's
47 residential ~~address~~ address and provide the applicant's e-mail address to which the
48 Commissioner can send electronic notifications and other messages. Every licensee shall give
49 written notification to the Commissioner of any change of the licensee's residential or e-mail
50 address within 10 business days after the licensee moves into the licensee's new
51 ~~residence~~ residence or obtains a different e-mail address. This requirement applies if the change

1 of residential address is by governmental action and there has been no actual change of
2 residence location; in which case the licensee shall notify the Commissioner within 10 business
3 days after the effective date of the change. A violation of this subsection is not a ground for
4 revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty
5 by the Commissioner, though a licensee who violates this subsection shall pay an
6 administrative fee of fifty dollars (\$50.00) to the Commissioner."

7 **SECTION 30.** Sections 22, 23, 24, and 27 of this act become effective October 1,
8 2009. Sections 19, 20, 21, 26, and 29 of this act become effective January 1, 2010. Section 5 of
9 this act becomes effective October 1, 2010. The remainder of this act is effective when it
10 becomes law.