

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

SESSION LAW 1999-244  
SENATE BILL 766

AN ACT TO MAKE CERTAIN PROVISIONS IN THE INSURANCE LAW  
APPLICABLE TO HOSPITAL, MEDICAL, AND DENTAL SERVICE  
CORPORATIONS AND TO HEALTH MAINTENANCE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

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

**"§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

- |                       |  |
|-----------------------|--|
| <u>G.S. 58-2-125.</u> | <u>Authority over all insurance companies; no exemptions from license.</u>   |
| <u>G.S. 58-2-155.</u> | <u>Investigation of charges.</u>   |
| <u>G.S. 58-2-160.</u> | <u>Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.</u> |
| <u>G.S. 58-2-162.</u> | <u>Embezzlement by insurance agents, brokers, or administrators.</u>   |
| <u>G.S. 58-2-185.</u> | <u>Record of business kept by companies and agents; Commissioner may inspect.</u>  |
| <u>G.S. 58-2-190.</u> | <u>Commissioner may require special reports.</u>   |
| <u>G.S. 58-2-195.</u> | <u>Commissioner may require records, reports, etc., for agencies, agents, and others.</u>  |
| <u>G.S. 58-2-200.</u> | <u>Books and papers required to be exhibited.</u>  |
| <u>G.S. 58-3-50.</u>  | <u>Companies must do business in own name; emblems, insignias, etc.</u>  |
| <u>G.S. 58-3-115.</u> | <u>Twisting with respect to insurance policies; penalties.</u>   |
| <u>G.S. 58-50-35.</u> | <u>Notice of nonpayment of premium required before forfeiture.</u>   |
| <u>G.S. 58-51-25.</u> | <u>Policy coverage to continue as to mentally retarded or physically handicapped children."</u>  |

Section 2. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-67-171. Other laws applicable to HMOs.**

The following provisions of this Chapter are applicable to HMOs that are subject to this Article:

<u>G.S. 58-2-125.</u>	<u>Authority over all insurance companies; no exemptions from license.</u>
<u>G.S. 58-2-155.</u>	<u>Investigation of charges.</u>
<u>G.S. 58-2-160.</u>	<u>Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.</u>
<u>G.S. 58-2-162.</u>	<u>Embezzlement by insurance agents, brokers, or administrators.</u>
<u>G.S. 58-2-185.</u>	<u>Record of business kept by companies and agents; Commissioner may inspect.</u>
<u>G.S. 58-2-190.</u>	<u>Commissioner may require special reports.</u>
<u>G.S. 58-2-195.</u>	<u>Commissioner may require records, reports, etc., for agencies, agents, and others.</u>
<u>G.S. 58-2-200.</u>	<u>Books and papers required to be exhibited.</u>
<u>G.S. 58-3-50.</u>	<u>Companies must do business in own name; emblems, insignias, etc.</u>
<u>G.S. 58-3-115.</u>	<u>Twisting with respect to insurance policies; penalties.</u>
<u>G.S. 58-50-35.</u>	<u>Notice of nonpayment of premium required before forfeiture.</u>
<u>G.S. 58-51-25.</u>	<u>Policy coverage to continue as to mentally retarded or physically handicapped children.</u>
<u>G.S. 58-51-35.</u>	<u>Insurers and others to afford coverage to mentally retarded and physically handicapped children.</u>
<u>G.S. 58-51-45.</u>	<u>Policies to be issued to any person possessing the sickle-cell trait or hemoglobin C trait."</u>

Section 3. G.S. 58-65-125 reads as rewritten:

**"§ 58-65-125. Revocation of certificate of authority; dissolution. Revocation, suspension, and refusal to renew license; unfair trade practices.**

~~Whenever the Commissioner of Insurance shall find as a fact that any corporation subject to the provisions of this Article and Article 66 of this Chapter is being operated for profit or fraudulently conducted, or is not complying with the provisions of this Article and Article 66 of this Chapter, he shall be authorized to revoke the certificate of authority or license theretofore granted after notice and hearing, and may at any time thereafter institute or cause to be instituted the necessary proceedings under the laws of this State looking to the dissolution of such corporation, and any dissolution, liquidation, merger, or reorganization of a corporation or corporations subject to the provisions of this Article and Article 66 of this Chapter shall be under the supervision of the Commissioner of Insurance who shall have all powers with respect thereto granted to him under the insurance laws of this State. If, at any time, a corporation organized under the provisions of this Article and Article 66 of this Chapter is financially unable to comply with the provisions of this Article and Article 66 of this Chapter or to comply with any of the provisions of any of the hospital contracts or subscribers' contracts issued by said corporation in pursuance of this Article and Article 66 of this Chapter, the Commissioner of Insurance shall have the right without court action, to transfer all its assets, liabilities, and obligations, to any other corporation, whether organized under~~

~~the provisions of this Article and Article 66 of this Chapter, or not, under such contract of reinsurance with such transferee corporation, that he deems to the best interests of the corporation, its members and creditors whose assets, obligations and liabilities, are transferred. This action on the part of the Commissioner of Insurance is without prejudice to the rights of the corporations whose assets, liabilities and obligations are so transferred, to institute other and proper legal remedies, and to question the action so taken by the Commissioner of Insurance as herein provided, provided, however, that the action taken by the Commissioner of Insurance herein shall not be affected pending a final determination by the court with reference thereto.~~

(a) The Commissioner may revoke, suspend, or refuse to renew the license of any service corporation if:

- (1) The service corporation fails or refuses to comply with any law, order, or rule applicable to the service corporation.
- (2) The service corporation's financial condition is unsound.
- (3) The service corporation has published or made to the Department or to the public any false statement or report.
- (4) The service corporation refuses to submit to any examination authorized by law.
- (5) The service corporation is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

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

(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if a service corporation fails to acknowledge a claim within 30 days after receiving written notice of the claim, but only if the notice contains sufficient information for the service corporation to identify the specific coverage involved. Acknowledgement of the claim shall be made to the claimant or the claimant's legal representative and shall do one of the following, as applicable:

- (1) Advise that the claim is being investigated.
- (2) Be a payment of the claim.
- (3) Be a bona fide written offer of settlement.
- (4) Be a written denial of the claim.

(d) Article 63 of this Chapter applies to service corporations and their agents and representatives."

Section 4. G.S. 58-13-10 reads as rewritten:

**"§ 58-13-10. Scope.**

This Article applies to all domestic insurers and to all kinds of insurance written by those insurers under Articles 1 through ~~66-68~~ of this Chapter. Foreign insurers ~~are to~~ shall comply in substance with the requirements and limitations of this ~~section- Article~~. This Article does not apply to variable contracts for which separate accounts are

required to be maintained nor to statutory deposits that are required to be maintained by insurance regulatory agencies as a requirement for doing business in such jurisdictions."

Section 5. G.S. 58-65-105 reads as rewritten:

**"§ 58-65-105. Visitations and examinations.**

~~The Commissioner of Insurance or any deputy or examiner or other person whom he may appoint shall have the power of visitations and examination into the affairs of any such corporation and free access to all the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents, or employees or other persons in relation to the affairs, transactions and conditions of the corporation. Service corporations subject to this Article shall be examined under G.S. 58-2-131, 58-2-132, 58-2-133, and 58-2-134.~~"

Section 6. G.S. 58-65-95 reads as rewritten:

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

(a) No corporation subject to this Article shall invest in any securities other than securities permitted ~~by the laws of this State by Article 7 of this Chapter~~ for the investment of assets of ~~life insurance companies, banks, trust companies, executors, administrators and guardians.~~ life and health insurance companies.

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

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

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

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

Section 7. G.S. 58-65-115 reads as rewritten:

**"§ 58-65-115. Licensing and regulation of agents.**

Every agent of any ~~hospital~~—service corporation authorized to do business in this State under ~~the provisions of this Article and Article 66 of this Chapter shall be is~~ subject to the licensing provisions of Article 33 of this Chapter. Chapter and all other provisions in this Chapter applicable to life and health insurance agents."

Section 8. G.S. 58-67-90 reads as rewritten:

**"§ 58-67-90. Regulation Licensing and regulation of agents.**

The licensing provisions of Article 33 of this Chapter shall apply to the licensing of Article 67 agents. Every agent of any HMO authorized to do business in this State under this Article is subject to the licensing provisions of Article 33 of this Chapter and all other provisions in this Chapter applicable to life and health insurance agents."

Section 9. G.S. 58-28-35 reads as rewritten:

**"§ 58-28-35. Provisions of Article additional to existing law. law; application.**

The powers vested in the Commissioner by this Article are additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to transacting the business of insurance without authority. This Article applies to all kinds of insurance, including service corporations that would be subject to Article 65 of this Chapter, HMOs that would be subject to Article 67 of this Chapter, MEWAs that would be subject to Article 49 of this Chapter, and self-insured workers' compensation operations that would be subject to Article 47 of this Chapter or Article 4 of Chapter 97 of the General Statutes."

Section 10. G.S. 58-50-1 reads as rewritten:

**"§ 58-50-1. Waiver by insurer.**

The acknowledgment by any insurer of the receipt of notice given under any policy covered by Articles 49, 50 through 55-55, 65, or 67 of this Chapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim ~~thereunder, the policy,~~ shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under ~~such~~ the policy."

Section 11. G.S. 58-65-100 reads as rewritten:

**"§ 58-65-100. Reports Statements filed with ~~Commissioner of Insurance.~~ Commissioner.**

~~Every such corporation shall annually on or before the first day of March of each year, file in the office of the Commissioner of Insurance a sworn statement verified by at least two of the principal officers of the said corporation showing its condition on the thirty first day of December, then next preceding; which shall be in such form and shall contain such matter as the Commissioner of Insurance shall prescribe. In case any such corporation shall fail to file any such annual statement as herein required, the said Commissioner of Insurance shall be authorized and empowered to suspend the certificate of authority issued to such corporation until such statement shall be properly filed. Every service corporation subject to this Article is subject to G.S. 58-2-165."~~

Section 12. G.S. 58-67-55 reads as rewritten:

**"§ 58-67-55. Annual report. Statements filed with Commissioner.**

~~Every such health maintenance organization shall annually on or before the first day of March of each year, file in the office of the Commissioner of Insurance a sworn~~

~~statement verified by at least two of the principal officers of the health maintenance organization showing its condition on the thirty first day of December, then next preceding; which shall be in such form as the Commissioner of Insurance shall prescribe. In case any such health maintenance organization shall fail to file any such annual statement as herein required, the said Commissioner of Insurance shall be authorized and empowered to suspend the certificate of authority issued to such health maintenance organization until such statement shall be properly filed. Every HMO subject to this Article is subject to G.S. 58-2-165.~~"

Section 13. G.S. 58-63-5 reads as rewritten:

**"§ 58-63-5. Definitions.**

When used in this Article:

- (2) 'Person' ~~shall mean~~ means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, insurance under this Chapter; and includes agents, brokers, limited representatives, and adjusters."

Section 14. G.S. 58-67-65(b) reads as rewritten:

~~"(b) The provisions of Article 63 of this Chapter shall be construed to apply to health maintenance organizations, health care plans and evidences of coverage except to the extent that the Commissioner determines that the nature of health maintenance organizations, health care plans and evidences of coverage render such sections clearly inappropriate. Article 63 of this Chapter applies to health maintenance organizations and their agents and representatives."~~

Section 15. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 22nd day of June, 1999.

s/ Dennis A. Wicker  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 9:00 a.m. this 2nd day of July, 1999