GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 660
RATIFIED BILL

AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE FINANCIAL LAWS UNDER CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-150 reads as rewritten:

"**§ 58-2-150. Oath required for compliance with law.**

Before issuing license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with ~~him~~ the Commissioner the affidavit of its president or other chief officer that it accepts the terms and obligations of Articles 1 through ~~64~~ 67 of this Chapter as a part of the consideration of the license."

SECTION 2. G.S. 58-3-100(a)(2) reads as rewritten:

"(2) ~~The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.~~ After considering the standards under G.S. 58-30-60(b), the Commissioner determines that the continued operation of the insurer is hazardous to its policyholders, to its creditors, or to the general public."

SECTION 3. G.S. 58-5-50 reads as rewritten:

"**§ 58-5-50. Deposits of foreign life insurance companies.**

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of four hundred thousand dollars ($400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional two hundred thousand dollars ($200,000) where such companies cannot show three years of net operational gains prior to admission. ~~Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section.~~"

SECTION 4. G.S. 58-5-90 reads as rewritten:

"**§ 58-5-90. Deposits held in trust by Commissioner or Treasurer.**

(a) Deposits by Domestic Company. – The Commissioner or the Treasurer, in ~~his~~ that officer's official capacity, shall take and hold in trust deposits made by any domestic insurance company for the benefit of all of the insurer's policyholders and for the purpose of complying with the laws of any other state to enable the company to do business in that state. The company making the deposits is entitled to the income thereof, and may, from time to time, with the consent of the Commissioner or Treasurer, and when not forbidden by the law under which the deposit was made, change in whole or in part the securities which compose the deposit for other solvent securities of equal par value. Upon request of any domestic insurance company ~~such officer~~ the Commissioner or the Treasurer may return to the company the whole or any portion of the securities of the company held by ~~him~~ the officer on deposit, when ~~he~~ the officer is satisfied that ~~they~~ the deposits are subject to no liability and are ~~not~~ no longer required to be ~~longer~~ held by any provision of law or purpose of the original deposit.

(b) Deposits by Foreign or Alien Company. – The Commissioner or Treasurer, in that respective officer's official capacity, shall take and hold in trust deposits made by any foreign or alien insurance company for the benefit of the holders of all insurance contracts of the company who are citizens or residents of this State or who hold policies issued upon property in this State in accordance with G.S. 58-5-70. The Commissioner or Treasurer may return to the trustees or other representatives authorized for that purpose any deposit made by a foreign or alien insurance company, when it appears that the company has ceased to do business in the State and is under no obligation to policyholders or other persons in the State for whose benefit the deposit was made.

(c) Action to Enforce or Terminate the Trust. – An insurance company which has made a deposit in this State pursuant to Articles 1 through 64 of this Chapter, or its trustees or resident managers in the United States, or the Commissioner, or any creditor of the company, may at any time bring an action in the Superior Court of Wake County against the State and other parties properly joined therein, to enforce, administer, or terminate the trust created by the deposit. The process in this action shall be served on the officer of the State having the deposit, who shall appear and answer in behalf of the State and perform such orders and judgments as the court may make in such action."

SECTION 5. G.S. 58-6-15 reads as rewritten:

"**§ 58-6-15. Annual license continuation fee definition; requirements.**

For purposes of this Chapter only, "annual license continuation ~~fee means"~~ fee" means the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the license is in effect after the company's year of initial licensing. The annual license continuation fee must be submitted annually on or before the first day of March ~~on a form to be supplied by the Commissioner each year~~ for as long as the license is to remain in effect. If the Commissioner is satisfied that the company has met all requirements of law and appears to be financially solvent, the Commissioner shall not revoke or suspend the license of the company, and the company shall be authorized to do business in this State, subject to all other applicable provisions of the insurance laws of this State. Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."

SECTION 6. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-7-46. Notification to Commissioner for president or chief executive officer changes.**

All domestic insurers organized under the laws of this Chapter shall provide the Commissioner written notice of any change that occurs in the position of president or chief executive officer of the insurer no later than 30 days after the change. Notice shall include the name of the insurer, the name of the person previously holding the position of president or chief executive officer, the name of the person currently holding the position, and the date the position change took place."

SECTION 7. G.S. 58-7-170 reads as rewritten:

"**§ 58-7-170. Diversification.**

(a) Every insurer must maintain an amount equal to its entire policyholder-related liabilities and the minimum capital and surplus required to be maintained by the insurer under this Chapter invested in coin or currency of the United States and in investments authorized under this Chapter, other than the investments authorized under G.S. 58-7-183 or G.S. 58-7-187, except G.S. 58-7-187(b)(1).

(b) Investments eligible under subsection (a), except investments acquired under G.S. 58-7-183, are subject to the following limitations, other limitations of this section, and any other limitations that are expressly provided for in any provision under which the investment is authorized:

(1) The cost of investments made by insurers in stock authorized by G.S. 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's admitted assets, provided that no more than twenty percent (20%) of the insurer's admitted assets shall be invested in common

stock; and the cost of an investment in stock of any one corporation shall not exceed three percent (3%) of the insurer's admitted assets. Notwithstanding any other provision in this Chapter, the financial statement carrying value of all stock investments shall be used for the purpose of determining the asset value against which the percentage limitations are to be applied. Investments in the voting securities of a depository institution, or any company that controls a depository institution, shall not exceed five percent (5%) of the insurer's admitted assets. As used in this subdivision, "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813; and includes any foreign bank that maintains a branch, an agency, or a commercial lending company in the United States.

(2) The cost of Canadian investments authorized by G.S. 58-7-173 shall not exceed forty percent (40%) of the insurer's admitted assets in the aggregate, provided that no more than twenty-five percent (25%) of the insurer's admitted assets shall be invested in Canadian investments authorized by G.S. 58-7-173(11).

(c) The cost of investments made by an insurer in mortgage loans authorized by G.S. 58-7-179 with any one person, or in ~~mortgage pass-through securities and derivatives of mortgage pass-through~~ mortgage-backed securities authorized by G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral ~~package,~~ pool, shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not invest in additional mortgage loans or ~~mortgage pass-through securities and derivatives of mortgage pass-through~~ mortgage-backed securities without the Commissioner's consent if the admitted value of all those investments held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%) limitation, the admitted value of all ~~mortgage pass-through securities and derivatives of mortgage pass-through~~ mortgage-backed securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of the admitted assets of the insurer. The admitted value of other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the insurer. ~~Mortgage pass-through~~ Mortgage-backed securities authorized by G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral ~~package~~ pool limitation and the sixty percent (60%) aggregate limitation. No later than January 31, 1999, an insurer that has mortgage investments that exceed the limitations specified in this subsection shall submit to the Commissioner a plan to bring the amount of mortgage investments into compliance with the specified limitations by January 1, 2004.

(d) Without the Commissioner's prior written approval, the cost of investments permitted under G.S. 58-7-173 and G.S. 58-7-178, and that are classified as medium to lower quality obligations, other than obligations of subsidiaries or affiliated corporations as that term is defined in G.S. 58-19-5, shall be limited to:

(1) No more than twenty percent (20%) of an insurer's admitted assets;

(2) No more than ten percent (10%) of an insurer's admitted assets in obligations ~~that have been given a rating of~~ designated a 4, 5, or 6 ~~by the Securities Valuation Office of the NAIC;~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office;

(3) No more than three percent (3%) of an insurer's admitted assets in obligations ~~that have been given a rating of~~ designated a 5 or 6 ~~by the Securities Valuation Office of the NAIC;~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office; and

(4) No more than one percent (1%) of an insurer's admitted assets in obligations ~~that have been given a rating of~~ designated a 6 ~~by the~~

~~Securities Valuation Office of the NAIC.~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office.

(5) (6). Repealed by Session Laws 1993, c. 452, s. 11.

(e) As used in subsections (d), (f), (g), and (h) of this section, "medium to lower quality obligations" means obligations ~~that have been given a rating of~~ designated a 3, 4, 5, or 6 ~~by the Securities Valuation Office of the NAIC.~~ in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office.

(f) Each insurer shall possess and maintain adequate documentation to establish that its investments in medium to lower quality obligations do not exceed the limitations under subsection ~~(d).~~ (d) of this section.

~~(g) The provisions of subsections (d), (e), and (f) of this section apply to any investment made after December 31, 1991. If an insurer's investments in medium to lower quality obligations equal or exceed the maximum amounts permitted by subsection (d) as of December 31, 1991, the insurer shall not acquire any additional medium to lower quality obligations without the Commissioner's prior written approval. An insurer that is not in compliance with subsection (d) of this section as of December 31, 1991, may hold until maturity or until December 31, 1995, whichever is sooner, only those medium to lower quality obligations it owns on that date, if the obligations were obtained in compliance with the law in effect when the investments were made. If the insurer sells, transfers, or otherwise disposes of the securities before maturity, the insurer may not acquire any medium to lower quality obligations as substitutions or replacements without the Commissioner's prior approval.~~

~~(h) An insurer that is not in compliance with subsection (d) of this section on December 31, 1991, shall file with its annual statement a separate schedule of the medium to lower quality obligations it owns on December 31, 1991. Until it is in compliance with subsection (d) of this section, the insurer shall file with each succeeding annual and quarterly statement a separate schedule of the medium to lower quality obligations it owns as of the reporting date of the filed statement.~~

(i) Failure to obtain the Commissioner's prior written approval shall result in any investments in excess of those permitted by subsection (d) of this section not being allowed as an asset of the insurer.

(j) The Commissioner may limit the extent of an insurer's deposits with any financial institution if the Commissioner determines that the financial solvency of the insurer is threatened by a deposit in excess of insured limits.

(k) The provisions of this section supersede any inconsistent provision of section 106 of the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. § 77r-1, to the extent permitted by that Act."

SECTION 8. G.S. 58-7-173(11) reads as rewritten:

"(11) Bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent institution organized under the laws of the United States, of any state, Canada or any Canadian province; provided ~~such~~ the instruments are ~~rated and valued by the Securities Valuation Office of the NAIC.~~ designated and valued in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office. The cost of investments made under this subdivision in any one issuer shall not exceed three percent (3%) of an insurer's admitted assets."

SECTION 9. G.S. 58-7-173(17) reads as rewritten:

"(17) ~~Mortgage pass-through securities and derivatives thereof, that have been rated as investment grade by the Securities Valuation Office of the NAIC~~ Mortgage-backed securities that are designated a 1 or 2 in accordance with the Purposes and Procedures Manual of the NAIC Securities Valuation Office including, without limitation, collateral mortgage obligations backed by a pool of mortgages of the kind, class,

and investment quality as those eligible for investment under G.S. 58-7-179."

SECTION 10. G.S. 58-7-178(b) reads as rewritten:

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

SECTION 11. G.S. 58-10-120(1) reads as rewritten:

"(1) "Mortgage guaranty insurers report of policyholders position" means the ~~annual~~ supplementary report required by the Commissioner."

SECTION 12. Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-10-140. Report of policyholder's position.**

Each mortgage guaranty insurance company doing business in this State must file on a form prescribed by the Commissioner a Mortgage Guaranty Insurers Report of Policyholders Position. The supplemental reports shall be filed with the annual and quarterly statements pursuant to G.S. 58-2-165."

SECTION 13. G.S. 58-16-6 reads as rewritten:

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

In order for a foreign insurance company to continue to be licensed, it shall report any changes in the documents filed under G.S. 58-16-5(1) or ~~G.S. 58-16-5(5),~~ G.S. 58-16-5(5); maintain the amounts of capital and surplus specified in ~~G.S. 58-16-5(2),~~ G.S. 58-16-5(2); and remain in ~~substantial~~ compliance with ~~the statutes listed in~~ G.S. 58-16-5(6), (7), and ~~(8).~~ (8) and with G.S. 58-7-46."

SECTION 14. G.S. 58-19-30(b)(1) reads as rewritten:

"(1) Sales, purchases, exchanges, loans or extensions of credit, ~~guarantees,~~ or investments, provided the transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the preceding December 31."

SECTION 15. G.S. 58-47-140 reads as rewritten:

"**§ 58-47-140. Other provisions of this Chapter.**

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, ~~58-3-125,~~ 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this Chapter apply to groups."

SECTION 16. G.S. 58-56-2(5)l. reads as rewritten:

"l. ~~A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.~~A managing general agent as defined in G.S. 58-34-2(a)(3), whose activities are limited exclusively to the scope of the activities set forth in the managing general agency contract filed by an insurer with the Commissioner in accordance with G.S. 58-34-2(i)."

SECTION 17. G.S. 58-65-2 reads as rewritten:

"**§ 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:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children."

SECTION 18. G.S. 58-67-25 reads as rewritten:

"**§ 58-67-25. Deposits.**

(a) The Commissioner shall require a minimum deposit of five hundred thousand dollars ($500,000) for all full service medical health maintenance organizations or such higher amount as he deems necessary for the protection of enrollees. ~~The minimum deposit for a full service medical health maintenance organization authorized to operate on July 17, 1987, and having a deposit of less than five hundred thousand dollars ($500,000) shall be as follows:~~

~~(1) $250,000 by December 31, 1987~~

~~(2) $500,000 by December 31, 1988.~~

~~Any health maintenance organization not authorized to do business on July 17, 1987, must comply with the minimum initial deposit of five hundred thousand dollars ($500,000).~~

(b) The Commissioner shall require a minimum deposit of twenty-five thousand dollars ($25,000) for all single service health maintenance organizations or such higher amount as he deems necessary for the protection of enrollees.

(c) All deposits required by this section shall be administered in accordance with the provisions of ~~G.S. 58-5-1.~~ Article 5 of this Chapter."

SECTION 19. G.S. 58-67-115(b)(2) reads as rewritten:

"(2) Whenever the reimbursements described in this subsection exceed ten percent (10%) of the HMO's total costs for health care services over the immediately preceding six months, the HMO shall file a written report with the Commissioner containing the information necessary to determine compliance with sub-subdivision (b)(1)a. of this section ~~no later than 30 business days from the first day of the month.~~ with its financial statements filed pursuant to G.S. 58-2-165. Upon an adequate showing by the HMO that the requirements of this section should be waived or reduced, the Commissioner may waive or reduce these requirements to such an amount as he deems sufficient to protect

enrollees of the HMO consistent with the intent and purpose of this Article."

SECTION 20. G.S. 58-67-171 reads as rewritten:

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

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

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
G.S. 58-7-73.	Dissolution of insurers.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-35.	Insurers and others to afford coverage to mentally retarded and physically handicapped children.
G.S. 58-51-45.	Policies to be issued to any person possessing the sickle-cell trait or hemoglobin C trait."

SECTION 21. G.S. 58-2-215(b)(1) reads as rewritten:

"(1) For the purpose of retaining outside actuarial and economic consultants, legal counsel, and court reporting services in the review and analysis of rate ~~filings,~~ filings and any other insurance regulatory matters, in conducting all hearings, and through any final adjudication."

SECTION 22. G.S. 58-12-40 reads as rewritten:

"**§ 58-12-40. Supplemental provisions; rules; exemptions.**

(a) The provisions of this Article are supplemental to any other provisions of the laws of this State, and do not preclude or limit any other powers or duties of the Commissioner under those laws, including Article 30 of this Chapter.

(b) Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The Commissioner shall not use any of these reports or plans for rate making nor consider or introduce them as evidence in any rate proceeding. The Commissioner shall not use these reports or plans to calculate or derive any elements of an appropriate premium level or rate of return for any kind of insurance that an insurer or any affiliate is authorized to write.

(c) The Commissioner may exempt from the application of this Article any domestic property or casualty insurer ~~that does all of the following:~~ that:

(1) Writes direct business only in this State.

(2) Writes direct annual premiums of ~~one thousand dollars ($1,000)~~ two million dollars ($2,000,000) or less.

(3) Assumes no reinsurance in excess of five percent (5%) of direct written premiums.

(d) The Commissioner may, in the Commissioner's discretion, exempt from the application of this Article:

(1) Any domestic town or county mutual insurance company organized under G.S. 58-7-75(5)d.

(2) Any domestic life or health insurer that:

a. Has no direct or assumed annual premiums; and

b. Has no direct or assumed policyholder obligations.

(3) Any domestic health maintenance organization that:

a. Writes only direct business in this State;

b. Assumes no reinsurance in excess of five percent (5%) of direct written premiums; and

c. Writes direct annual premiums for a comprehensive medical business of two million dollars ($2,000,000) or less, or is a single service health maintenance organization that covers less than 2,000 lives."

SECTION 23. G.S. 58-67-10 reads as rewritten:

"**§ 58-67-10. Establishment of health maintenance organizations.**

(a) Notwithstanding any law of this State to the contrary, any person may apply to the Commissioner for a ~~certificate of authority~~ license to establish and operate a health maintenance organization in compliance with this Article. No person shall establish or operate a health maintenance organization in this State, nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a ~~certificate of authority~~ license under this Article. A foreign corporation may qualify under this Article, subject to its full compliance with Article 16 of this Chapter.

(b) (1) It is specifically the intention of this section to permit such persons as were providing health services on a prepaid basis on July 1, 1977, or receiving federal funds under Section 254(c) of Title 42, U.S. Code, as a community health center, to continue to operate in the manner which they have heretofore operated.

(2) Notwithstanding anything contained in this Article to the contrary, any person can provide health services on a fee for service basis to individuals who are not enrollees of the organization, and to enrollees for services not covered by the contract, provided that the volume of services in this manner shall not be such as to affect the ability of the health maintenance organization to provide on an adequate and timely basis those services to its enrolled members which it has contracted to furnish under the enrollment contract.

(3) This Article shall not apply to any employee benefit plan to the extent that the Federal Employee Retirement Income Security Act of 1974 preempts State regulation thereof.

(3a) This Article does not apply to any prepaid health service or capitation arrangement implemented or administered by the Department of Health and Human Services or its representatives, pursuant to 42 U.S.C. § 1396n or Chapter 108A of the General Statutes, a provider sponsored organization or other organization certified, qualified, or otherwise approved by the Division of Medical Assistance of the Department of Health and Human Services pursuant to Article 17 of

Chapter 131E of the General Statutes, or to any provider of health care services participating in such a prepaid health service or capitation arrangement. Article; provided, however, that to the extent this Article applies to any such person acting as a subcontractor to a Health Maintenance Organization licensed in this State, that person shall be considered a single service Health Maintenance Organization for the purpose of G.S. 58-67-20(4), G.S. 58-67-25, and G.S. 58-67-110.

(4) Except as provided in paragraphs (1), (2), (3), and (3a) of this subsection, the persons to whom these paragraphs are applicable shall be required to comply with all provisions contained in this Article.

(c) Each application for a ~~certificate of authority~~ license shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Commissioner, and shall be set forth or be accompanied by the following:

(1) A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments ~~thereto;~~ thereto. Any proposed articles of incorporation for the formation of a domestic health maintenance organization shall be filed with the Commissioner. The Commissioner shall examine the proposed articles. If the Commissioner finds that the proposed articles meet the requirements of the insurance laws of this State and otherwise determines that the articles should be approved, the Commissioner shall place a certificate of approval on the articles and submit the approved articles to the Secretary of State;

(2) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) A list of the names, addresses, and official positions of persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(4) A copy of any contract form made or to be made between any class of providers and the HMO and a copy of any contract form made or to be made between third party administrators, marketing consultants, or persons listed in subdivision (3) of this subsection and the HMO;

(5) A statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) A copy of the form of evidence of coverage to be issued to the enrollees;

(7) A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the Commissioner directs that additional or more recent financial information is required for the proper administration of this Article;

(9) A financial feasibility plan, which includes detailed enrollment projections, the methodology for determining premium rates to be charged during the first 12 months of operations certified by an actuary or a recognized actuarial consultant, a projection of balance sheets, cash flow statements, showing any capital expenditures, purchase and sale of investments and deposits with the State, and income and

expense statements anticipated from the start of operations until the organization has had net income for at least one year; and a statement as to the sources of working capital as well as any other sources of funding;

(10) A power of attorney duly executed by such applicant, if not domiciled in this State, appointing the Commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this State upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this State may be served;

(11) A statement reasonably describing the geographic area or areas to be served;

(12) A description of the procedures to be implemented to meet the protection against insolvency requirements of G.S. 58-67-110;

(13) A description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee complaints and grievances; and

(14) Such other information as the Commissioner may require to make the determinations required in G.S. 58-67-20.

(d) (1) A health maintenance organization shall file a notice describing any significant modification of the operation set out in the information required by subsection (c) of this section. Such notice shall be filed with the Commissioner prior to the modification. If the Commissioner does not disapprove within 90 days after the filing, such modification shall be deemed to be approved. Changes subject to the terms of this section include expansion of service area, changes in provider contract forms and group contract forms where the distribution of risk is significantly changed, and any other changes that the Commissioner describes in properly promulgated rules. Every HMO shall report to the Commissioner for his information material changes in the provider network, the addition or deletion of Medicare risk or Medicaid risk arrangements and the addition or deletion of employer groups that exceed ten percent (10%) of the health maintenance organization's book of business or such other information as the Commissioner may require. Such information shall be filed with the Commissioner within 15 days after implementation of the reported changes. Every HMO shall file with the Commissioner all subsequent changes in the information or forms that are required by this Article to be filed with the Commissioner.

(1a) Any proposed change to the articles of incorporation shall be filed with the Commissioner. The Commissioner shall examine the proposed change to the articles. If the Commissioner determines that the proposed change should be approved, the Commissioner shall place a certificate of approval on the change and submit the approved change to the Secretary of State.

(2) The Commissioner may promulgate rules and regulations exempting from the filing requirements of subdivision (1) those items he deems unnecessary."

SECTION 24. G.S. 58-15-30 reads as rewritten:

"**§ 58-15-30. License, surplus, and deposit requirements.**

(a) No reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of Articles 1 through 64 of this Chapter. ~~Such~~ The license shall ~~expire on the last day of June of each year.~~ continue in full force and effect, subject to timely payment of an annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provision of the insurance laws of this State.

(b) No domestic or foreign reciprocal shall be licensed in this State unless it has a surplus to policyholders of at least eight hundred thousand dollars ($800,000); and no alien reciprocal shall be licensed unless it has a trusteed surplus of at least eight hundred thousand dollars ($800,000).

(c) Each domestic, foreign, or alien reciprocal licensed in this State ~~must maintain a minimum deposit~~ shall deposit and maintain deposits with the Commissioner of at least ~~one hundred thousand dollars ($100,000)~~ four hundred thousand dollars ($400,000) in cash or in value of securities of the kind specified in G.S. 58-5-15, which shall be subject to ~~the same conditions as contained in~~ Article 5 of this Chapter."

SECTION 25. G.S. 58-13-20 reads as rewritten:

"**§ 58-13-20. Exception.**

(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those policyholder-related liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

(1) The ceding insurer and the reinsurer are both licensed to transact business in this State;

(2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the policyholder-related liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in trust account for that purpose and under those conditions with a ~~State or national bank domiciled in this State.~~ qualified United States financial institution.

(b) The Commissioner has the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with his authority to make examinations of insurers as conferred by other provisions of this Chapter.

(c) For purposes of subdivision (a)(2) of this section, "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;

(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions who serve as trustees."

SECTION 26. G.S. 58-8-20(e) reads as rewritten:

"(e) Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. ~~Due~~ Written notice of ~~such~~ the proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the

Commissioner, not less than three times a week for a period of not less than four weeks before ~~such~~ the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. An affirmative vote of at least two-thirds of the policyholders voting in person or by proxy is required to adopt the proposed action."

SECTION 27. Sections 1, 4, 6, 11, 12, 14 through 16, 18, 19, 21, and 23 through 25 of this act become effective October 1, 2005. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2005.

_____
Marc Basnight
President Pro Tempore of the Senate

_____
James B. Black
Speaker of the House of Representatives

_____
Michael F. Easley
Governor

Approved _____.m. this _____ day of _____, 2005