

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

SESSION LAW 2007-305  
HOUSE BILL 588

AN ACT TO UPDATE AND IMPROVE LAWS COVERING UNAUTHORIZED INSURERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-28-45 reads as rewritten:

**"§ 58-28-45. ~~Uniform Unauthorized Insurers Act.~~ Insurers; prohibited acts.**

(a) No ~~person, corporation, association or partnership~~ person shall in this State act as agent for any insurer not authorized to transact business in this State, or negotiate for or place or aid in placing insurance coverage in this State for another with any such insurer.

(b) No ~~person, corporation, association or partnership~~ person shall in this State aid any unauthorized insurer in effecting insurance or in transacting insurance business in this State, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service for process, or otherwise, except as provided in ~~subsection (e) hereof.~~ this section or in G.S. 58-16-35.

(c) No ~~person, corporation, association or partnership~~ person shall make, negotiate for or place, or aid in negotiating or placing any insurance contract in this State for another who is an applicant for insurance covering any property or risk in another state, territory or district of the United States with any insurer not authorized to transact insurance business in the state, territory or district wherein such property or risk or any part thereof is located.

(d) ~~The provisions of the three foregoing subsections~~ Subsections (a), (b), and (c) of this section do not apply to contracts of reinsurance, or to contracts of insurance made through surplus lines licensees as provided in Article 21 of this Chapter, nor do they apply to any insurer not authorized in this State, or its representatives, in investigating, adjusting losses or otherwise complying in this State with the terms of its insurance contracts made in a state wherein the insurer was authorized; provided, the property or risk insured under such contracts at the time such contract was issued was located in such other state. A motor vehicle used and kept garaged principally in another state shall be deemed to be located in such state.

(e) (1) Repealed by Session Laws 1985, c. 666, s. 40.

(2) Such service of process shall be made by delivering and leaving with the Commissioner or to some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The Commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all such process so served upon him. Such service of process is sufficient provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of plaintiff's attorney showing a compliance herewith are

filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a judgment by default under this subdivision (2) until the expiration of 30 days from the date of the filing of the affidavit of compliance.

- (3) Service of process in any such action, suit or proceeding shall be in addition to the manner provided in the preceding subdivision (2) be valid if served upon any person within this State who, in this State on behalf of such insurer, is
- a. Soliciting insurance, or
  - b. Making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or
  - c. Collecting or receiving any premium for insurance; and a copy of such process is sent within 10 days thereafter by registered mail by plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.
  - d. Nothing in this subsection (e) shall limit or abridge the right to serve process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(f) No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this State to enforce any right, claim or demand arising out of the transaction of business in this State until such insurer shall have obtained a license to transact insurance business in this State. Nothing in this subsection shall be construed to require an unauthorized insurance company to obtain a license before instituting or filing, or causing to be instituted or filed, any suit, action or proceeding either in connection with any of its investments in this State or in connection with any contract issued by it at a time when it was authorized to do business in the state where such contract was issued.

- (g) (1) Before any unauthorized insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either
- a. File with the clerk of the court in which such action, suit or proceeding is pending a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action or
  - b. Procure a license to transact the business of insurance in this State.
- (2) The court in any action, suit or proceeding in which service is made in the manner prescribed in subdivisions (2) and (3) of subsection (e) may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (g) and to defend such action.
- (3) Nothing in subdivision (1) of this subsection (g) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or

to set aside service thereof made in the manner provided in subdivisions (2) and (3) of subsection (e) on the ground either

- a. That no policy or contract of insurance has been issued or delivered to a citizen or resident of this State or to a corporation authorized to do business therein, or
- b. That such insurer has not been transacting business in this State, or
- c. That the person on whom service was made pursuant to subdivision (3) of subsection (e) was not doing any of the acts enumerated therein.

(h) Except as provided in G.S. 58-33-95, any ~~person, corporation, association or partnership~~ person violating ~~any of the provisions~~ subsection (a), (b), (c), or (k) of this section shall be guilty of a Class 3 misdemeanor ~~Class H felony~~ and shall ~~only~~ be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). Any person violating subsections (e), (f), and (g) of this section shall be guilty of a Class 1 misdemeanor and shall only be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). For the purposes of the fine imposed by this subsection, each day during which a violation occurs constitutes a separate violation.

~~(i) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.~~

~~(j) This section may be cited as the Uniform Unauthorized Insurers Act.~~

(k) No person shall act as an officer, director, or controlling person for a person who is engaged in a violation of subsection (a), (b), or (c) of this section. As used in this subsection, "controlling" has the same meaning as in G.S. 58-19-5(2).

(l) In addition to any other penalties or remedies provided by law, any person who violates this section shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract issued by or on behalf of the unauthorized insurer in violation of this Article. The liability imposed by this subsection shall be joint and several if more than one person violates this section.

(m) A civil action may be filed under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action."

**SECTION 2.** G.S. 58-28-20(a) reads as rewritten:

"(a) Whenever the Commissioner has reasonable grounds to believe that any person is violating or is about to violate ~~G.S. 58-28-5, G.S. 58-28-5, 58-28-45, or 58-33-95,~~ the Commissioner may, after notice and opportunity for hearing, make written findings and issue and cause to be served upon the person an order to cease and desist violating ~~G.S. 58-28-5, G.S. 58-28-5, 58-28-45, or 58-33-95."~~

**SECTION 3.** G.S. 58-28-20(d) reads as rewritten:

"(d) Whenever the Commissioner has evidence that any person has or is violating ~~G.S. 58-28-5, G.S. 58-28-5 or G.S. 58-28-45,~~ or has or is violating any order or requirement of the Commissioner issued by the Commissioner under this Article, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue an emergency cease and desist order that shall become effective on the date specified in the order or upon service of a certified copy of the order upon the person ordered to cease and desist, whichever is later. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner as provided under subsection (b) of this section."

**SECTION 4.** G.S. 58-28-5(a) reads as rewritten:

"(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-28-10, without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and delivered in a state in which the company was authorized to transact business.
- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

**SECTION 5.** G.S. 58-33-95(a)(1) reads as rewritten:

- "(1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract sold, directly or indirectly, by or through that person or entity on behalf of the unauthorized insurer. The liability imposed by this subsection shall be joint and several if more than one person violates this section."

**SECTION 6.** 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 7.** Section 4 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2007, and applies to offenses or acts committed on or after that date.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of July, 2007.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 12:07 p.m. this 28<sup>th</sup> day of July, 2007