



# HOUSE BILL 382: DOI Omnibus- AB.

2017-2018 General Assembly

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| <b>Committee:</b>     | Senate Commerce and Insurance                 | <b>Date:</b>        | June 6, 2018                              |
| <b>Introduced by:</b> | Reps. Setzer, Bumgardner, Henson, Destin Hall | <b>Prepared by:</b> | Kristen L. Harris<br>Committee Co-Counsel |
| <b>Analysis of:</b>   | PCS to Second Edition<br>H382-CSTU-33         |                     | Jason Moran-Bates<br>Staff Attorney       |

**OVERVIEW:** *The Proposed Committee Substitute for House Bill 382 would 1) incorporate model act language from the National Association of Insurance Commissioners (NAIC) into North Carolina's Life and Health Insurance Guaranty Association Act; 2) amend the Surplus Lines Act to allow an insurer to be designated a Domestic Surplus Lines Insurer ("DSLII") and be domiciled in and write surplus lines insurance in North Carolina; 3) amend the notice provisions in the consent to rate statute and add data collection provisions; and 4) amend and make technical changes to other insurance laws, as recommended by the Department of Insurance.*

[As introduced, this bill was identical to S293, as introduced by Sens. Meredith, Newton, Dunn, which is currently in Senate Rules and Operations of the Senate.]

## BILL ANALYSIS:

### PART I. AMEND THE NORTH CAROLINA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT WITH NAIC MODEL LANGUAGE

**Section 1.1** would incorporate new NAIC Model Act language into North Carolina's Life and Health Insurance Guaranty Association Act. Under the new language, health maintenance organizations (HMOs) would be members of the Association and would share liability for long-term care insurance companies' insolvencies with health and life insurance and annuity companies. Various technical and conforming changes would also be made throughout the Act. The substantive changes are summarized below. **Section 1.2** would make conforming changes in Chapter 58.

#### G.S. 58-62-16. Definitions.

- Would add definitions for "Authorized assessment," "Benefit plan," "Called assessment," "Extra-contractual claims," "Health benefit plan," "Owner," "Policyholder," "Policy owner," "Plan sponsor," "Principal place of business," "State," and "Supplemental contract".
- Would also amend the definition for "Covered policy" to clarify that insurance contracts and certificates are included in the definition.
- Would amend the definition for "member insurer" to include health maintenance organizations.
- Would amend the definition for "premiums" to clarify that premiums in excess of \$5,000,000 for certain retirement and life insurance policies are not included.

#### G.S. 58-62-21. Coverage and limitations.

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- Would amend the coverage provisions to clarify that the guaranty association will provide coverage to:
  - Healthcare providers who are payees on policies written by insolvent insurers.
  - Out-of-state residents who are otherwise ineligible for coverage because their insurer was not licensed in their home state.
  - Holders of unallocated annuity contracts issued in connection with a specific benefit plan.
- Would exclude from coverage:
  - Individuals who receive coverage from the guaranty association of any other state.
  - Individuals who receive a right to payment through a structured settlement factoring transaction.
  - Policies to the extent that assessments required under G.S. 58-62-41 are preempted under federal or state law.
  - Obligations that do not arise under the express written language of an insurance contract.
  - Book value accounting guaranties for defined contribution benefit plan participants.
  - Individuals who held structured settlement annuity benefits, but transferred those benefits to others.
- Would clarify that the intent of the law is to provide coverage through the guaranty association of only one state and that it should be construed for that purpose.
- Would make changes to conform to the NAIC model act language throughout the section.

## G.S. 58-62-26. Creation of the Association.

- Would split the current annuity subaccount into an annuity subaccount and an unallocated annuity subaccount.

## G.S. 58-62-31. Board of directors.

- Would add two public members to the Association's Board of Directors.

## G.S. 58-62-36. Duties and powers of the Association.

- Would give the Association the power to:
  - Organize as a legal corporation.
  - Request information from individuals seeking coverage.
  - File for premium increases.
  - Take other appropriate action to discharge its duties.
- Would clarify the Association's powers to assume rights under reinsurance contracts.
  - The Association would be able to choose whether to succeed to the benefits of any reinsurance contracts held by insolvent insurers.
  - The Association would be required to pay all unpaid premiums and calculate the net balance due to or from the Association under the reinsurance contracts.

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- If the Association pays all owed premiums, no reinsurer would be able to terminate the reinsurance contract.
- When the Association transfers policies from an insolvent insurer to an assuming insurer, it may also transfer any reinsurance contracts.
- Would make changes to conform to the NAIC model act language throughout the section.
- Would recodify G.S. 58-62-36(e)-(j) as G.S. 58-62-36(d)(5)a.-h.

## G.S. 58-62-41. Assessments.

- Would allow the Board to authorize and call for two different types of assessments:
  - One for administrative and legal costs (Class A)
  - One for handling delinquent insurers (Class B)
- Would remove the \$500.00 per member cap on non-prorated Class A assessments.
- Would require the amount of any Class B assessments, except for assessments relating to long-term care insurance, to be allocated between the accounts and subaccounts of life insurance and annuity accounts by an allocation formula considered by the Board to be fair and reasonable,.
- Would require Class B assessments for long-term care insurance written by an impaired or insolvent insurer to be allocated with 50% to the accident and health member insurers and 50% to life and annuity member insurers.
- Would require the Association to notify insurers of their pro rata share of an assessment within 180 days after the assessment is authorized, but not yet called.
- Would require a member insurer whose assessment was deferred to pay the assessment once the condition that caused the deferral is removed or rectified.
- Would limit the number of assessments per year and the amount of an assessment that can be made on an impaired or insolvent member insurer.
- Would provide a procedure on how member insurers may protest and appeal all or part of an assessment.

## G.S. 58-62-46(d). Plan of operation.

- Would require the Association's Plan of Operation to establish procedures for removing a director for cause and for addressing conflicts of interest.

## G.S. 58-62-56. Prevention of delinquencies.

- Would add a 30-day time limit in which the Commissioner has to notify other insurance regulators that a member insurer is being disciplined.
- Would remove the Board's ability to request the Commissioner conduct an examination of a member insurer believed to be delinquent.
- Would remove the requirement that the Board prepare a report after an insurer insolvency or cooperate with boards in other states in preparing reports.

## G.S. 58-62-66. Examination of Association; annual report.

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- If requested by the member insurer, would require the Association to provide a member insurer a copy of the annual financial report it submits to the Commissioner.

## G.S. 58-62-81. Stay of proceedings; reopening default judgments.

- To permit legal action by the Association, would change the length of a stay from 60 days to 180 days from the date an order of liquidation, rehabilitation, or conservation is final in all proceedings in which an insolvent insurer is a party.

## G.S. 58-62-86. Prohibited advertisement of Article in insurance sales; notice to policyholders.

- Would require additional language be included in the disclaimer section of the Association's summary document that is provided to policyholders.

## **PART II. AMEND SURPLUS LINES ACT AND MAKE CLARIFYING CHANGES**

**Section 2.1** would amend the Surplus Lines Act by allowing an insurer to be designated as a "nonadmitted domestic surplus lines insurer" in North Carolina. This designation would allow the insurer to be domiciled in North Carolina and write surplus lines insurance in North Carolina.

## G.S. 58-21-2. Relationship to other insurance laws.

- Would exclude nonadmitted domestic surplus lines insurers from Chapter 58 regulations.

## G.S. 58-21-10. Definitions.

- Would define "nonadmitted domestic surplus lines insurer" and amend other definitions.

## G.S. 58-21-16(a)(2). Streamlined application for commercial purchasers.

- Would add nonadmitted domestic surplus lines insurers to the types of insurers that could be requested by an exempt commercial purchaser when utilizing the streamlined application process.

## G.S. 58-21-20. Eligible surplus lines insurer required.

- Would require a surplus lines licensee to verify that an insurer meets the definition of a "nonadmitted domestic surplus lines insurer" before placing coverage with it.

## G.S. 58-21-21. Nonadmitted domestic surplus lines insurer.

- Would allow a domestic insurer with minimum capital and a surplus of at least \$15,000,000, by resolution of its board and the Commissioner, to be designated as a nonadmitted domestic surplus lines insurer.
- Would require a nonadmitted surplus lines insurer to only write insurance in North Carolina in accordance with the requirements in Article 21 of Chapter 58.
- Would allow a nonadmitted surplus lines insurer to write insurance in other jurisdictions if written in accordance with that jurisdiction's requirements.
- Would subject insurance written by a nonadmitted surplus lines insurer to the premium receipts tax required by the surplus lines tax.
- Would exclude surplus lines policies issued by nonadmitted surplus lines insurers from Articles 48 (Postassessment Insurance Guaranty Association) and 62 (North Carolina Life and Health Insurance Guaranty Association) of Chapter 58 and exempt them from all statutory requirements relating to insurance rating and rating plans, policy forms, and cancellations and renewals.

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- Would subject nonadmitted surplus lines insurer to all the financial and solvency requirements imposed on domestic admitted insurers unless specifically exempted.

## G.S. 58-21-40. Surplus lines regulatory support organization.

- Would clarify that the North Carolina Surplus Lines Association (NCSLA) is the regulatory support organization for surplus lines.

## G.S. 58-21-45(f). Evidence of the insurance; changes; penalty.

- Would add notification language to policies for nonadmitted surplus lines insurers.

## G.S. 58-21-50. Duty to notify insured.

- Would add notification language to policies for nonadmitted surplus lines insurers.

## G.S. 58-21-65. Licensing of surplus lines licensee.

- Would specify that a surplus lines agent procures surplus lines contracts and would make a technical change by deleting "property broker's" and inserting "property and casualty".

## G.S. 58-21-75. Records of surplus lines licensee.

- Would make a conforming change to the number of years (not less than five) a surplus lines licensee must keep a record of each contract to be consistent with 11 NCAC 19.0102.

## G.S. 58-21-105(a). Penalties.

- Would make it a Class 1 misdemeanor for a surplus lines licensee in North Carolina to represent or aid a nonadmitted surplus lines insurer to violate Article 21 of Chapter 58.

## **PART III. AMEND CONSENT TO RATE LAWS**

### G.S. 58-36-30. Deviations.

- Would amend North Carolina's consent to rate statute for both automobile insurance and homeowners insurance by removing the requirement that the insurance carrier obtain the written consent of the insured prior to utilizing consent to rate.
- Would require automobile insurance carriers to include a disclosure statement either on the policy's declarations page or on a separate page before the declarations page notifying an insured that the premium he or she is being charged is greater than the approved North Carolina rate. The disclosure would be included on any renewal or endorsement when the premium charged exceeded the approved rate.
- Would amend the disclosure statement language currently being used in homeowners insurance policies to notify the insureds that the rate being charged is higher than the approved rate and remove the 30-day notification requirement for all written consents to rate and notices currently required on renewals and endorsements.
- Would require the Commissioner of Insurance to collect and publish annually on the Department's website, homeowners insurance consent to rate data aggregated across all insurers for each geographical ratemaking territory. The data would show the percentage of policies for which consent to rate has been used and the average difference between the approved premium and the consented premium. Information identifying individual insurers or insureds would remain confidential and proprietary and not a public record.

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- Would require each insurer to collect consent to rate data for automobile physical damage and homeowners residential property and transmit the data for each policy to the Commissioner on a semi-annual basis.

## **PART IV. AMEND AND MAKE TECHNICAL CHANGES TO VARIOUS INSURANCE LAWS, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE**

### **AMEND FEDERAL HOME LOAN BANK ADMITTED ASSET**

G.S. 58-7-163(9). Assets not allowed.

- Would allow an asset used as collateral to secure an advance from a federal home loan bank to be included in the determination of an insurer's financial condition.

### **REVISE LOAN TO VALUE REQUIREMENTS FOR INSURER MORTGAGE INVESTMENTS**

G.S. 58-7-179(c). Mortgage loans.

- Would revise the loan to value limitations for an insurer's investments in mortgage loans.

### **AMEND NON-RESIDENT AGENT LICENSING REQUIREMENTS**

G.S. 33-30(H0(2)a). License requirements.

- Would cause a nonresident licensee's insurance agent license to automatically lapse 30 days after the loss of his or her home state license.
- The nonresident licensee's license could be reinstated if, within 30 days following the lapse, he or she would be otherwise entitled to licensure and he or she provided proof to the Commissioner that his or her home state license had been reinstated.
- The licensee could also provide proof that he or she relocated to another jurisdiction and obtained a new home state license and filed a change of address with the Commissioner.

### **INSURANCE PRODUCER NOTICE REQUIREMENT CONFORMING CHANGE**

G.S. 58-33-56(d). Notification to Commissioner of termination.

- Would make a conforming change by allowing notification to a producer of his or her termination to be given in a form prescribed by the Commissioner.

### **AMEND PORTABLE ELECTRONICS INSURANCE NOTICE REQUIREMENTS**

G.S. 58-44A10. Requirements for sale of portable electronics insurance.

- Would allow for notices and correspondence related to portable electronic insurance policies to be sent to the consumer by either mail or electronically.
- If the consumer provided an electronic mail address, it would be considered as the consumer's consent to receive notices and correspondence electronically so long as a disclosure to that effect was provided to the consumer within 30 days following the purchase of the product.

### **AMEND PREFERRED PROVIDER DEFINITION**

G.S.58-50-56. Insurers, preferred provider organizations, and preferred provider benefit plans.

- Would amend the definition of "preferred provider" to allow preferred providers to be reimbursed in ways other than on a fee-for-service basis.

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- Would repeal G.S. 58-50-56(e), which requires the terms for special reimbursements to be ones the parties found mutually agreeable.

G.S. 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.

- Would repeal the portion of G.S. 58-65-1(a), which requires the terms for special reimbursements to be ones the parties found mutually agreeable.

## **AMEND CONTINUING EDUCATION FOR BAIL BONDSMEN AND RUNNERS**

G.S. 58-71-71(b). Examination; educational requirements; penalties.

- Would require bail bondsmen and runners to complete three hours of continuing education credits by June 30th of every year, however, there would be a waiver for newly-licensed individuals for their first year.

## **NORTH CAROLINA MANUFACTURED HOUSING BOARD TECHNICAL CHANGE**

G.S. 143-143.10(a). Manufactured Housing Board created; membership; terms; meetings.

- Would make a technical change by deleting "North Carolina Manufactured Housing Institute" and inserting "North Carolina Manufactured and Modula Homebuilders Association".

## **AMEND AUTOMOBILE INSURANCE UNDERWRITING PROCEDURE**

G.S. 58-36-65. Classifications and Safe Driver Incentive Plan for nonfleet private passenger motor vehicle insurance.

- Would require insurers to obtain a potential policyholder's records of convictions for moving traffic violations prior to the sale of a new policy of automobile insurance in accordance with rules established by the North Carolina Rate Bureau.
- The rules would allow a reasonable time for underwriting following the binding of coverage if the policyholder's records were unavailable at the time of sale or the applicant provided incorrect or incomplete information.

## **ADD ADDITIONAL PROOFS OF RESIDENCY TO RATE EVASION STATUTE**

G.S. 58-2-164. Rate evasion fraud; prevention programs.

- Would allow an individual to prove his or her North Carolina residency or eligible risks status under the rate evasion fraud statute by providing the North Carolina driver's license of a 20% or more owner of an applicant corporation or LLC or if the principal place of business of a corporation or LLC is the primary residence of the sole owner, he or she can provide any of the other five accepted proofs of residency or status.
- For either of the above two forms of proof, if the policies were ceded to the Reinsurance Facility, the owner would execute a form promulgated by the Reinsurance Facility.

## **CLARIFY EXCEPTED BENEFITS REQUIREMENTS**

G.S. 58-68-25(b). Definitions; excepted benefits; employer size rule.

- Would clarify that excepted benefits are not subject to statutory mandates for health insurance unless the law specifically says otherwise.

## **PART V. MAKE CLARIFYING CHANGES AND AMEND CAPTIVE INSURANCE LAWS**

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## G.S. 58-10-345(g). Licensing; authority; confidentiality.

- Would make clarifying changes to the North Carolina Captive Insurance Act by changing the term "investigation" to the term "audit".

## G.S. 58-10-355. Organizational audit.

- Would make clarifying changes to the North Carolina Captive Insurance Act by changing the term "survey" to "review".

## G.S. 58-10-385(a). Directors.

- Would amend the process and timeframe in which any change in executive officers or directors of a captive insurance company is deemed approved by the Commissioner.

## **PART VI. AMEND BAIL BOND FORFEITURE LAW**

### G.S. 15A-544.5(b)(7). Setting Aside Forfeiture.

- Would amend a reason to set aside a forfeiture of a bail bond by extending the period of time in which the defendant was incarcerated and the district attorney had noticed of the incarceration to include not only the time of defendant's failure to appear but also any time between the failure to appear and the final judgment date.

**EFFECTIVE DATE:** Sections 1.1 and 1.2 are effective when this act becomes law. The provisions of Sections 1.1 and 1.2 shall not apply to any member insurer that is insolvent or unable to fulfill its contractual obligations on the effective date of this act. Section 3.1 is effective January 1, 2019 and applies to policies issued, renewed, or amended on or after that date. Section 4.9 is effective January 1, 2019 and applies to policies issued, renewed, or amended on or after that date. Except as otherwise provided, this act is effective when it becomes law.