

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 459*
Insurance and Consumer Protection Committee Substitute Adopted 4/17/01

Short Title: Insurance Financial Amendments.

(Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA'S INSURANCE LAWS CONCERNING
INSURANCE COMPANY RESERVING METHODS, LICENSING
PROVISIONS, REINSURANCE FOR DOMESTIC COMPANIES, DOMESTIC
COMPANY FORMATION, SOLVENCY PROTECTION, LIFE INSURANCE
COMPANY VARIABLE ACCOUNTS, CONSOLIDATIONS, INVESTMENTS,
MUTUAL INSURANCE COMPANIES, REINSURANCE INTERMEDIARIES,
MORTGAGE GUARANTY INSURANCE, RISK-BASED CAPITAL
REQUIREMENTS, ASSET PROTECTION, FOREIGN INSURANCE
COMPANIES, PROMOTING AND HOLDING COMPANIES, HOLDING
COMPANY SYSTEMS, SURPLUS LINES INSURANCE, RISK RETENTION
GROUPS, INSURANCE COMPANY RECEIVERSHIPS, MANAGING
GENERAL AGENTS, SELF-INSURED WORKERS' COMPENSATION, AND
CONTINUING CARE RETIREMENT COMMUNITIES; AND TO ALLOW
NORTH CAROLINA DOMESTIC INSURANCE COMPANIES TO FORM
PROTECTED CELLS TO ACCESS ALTERNATIVE SOURCES OF CAPITAL
AND ACHIEVE THE BENEFITS OF SECURITIZATION.

The General Assembly of North Carolina enacts:

PART I. INSURANCE COMPANY RESERVING METHODS.

SECTION 1.1. Article 3 of Chapter 58 of the General Statutes is amended
by adding the following new section to read:

"§ 58-3-72. Premium deficiency reserves.

(a) In determining the financial condition of any casualty, fidelity, and surety
company and any fire and marine company referred to in G.S. 58-7-75, and in any
financial statement or report of the company, there shall be included in the liabilities of
the company premium deficiency reserves at least equal to the amounts required under
this section. The date as of which the determination, statement, or report is made is
known as the 'date of determination.'

1 (b) For all recorded unearned premium reserves, a premium deficiency reserve
2 shall be calculated to include the amount by which the anticipated losses, loss
3 adjustment expenses, commissions and other acquisition costs, and maintenance costs
4 exceed the sum of those unearned premium reserves and any related expected future
5 installment premiums as of the date of determination.

6 (c) Except as provided in subsection (f) of this section, commissions, other
7 acquisition costs, and premium taxes do not have to be considered in the determination
8 of the premium deficiency reserve, to the extent that they have previously been
9 incurred.

10 (d) Except as provided in subsection (f) of this section, no reduction shall be
11 taken for anticipated investment income in the determination of the premium deficiency
12 reserve.

13 (e) For purposes of determining if a premium deficiency exists, insurance
14 contracts shall be grouped in a manner consistent with the way in which such policies
15 are marketed or serviced.

16 (f) If the Commissioner determines that the premium deficiency reserves of any
17 company that have been calculated in accordance with this section are inadequate or
18 excessive, the Commissioner may prescribe any other basis that will produce adequate
19 and reasonable reserves."

20 **SECTION 1.2.** G.S. 58-3-81 reads as rewritten:

21 "**§ 58-3-81. Loss and loss expense reserves of casualty insurance and surety**
22 **companies.**

23 (a) In determining the financial condition of any casualty insurance or surety
24 company and in any financial statement or report of any such company, there shall be
25 included in the liabilities of ~~such that~~ company loss reserves and loss expense reserves
26 at least equal to the amounts required under ~~the provisions of this section, and the~~
27 section. The amount of ~~such those~~ reserves shall be diminished by an allowance or
28 credit for reinsurance recoverable from assuming ~~insurers-reinsurers~~ in accordance with
29 G.S. ~~58-7-21.~~G.S. 58-7-21 or G.S. 58-7-26. The date as of which ~~such the~~
30 determination, statement, or report is made is ~~hereinafter referred to~~ known as the date
31 of determination.

32 (b) For all outstanding losses and loss expenses, the reserves shall be valued as of
33 the date of determination and shall include the following:

34 (1) ~~The aggregate estimated amounts due or to become due on account of~~
35 ~~all known losses and claims and loss expenses incurred but not paid,~~
36 ~~including the estimated liability on any notice received by the~~
37 ~~company of the occurrence of any event which may result in a loss;~~
38 and The aggregate estimated amounts due for losses and loss
39 adjustment expenses on account of all known claims.

40 (2) ~~The aggregate amounts of liability for all losses and loss expenses~~
41 ~~incurred but on which no notice has been received, estimated in~~
42 ~~accordance with the company's prior experience, if any, otherwise in~~

1 ~~accordance with the experience of similar companies under similar~~
2 ~~contracts of insurance. The estimated liabilities for such losses under~~
3 ~~all its bonds, policies, or contracts of fidelity insurance, shall be not~~
4 ~~less than ten percent (10%) of the net premiums in force thereon, and~~
5 ~~the estimated liabilities for all such losses under all its surety contracts~~
6 ~~shall be not less than five percent (5%) of the net premium in force~~
7 ~~thereon. The aggregate estimated amounts due for losses and loss~~
8 ~~adjustment expenses on account of all unknown, incurred but not~~
9 ~~reported claims.~~

10 (c) ~~Except as provided in subsection (e) of this section, the minimum reserves for~~
11 ~~outstanding losses and loss expenses under policies of personal injury liability insurance~~
12 ~~and under policies of employers' liability insurance, where the losses were incurred~~
13 ~~during the three years immediately preceding the date of determination, shall be~~
14 ~~calculated in accordance with any method adopted or approved by the NAIC and shall~~
15 ~~be not less than the aggregate of the estimated unpaid losses and loss expenses for~~
16 ~~claims incurred computed in accordance with subsection (b) of this section. Except as~~
17 ~~provided in subsection (e) of this section, the minimum loss and loss expense reserves~~
18 ~~for workers' compensation insurance shall be determined as follows:~~

19 (1) ~~In the case of indemnity benefits where tabular reserves are prescribed~~
20 ~~for the reporting of such benefits under the Workers' Compensation~~
21 ~~Statistical Plan (WCSP) of the National Council on Compensation~~
22 ~~Insurance, the minimum reserve shall be the result obtained by the~~
23 ~~application of the appropriate pension table in the WCSP, unless the~~
24 ~~reserve required by any method adopted or approved by the NAIC is~~
25 ~~greater, in which case that greater reserve shall be used.~~

26 (2) ~~In all other cases, including other indemnity benefits, medical benefits,~~
27 ~~and loss adjustment expense, the reserve shall be determined by~~
28 ~~subsection (b) of this section, unless the reserve required by any~~
29 ~~method adopted or approved by the NAIC is greater, in which case that~~
30 ~~greater reserve shall be used.~~

31 (d) ~~The minimum reserves for outstanding losses and loss expenses under~~
32 ~~policies of workers' compensation insurance, except as provided in subsection (e) of this~~
33 ~~section, shall be computed as follows:~~

34 (1) ~~For all such compensation policies where losses were incurred more~~
35 ~~than three years prior to the date of determination, such reserves shall~~
36 ~~be the sum of the present values, at three and one half percent (3~~
37 ~~1/2%) interest per annum, of the determined and estimated unpaid~~
38 ~~losses computed on an individual case basis plus the estimated unpaid~~
39 ~~loss expenses computed in accordance with subsection (b) of this~~
40 ~~section.~~

41 (2) ~~Where losses were incurred during the three years immediately~~
42 ~~preceding the date of determination, such reserves shall be the sum of~~

1 ~~the reserves for each year, which shall be calculated in accordance~~
2 ~~with any method adopted or approved by the NAIC and shall be not~~
3 ~~less than the sum of the present values, at three and one-half percent (3~~
4 ~~1/2%) interest per annum, of the determined and estimated unpaid~~
5 ~~losses computed on an individual case basis plus the estimated unpaid~~
6 ~~loss expenses computed in accordance with subsection (b) of this~~
7 ~~section.~~

8 (e) Whenever in the judgment of the Commissioner the loss and loss expense
9 reserves of any casualty or surety company doing business in this State calculated in
10 accordance with the foregoing provisions are inadequate or excessive, he may prescribe
11 any other basis that will produce adequate and reasonable reserves.

12 (f) Every casualty insurance and every surety company doing business in this
13 State shall keep a complete and itemized record showing all losses and claims on which
14 it has received notices, including all notices received by it of the occurrence of any
15 event that may result in a loss."
16

17 PART II. INSURANCE COMPANY LICENSING PROVISIONS.

18 **SECTION 2.1.** G.S. 58-3-90 is repealed.

19 **SECTION 2.2.** G.S. 58-3-100 reads as rewritten:

20 "**§ 58-3-100. ~~Revocation, suspension and refusal to renew license.~~ Insurance**
21 **company licensing provisions.**

22 (a) ~~The Commissioner may revoke, suspend, or refuse to renew the license of~~
23 ~~any insurer if:~~ The Commissioner may, after notice and opportunity for a hearing,
24 revoke, suspend, restrict, or refuse to renew the license of any insurer if:

- 25 (1) The insurer fails or refuses to comply with any law, order or rule
26 applicable to the insurer.
- 27 (2) The insurer's financial condition is unsound, or its assets above its
28 liabilities, exclusive of capital, are less than the amount of its capital or
29 required minimum surplus.
- 30 (3) The insurer has published or made to the Department or to the public
31 any false statement or report.
- 32 (4) The insurer or any of the insurer's officers, directors, employees, or
33 other representatives ~~refuses~~ refuse to submit to any examination
34 authorized by law, law or refuse to perform any legal obligation in
35 relation to an examination.
- 36 (5) The insurer is found to make a practice of unduly engaging in
37 litigation or of delaying the investigation of claims or the adjustment
38 or payment of valid claims.

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

1 (c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an
2 HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30
3 days after receiving written or electronic notice of the claim, but only if the notice
4 contains sufficient information for the insurer to identify the specific coverage involved.
5 Acknowledgement of the claim shall be ~~made to the claimant or his legal representative~~
6 ~~advising that the claim is being investigated; or shall be a payment of the claim; or shall~~
7 ~~be a bona fide written offer of settlement; or shall be a written denial of the claim. one~~
8 ~~of the following:~~

9 (1) A statement made to the claimant or to the claimant's legal
10 representative advising that the claim is being investigated.

11 (2) Payment of the claim.

12 (3) A bona fide written offer of settlement.

13 (4) A written denial of the claim.

14 A claimant includes an insured, a health care provider, or a health care facility that is
15 responsible for directly making the claim with an ~~insurer~~, insurer, HMO, service
16 corporation, or MEWA. This subsection does not apply to HMOs, service corporations,
17 MEWAs or insurers subject to G.S. 58-3-225.

18 (d) If a foreign insurance company's license is suspended or revoked, the
19 Commissioner shall cause written notification of the suspension or revocation to be
20 given to all of the company's agents in this State. Until the Commissioner restores the
21 company's license, the company shall not write any new business in this State.

22 (e) The Commissioner may, after considering the standards under G.S. 58-30-
23 60(b), restrict an insurer's license by prohibiting or limiting the kind or amount of
24 insurance written by that insurer. For a foreign insurer, this restriction relates to the
25 insurer's business conducted in this State. The Commissioner shall remove any
26 restriction under this subsection once the Commissioner determines that the operations
27 of the insurer are no longer hazardous to the public or the insurer's policyholders or
28 creditors. As used in this subsection, 'insurer' includes an HMO, service corporation,
29 and MEWA."

30 **SECTION 2.3.** This Part becomes effective July 1, 2001.

31 **PART III. REINSURANCE FOR DOMESTIC COMPANIES.**

32 **SECTION 3.1.** G.S. 58-7-21 reads as rewritten:

33 **"§ 58-7-21. Credit allowed a domestic ceding insurer.**

34 (a) ~~As used in this section and in G.S. 58-7-26, 58-7-30, and 58-7-31:~~

35 (1) ~~"Reinsurance" means a transfer of insurance risk from a ceding insurer~~
36 ~~to an assuming insurer.~~

37 (2) ~~"Insurance risk" means an uncertainty regarding the ultimate amount~~
38 ~~of any claim payment (underwriting risk) or an uncertainty regarding~~
39 ~~the timing of the payments (timing risk), or both.~~

40 The purpose of this section and G.S. 58-7-26 is to protect the interest of insureds,
41 claimants, ceding insurers, assuming insurers, and the public generally. The General
42

1 Assembly declares its intent is to ensure adequate regulation of insurers and reinsurers
2 and adequate protection for those to whom they owe obligations. In furtherance of that
3 interest, the General Assembly provides a mandate that upon the insolvency of an alien
4 insurer or reinsurer that provides security to fund its United States obligations in
5 accordance with this section and G.S. 58-7-26, the assets representing the security shall
6 be maintained in the United States and claims shall be filed with and valued by the state
7 insurance commissioner with regulatory oversight, and the assets shall be distributed, in
8 accordance with the insurance laws of the state in which the trust is domiciled that are
9 applicable to the liquidation of domestic United States insurance companies. The
10 General Assembly declares that the matters contained in this section and G.S. 58-7-26
11 are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-
12 1012.

13 (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an
14 asset or a ~~deduction~~ reduction from liability on account of reinsurance ceded only when
15 the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this
16 subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection
17 only with regard to cessions of those kinds or classes of business in which the assuming
18 insurer is licensed or otherwise permitted to write or assume in its state of domicile or,
19 in the case of a United States branch of an alien assuming insurer, in the state through
20 which it is entered and licensed to transact insurance or reinsurance. ~~If meeting the~~
21 ~~requirements of subdivisions (3) or (4) of this subsection, the reinsurer must also meet~~
22 ~~the requirements of subdivision (6) of this subsection.~~ Credit shall be allowed under
23 subdivision (3) or (4) of this subsection only if the applicable requirements of
24 subdivision (6) of this section have been satisfied.

25 (1) Credit shall be allowed when the reinsurance is ceded to an assuming
26 insurer that is licensed to transact insurance or reinsurance in this
27 State.

28 (2) Credit shall be allowed when the reinsurance is ceded to an assuming
29 insurer that is accredited as a reinsurer in this State. An accredited
30 reinsurer is one that:

- 31 a. Files with the Commissioner evidence of its submission to this
32 State's jurisdiction;
- 33 b. Submits to this State's authority to examine its books and
34 records;
- 35 c. Is licensed to transact insurance or reinsurance in at least one
36 state, or in the case of a United States branch of an alien
37 assuming insurer is entered through and licensed to transact
38 insurance or reinsurance in at least one state;
- 39 d. Files annually with the Commissioner a copy of its annual
40 statement filed with the insurance regulator of its state of
41 domicile, a copy of its most recent audited financial statement,
42 and a fee of five hundred dollars (\$500.00); and either

- 1 1. Maintains a policyholders' surplus in an amount that is
2 not less than twenty million dollars (\$20,000,000) and
3 whose accreditation has not been denied by the
4 Commissioner within 90 days after its submission; or
5 2. Maintains a policyholders' surplus in an amount less than
6 twenty million dollars (\$20,000,000) and whose
7 accreditation has been approved by the Commissioner.
8 ~~No credit~~ Credit shall not be allowed a domestic ceding insurer
9 if the assuming insurer's accreditation has been revoked by the
10 Commissioner after notice and opportunity for a hearing.
- 11 (3) Credit shall be allowed when the reinsurance is ceded to an assuming
12 insurer that is domiciled ~~and licensed~~ in, or in the case of a United
13 States branch of an alien assuming insurer is entered through, a state
14 that uses standards regarding credit for reinsurance substantially
15 similar to those applicable under this section and the assuming insurer
16 or United States branch of an alien assuming insurer:
17 a. Maintains a policyholders' surplus in an amount not less than
18 twenty million dollars (\$20,000,000); and
19 b. Submits to the authority of this State to examine its books and
20 records.
21 ~~However, the~~ The requirement in sub-subdivision (3)a. of this
22 subsection does not apply to reinsurance ceded and assumed under
23 pooling arrangements among insurers in the same holding company
24 system.
- 25 (4) a. Credit shall be allowed when the reinsurance is ceded to an
26 assuming insurer that maintains a trust fund in a qualified
27 United States financial institution, as defined in G.S.
28 58-7-26(b), for the payment of the valid claims of its United
29 States ~~policyholders and ceding insurers~~, their assigns and
30 successors in interest. The assuming insurer shall report
31 annually to the Commissioner information substantially the
32 same as that required to be reported on the NAIC Annual
33 Statement form by licensed insurers to enable the
34 Commissioner to determine the sufficiency of the trust fund.
35 The assuming insurer shall submit to examination of its books
36 and records by the Commissioner and bear the expense of
37 examination. ~~In the case of a single assuming insurer, the trust~~
38 ~~shall consist of a trustee account representing the assuming~~
39 ~~insurer's liabilities attributable to business written in the United~~
40 ~~States and, in addition, the assuming insurer shall maintain a~~
41 ~~trustee surplus of not less than twenty million dollars~~
42 ~~(\$20,000,000). In the case of a group of insurers, which~~

1 includes individual unincorporated underwriters, the trust shall
2 consist of a trusteed account representing the group's liabilities
3 attributable to business written in the United States and, in
4 addition, the group shall maintain a trusteed surplus of which
5 one hundred million dollars (\$100,000,000) shall be held jointly
6 for the benefit of United States ceding insurers of any member
7 of the group; and the group shall make available to the
8 Commissioner an annual certification of the solvency of each
9 underwriter by the group's domiciliary regulator and its
10 independent certified public accountants.

11 b. In the case of a group of incorporated insurers under common
12 administration which (i) complies with the filing requirements
13 contained in the previous paragraph, (ii) has continuously
14 transacted an insurance business outside the United States for at
15 least three years immediately before making application for
16 accreditation, (iii) submits to this State's authority to examine
17 its books and records, and (iv) has aggregate policyholders'
18 surplus of ten billion dollars (\$10,000,000,000); the trust shall
19 be in an amount equal to the group's several liabilities
20 attributable to business ceded by United States ceding insurers
21 to any member of the group under reinsurance contracts issued
22 in the name of the group. In addition, the group shall maintain a
23 joint trusteed surplus of which one hundred million dollars
24 (\$100,000,000) shall be held jointly for the benefit of United
25 States ceding insurers of any member of the group as additional
26 security for any such liabilities, and each member of the group
27 shall make available to the Commissioner an annual
28 certification of the member's solvency by the member's
29 domiciliary regulator and its independent public accountant.

30 b1. Credit for reinsurance shall not be granted under this
31 subdivision unless the form of the trust and any amendments to
32 the trust have been approved by:

- 33 1. The insurance regulator of the state where the trust is
34 domiciled; or
- 35 2. The insurance regulator of another state who, pursuant to
36 the terms of the trust instrument, has accepted principal
37 regulatory oversight of the trust.

38 b2. The form of the trust and any trust amendments also shall be
39 filed with the insurance regulator of every state in which the
40 ceding insurer beneficiaries of the trust are domiciled. The trust
41 instrument shall provide that contested claims shall be valid and
42 enforceable upon the final order of any court of competent

1 jurisdiction in the United States. The trust shall vest legal title
2 to its assets in its trustees for the benefit of the assuming
3 insurer's United States ceding insurers, their assigns, and
4 successors in interest. The trust and the assuming insurer shall
5 be subject to examination as determined by the Commissioner.

6 b3. The trust shall remain in effect for as long as the assuming
7 insurer has outstanding obligations due under the reinsurance
8 agreements subject to the trust. No later than February 28 of
9 each year, the trustees of the trust shall report to the
10 Commissioner in writing the balance of the trust, shall list the
11 trust's investments at the end of the preceding year, and shall
12 certify the date of termination of the trust, if so planned, or shall
13 certify that the trust will not expire before the following
14 December 31.

15 c. The trust shall be established in a form approved by the
16 Commissioner. The trust instrument shall provide that contested
17 claims shall be valid and enforceable upon the final order of any
18 court of competent jurisdiction in the United States. The trust
19 shall vest legal title to its assets in the trustees of the trust for its
20 United States policyholders and ceding insurers, their assigns
21 and successors in interest. The trust and the assuming insurer
22 shall be subject to examination as determined by the
23 Commissioner. The trust shall remain in effect for as long as the
24 assuming insurer has outstanding obligations due under the
25 reinsurance agreements subject to the trust.

26 The following requirements apply to the following categories of
27 assuming insurer:

28 1. The trust fund for a single assuming insurer shall consist
29 of funds in trust in an amount not less than the assuming
30 insurer's liabilities attributable to reinsurance ceded by
31 United States ceding insurers, and, in addition, the
32 assuming insurer shall maintain a surplus in trust of not
33 less than twenty million dollars (\$20,000,000).

34 2. In the case of a group including incorporated and
35 individual unincorporated underwriters:

36 I. For reinsurance ceded under reinsurance
37 agreements with an inception, amendment, or
38 renewal date on or after August 1, 1995, the trust
39 shall consist of an account in trust in an amount
40 not less than the group's several liabilities
41 attributable to business ceded by United States

1 domiciled ceding insurers to any member of the
2 group.

3 II. For reinsurance ceded under reinsurance
4 agreements with an inception date on or before
5 July 31, 1995, and not amended or renewed after
6 that date, notwithstanding the other provisions of
7 this section and G.S. 58-7-26, the trust shall
8 consist of an account in trust in an amount not
9 less than the group's several insurance and
10 reinsurance liabilities attributable to business
11 written in the United States.

12 In addition to these trusts, the group shall maintain in
13 trust a surplus of which one hundred million dollars
14 (\$100,000,000) shall be held jointly for the benefit of the
15 United States domiciled ceding insurers of any member
16 of the group for all years of account. Each incorporated
17 member of the group shall not be engaged in any
18 business other than underwriting as a member of the
19 group and shall be subject to the same level of regulation
20 and solvency control by the group's domiciliary
21 insurance regulator as are the unincorporated members.
22 Within 90 days after its financial statements are due to
23 be filed with the group's domiciliary insurance regulator,
24 the group shall provide to the Commissioner an annual
25 certification by the group's domiciliary insurance
26 regulator of the solvency of each underwriter member or,
27 if a certification is unavailable, financial statements
28 prepared by independent public accountants of each
29 underwriter member of the group.

30 ~~d. No later than February 28 of each year the trustees of the trust~~
31 ~~shall report to the Commissioner in writing, setting forth the~~
32 ~~balance of the trust and listing the trust's investments at the end~~
33 ~~of the preceding year, and shall certify the date of termination~~
34 ~~of the trust, if so planned, or certify that the trust shall not~~
35 ~~expire before the next following December 31.~~

36 (5) Credit shall be allowed when the reinsurance is ceded to an assuming
37 insurer not meeting the requirements of subdivisions (1), (2), (3), or
38 (4) of this subsection, but only with respect to the insurance of risks
39 located in jurisdictions where the reinsurance is required by applicable
40 law or regulation of that jurisdiction.

41 (6) If the assuming insurer is not licensed or accredited to transact
42 insurance or reinsurance in this State, the credit permitted by

1 subdivisions (3) and (4) of this subsection shall not be allowed unless
2 the assuming insurer agrees in the reinsurance agreements:

3 a. That if the assuming insurer fails to perform its obligations
4 under the terms of the reinsurance agreement, the assuming
5 insurer, at the ceding insurer's request, shall submit to the
6 jurisdiction of any court of competent jurisdiction in any state
7 of the United States, shall comply with all requirements
8 necessary to give the court jurisdiction, and shall abide by the
9 final decision of the court or of any appellate court if there is an
10 appeal; and

11 b. To designate the Commissioner or a designated attorney as its
12 true and lawful attorney upon whom may be served any lawful
13 process in any action, suit, or proceeding begun by or on behalf
14 of the ceding company.

15 This subdivision does not affect the obligation of the parties to a
16 reinsurance agreement to arbitrate their disputes, if ~~such an~~ the
17 obligation is created in the agreement.

18 (7) If the assuming insurer does not meet the requirements of subdivision
19 (1), (2), or (3) of this subsection, the credit permitted by subdivision
20 (4) of this subsection shall not be allowed unless the assuming insurer
21 agrees in the trust agreements to the following conditions:

22 a. Notwithstanding any other provisions in the trust instrument, if
23 the trust fund is inadequate because it contains an amount less
24 than the amount required by sub-subdivision (4)c. of this
25 subsection, or if the grantor of the trust has been declared
26 insolvent or placed into receivership, rehabilitation, liquidation,
27 or similar proceedings under the laws of its state or country of
28 domicile, the trustee shall comply with an order of the public
29 official with regulatory oversight over the trust or with an order
30 of a court of competent jurisdiction directing the trustee to
31 transfer to the public official with regulatory oversight all of the
32 assets of the trust fund.

33 b. The assets shall be distributed by, and claims shall be filed with
34 and valued by, the public official with regulatory oversight in
35 accordance with the laws of the state in which the trust is
36 domiciled that are applicable to the liquidation of domestic
37 insurance companies.

38 c. If the public official with regulatory oversight determines that
39 the assets of the trust fund or any part thereof are not necessary
40 to satisfy the claims of the United States ceding insurers of the
41 grantor of the trust, those assets shall be returned by the public

1 official with regulatory oversight to the trustee for distribution
2 in accordance with the trust agreement.

3 d. The grantor shall waive any right otherwise available to it under
4 United States law that is inconsistent with this provision.

5 (c) This section applies to all reinsurance cessions made on or after January 1,
6 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
7 on or after January 1, 1992."

8 **SECTION 3.2.** G.S. 58-7-26 reads as rewritten:

9 "**§ 58-7-26. Reduction-Asset or reduction from liability for reinsurance ceded by a**
10 **domestic insurer to an assuming insurer-insurer not meeting the**
11 **requirements of G.S. 58-7-21.**

12 (a) ~~A~~An asset or a reduction from liability for reinsurance ceded by a domestic
13 insurer to an assuming insurer not meeting the requirements of G.S. 58-7-21 shall be
14 allowed in an amount not exceeding the liabilities carried by the ceding insurer; and
15 such insurer. The reduction shall be in the amount of funds held by or on behalf of the
16 ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance
17 contract with the assuming insurer as security for the payment of obligations thereunder,
18 if the security is held in the United States subject to withdrawal solely by, and under the
19 exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified
20 United States financial institution as defined in subsection (c) of this section. This
21 security may be in the form of:

22 (1) Cash;

23 (2) Securities that are listed by the Securities Valuation Office of the
24 NAIC and qualifying as admitted assets;

25 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed
26 by a qualified United States financial institution, as defined in
27 subsection (b) of this section, no later than December 31 of the year
28 for which the filing is being made, and in the possession ~~of~~of, or in
29 trust for, the ceding company on or before the filing date of its annual
30 statement. Letters of credit meeting applicable standards of issuer
31 acceptability as of the dates of their issuance (or confirmation) shall,
32 notwithstanding the issuing (or confirming) institution's subsequent
33 failure to meet applicable standards of issuer acceptability, continue to
34 be acceptable as security until their expiration, extension, renewal,
35 modification or amendment, whichever occurs first; or

36 (4) Any other form of security acceptable to the Commissioner.

37 (b) For purposes of subdivision (a)(3) of this section, a "qualified United States
38 financial institution" means an institution that:

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

- 1 (2) Is regulated, supervised, and examined by United States federal or
2 state authorities having regulatory authority over banks and trust
3 companies; and
4 (3) Has been determined by either the Commissioner or the Securities
5 Valuation Office of the NAIC to meet such standards of financial
6 condition and standing as are considered necessary and appropriate to
7 regulate the quality of financial institutions whose letters of credit will
8 be acceptable to the Commissioner.
- 9 (c) A "qualified United States financial institution" means, for purposes of those
10 provisions of this section specifying those institutions that are eligible to act as a
11 fiduciary of a trust, an institution that:
- 12 (1) Is organized, or in the case of a United States branch or agency office
13 of a foreign banking organization licensed, under the laws of the
14 United States or any of its states and has been granted authority to
15 operate with fiduciary powers; and
16 (2) Is regulated, supervised, and examined by federal or state authorities
17 having regulatory authority over banks and trust companies.
- 18 (d) This section applies to all reinsurance cessions made on or after January 1,
19 1992, under reinsurance agreements that have an inception, anniversary, or renewal date
20 on or after January 1, 1992."

21 **SECTION 3.3.** G.S. 58-7-30 reads as rewritten:

22 "**§ 58-7-30. Insolvency of Insolvent ceding insurer; exceptions; written reinsurance**
23 **agreements. insurer.**

24 (a) Notwithstanding any other provision of this Article, no credit shall be
25 allowed, as an admitted asset or as a ~~deduction~~-reduction from liability, to any ceding
26 insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the
27 basis of reported claims allowed by the court overseeing the liquidation against the
28 ceding insurer under the contract or contracts reinsured without diminution because of
29 the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary
30 receiver except (1) where the contract or other written agreement specifically provides
31 for another payee of the reinsurance in the event of the insolvency of the ceding insurer
32 or (2) where the assuming insurer, with the consent of the direct insured or insureds, has
33 assumed the policy obligations of the ceding insurer as direct obligations of the
34 assuming insurer to the payees under the policies and in substitution of the obligations
35 of the ceding insurer to the payees.

36 (b) No credit shall be allowed, as an admitted asset or as a ~~deduction~~-reduction
37 from liability, to any ceding insurer for reinsurance, unless the reinsurance is
38 documented by a policy, certificate, treaty, or other form of agreement that is properly
39 executed by an authorized officer of the assuming insurer. If the reinsurance is ceded
40 through an underwriting manager or agent, the manager or agent shall provide to the
41 domestic ceding insurer evidence of the manager or agent's authority to assume
42 reinsurance for and on behalf of the assuming insurer. The evidence shall consist of

1 either an acceptable letter of authority executed by an authorized officer of the assuming
2 insurer or a copy of the actual agency agreement between the underwriting manager or
3 agent and the assuming insurer; and the evidence shall be specific as to the classes of
4 business within the authority and as to the term of the authority. If there is any conflict
5 between this subsection and Article 9 of this Chapter, the provisions of Article 9 govern.

6 (c) The reinsurance agreement may provide that the domiciliary liquidator of an
7 insolvent ceding insurer shall give written notice to the assuming insurer of the
8 pendency of a claim against the ceding insurer on the contract reinsured within a
9 reasonable time after the claim is filed in the liquidation proceeding. During the
10 pendency of the claim, any assuming insurer may investigate the claim and interpose at
11 its own expense in the proceeding where the claim is to be adjudicated, any defenses
12 which it deems available to the ceding insurer or its liquidator. The expense may be
13 filed as a claim against the insolvent ceding insurer to the extent of a proportionate
14 share of the benefit which may accrue to the ceding insurer solely as a result of the
15 defense undertaken by the assuming insurer. Where two or more assuming insurers are
16 involved in the same claim and a majority in interest elect to interpose a defense to the
17 claim, the expense shall be apportioned in accordance with the terms of the reinsurance
18 agreement as though the expense had been incurred by the ceding insurer."

19 **SECTION 3.4.** G.S. 58-7-31(c) reads as rewritten:

20 "(c) Notwithstanding subsection ~~(a)~~(b) of this section, an insurer may, with the
21 prior approval of the Commissioner, take such reserve credit or establish such asset as
22 the Commissioner deems to be consistent with the insurance laws or rules of this State,
23 including actuarial interpretations or standards adopted by the Commissioner."

24 **SECTION 3.5.** G.S. 58-7-31(d)(1) reads as rewritten:

25 "(1) Reinsurance agreements entered into after October 1, 1993, that
26 involve the reinsurance of business issued prior to the effective date of
27 the reinsurance agreements, along with any subsequent amendments
28 thereto, shall be filed by the ceding company with the Commissioner
29 within 30 days after its date of execution. Each filing shall include data
30 detailing the ~~final~~financial impact of the transaction. The ceding
31 insurer's actuary who signs the financial statement actuarial opinion
32 with respect to valuation of reserves shall consider this statute and any
33 applicable actuarial standards of practice when determining the proper
34 credit in financial statements filed with the Commissioner. The actuary
35 should maintain adequate documentation and be prepared upon request
36 to describe the actuarial work performed for inclusion in the financial
37 statements and to demonstrate that such work conforms to this statute."

38 **SECTION 3.6.** G.S. 58-57-85 is repealed.

39 **SECTION 3.7.** Sections 3.1 and 3.2 of this act apply to all reinsurance
40 cessions made on or after January 1, 2002, under reinsurance agreements that have an
41 inception, anniversary, or renewal date on or after January 1, 2002. The remainder of
42 this part is effective when it becomes law.

1
2 **PART IV. DOMESTIC COMPANY FORMATION AND RELOCATION.**

3 **SECTION 4.1.** Article 7 of Chapter 58 of the General Statutes is amended
4 by adding the following new section to read:

5 **"§ 58-7-37. Background of incorporators and proposed management personnel.**

6 (a) Before a license is issued to a new domestic insurance company, each key
7 person must furnish the Commissioner a complete set of the applicant's fingerprints and
8 a recent passport size full-face photograph of the applicant. The applicant's fingerprints
9 shall be certified by an authorized law enforcement officer. The fingerprints of every
10 applicant shall be forwarded to the State Bureau of Investigation for a search of the
11 applicant's criminal history record file, if any. If warranted, the State Bureau of
12 Investigation shall forward a set of the fingerprints to the Federal Bureau of
13 Investigation for a national criminal history record check. An applicant shall pay the
14 cost of the State and any national criminal history record check of the applicant.

15 (b) As used in this section, 'key person' means a proposed officer, director, or any
16 other individual who will be in a position to influence the operating decisions of a
17 domestic insurance company.

18 (c) The Commissioner may refuse to approve the formation or initial license of a
19 new domestic insurance company under this Article if, after notice to the applicant and
20 an opportunity for a hearing, the Commissioner finds as to the incorporators or other
21 key person any one or more of the following conditions:

- 22 (1) Any untrue material statement regarding the background or experience
23 of any incorporator or other key person;
24 (2) Violation of, or noncompliance with, any insurance laws, or of any
25 rule or order of the Commissioner or of a commissioner of another
26 state by any incorporator or other key person;
27 (3) Obtaining or attempting to obtain the license through
28 misrepresentation or fraud;
29 (4) An incorporator or other key person has been convicted of a felony;
30 (5) An incorporator or other key person has been found to have committed
31 any unfair trade practice or fraud;
32 (6) An incorporator or other key person has used fraudulent, coercive, or
33 dishonest practices, or has acted in a manner that is incompetent,
34 untrustworthy, or financially irresponsible; or
35 (7) An incorporator or other key person has held such a position in another
36 insurance company that has had its license suspended or revoked by
37 any state.

38 (d) If the Commissioner disapproves of the formation or initial license, the
39 Commissioner shall notify the applicant and advise the applicant in writing of the
40 reasons for the disapproval. Within 30 days after receipt of notification, the applicant
41 may make written demand upon the Commissioner for a hearing to determine the

1 reasonableness of the Commissioner's action. The hearing shall be scheduled within 30
2 days after the date of receipt of the written demand.

3 (e) For the purposes of investigation under this section, the Commissioner shall
4 have all the power conferred by G.S. 58-2-50 and other applicable provisions of this
5 Chapter.

6 (f) The Commissioner may adopt rules to set standards for obtaining background
7 information on each incorporator or other key person of a proposed new domestic
8 insurance company."

9 **SECTION 4.2.** G.S. 58-7-70 reads as rewritten:

10 "**§ 58-7-70. Effects of redomestication.**

11 The license, agent appointments and licenses, rates, and other items that the
12 Commissioner authorizes or grants, in his discretion, that are in existence at the time
13 any insurer licensed ~~to transact the business of insurance in this State by the~~
14 Commissioner transfers its corporate domicile to this or any other state by merger,
15 consolidation, or any other lawful method, shall continue in full force and effect upon
16 ~~such the~~ transfer if ~~such the~~ insurer remains duly licensed ~~to transact the business of~~
17 insurance in this State by the Commissioner. All outstanding policies of any transferring
18 insurer shall remain in full force and effect and need not be endorsed as to any new
19 name of the insurer or its new location unless so ordered by the Commissioner. Every
20 transferring insurer shall file new policy forms with the Commissioner on or before the
21 effective date of the transfer, but may use existing policy forms with appropriate
22 endorsements if allowed by, and under such conditions as approved by, the
23 Commissioner: Provided, however, every such transferring insurer shall (i) notify the
24 Commissioner of the details of the proposed transfer and (ii) promptly file any resulting
25 amendments to corporate documents filed or required to be filed with the
26 Commissioner."
27

28 **PART V. INSURANCE COMPANY SOLVENCY PROTECTION.**

29 **SECTION 5.1.** G.S. 58-7-75(10) reads as rewritten:

30 "(10) Impairment of Capital and/or Surplus. – Whenever the Commissioner
31 finds from a financial statement made by any company, or from a
32 report of examination of any company, that its admitted assets are less
33 than the aggregate amount of its liabilities and its outstanding capital
34 ~~stock and/or stock,~~ required minimum surplus, or both, the
35 Commissioner shall ~~determine~~ determine, in accordance with G.S. 58-
36 2-165 and other applicable provisions of this Chapter, the amount of
37 the impairment of ~~capital and/or surplus~~ capital, surplus, or both and
38 issue an order in writing requiring the company to eliminate the
39 impairment within such period of not more than 90 days as the
40 Commissioner shall designate. The Commissioner may, by order
41 served upon the company, prohibit the company from issuing any new
42 policies while the impairment exists. If at the expiration of the

1 designated period the company has not satisfied the Commissioner that
2 the impairment has been eliminated, an order for the rehabilitation or
3 liquidation of the company may be entered as provided in Article 30 of
4 this Chapter."

5 **SECTION 5.2.** G.S. 58-7-130 reads as rewritten:

6 "~~§ 58-7-130. Payment of dividends impairing financial soundness of company or~~
7 ~~detrimental to policyholders.~~Dividends and distributions to stockholders.

8 (a) Each domestic insurance company in North Carolina shall be restricted by the
9 Commissioner from the payment of any dividends or other distributions to its
10 stockholders whenever the Commissioner determines from examination of ~~such~~ the
11 company's financial condition that the payment of future dividends or other distributions
12 would cause a hazardous financial condition, impair the financial soundness of the
13 company or be detrimental to its policyholders, and ~~such~~ those restrictions shall
14 continue in force until ~~such future date when~~ the Commissioner ~~may~~ specifically ~~permit~~
15 permits the payment of dividends or other distributions to stockholders by the company
16 through a written authorization. ~~Nothing contained in this section and no action taken by~~
17 ~~the Commissioner shall in any way restrict the liability of stockholders under G.S. 58-7-~~
18 ~~125.~~

19 (b) No domestic stock insurance company shall declare dividends to its
20 stockholders except from the unassigned surplus of the company as reflected in the
21 company's most recent financial statement filed with the Commissioner under G.S. 58-
22 2-165.

23 (c) A transfer out of paid-in and contributed surplus to common or preferred
24 capital stock will be permitted on a case-by-case basis, with the Commissioner's prior
25 approval, depending on the necessity for a company to make the transfer.

26 (d) Nothing in this section and no action taken by the Commissioner in any way
27 restricts the liability of stockholders under G.S. 58-7-125.

28 (e) Dividends and other distributions paid to stockholders are subject to the
29 requirements and limitations of G.S. 58-19-25(d) and G.S. 58-19-30(c)."

30 31 **PART VI. LIFE INSURANCE COMPANY VARIABLE ACCOUNTS.**

32 **SECTION 6.1.** G.S. 58-7-95(b) reads as rewritten:

33 "(b) Any domestic life insurance company may, pursuant to resolution of its board
34 of directors, establish one or more separate accounts and may allocate to such account
35 or accounts amounts ~~received or retained in connection with variable contracts~~
36 (including without limitation proceeds applied under optional modes of settlement or
37 under dividend options) to provide for life ~~insurance~~ insurance, guaranteed investment
38 contracts, or annuities (and benefits incidental thereto) payable in fixed or variable
39 amounts or both."

40 **SECTION 6.2.** G.S. 58-7-95(c) reads as rewritten:

41 "(c) In addition to the amounts allocated under subsection (b), such company may
42 allocate from its general accounts to such separate account or accounts additional

1 amounts, which may include an initial allocation to establish such account; provided,
2 ~~that the aggregate amount so allocated shall not exceed one per centum (1%) of its~~
3 ~~admitted assets as of the preceding December 31, or one million dollars (\$1,000,000),~~
4 ~~whichever is less, and, provided further,~~ that such company shall be entitled to withdraw
5 at any time, in whole or in part, its participation in any separate account to which funds
6 have been allocated as provided in this subsection (c), and to receive, upon withdrawal,
7 its proportionate share of the value of the assets of the separate account at the time of
8 withdrawal."

9 **SECTION 6.3.** G.S. 58-7-95(e) and G.S. 58-7-95(f) are repealed.

10 **SECTION 6.4.** G.S. 58-7-95(g) reads as rewritten:

11 "(g) ~~The limitations provided in subsections (e) and (f) above shall not apply to~~
12 ~~the investment with respect to a separate account in the securities of an investment~~
13 ~~company registered under the Investment Company Act of 1940, provided that the~~
14 ~~investments of such investment company comply in substance with subsections (e) and~~
15 ~~(f) hereof.~~ The life insurance company shall maintain in each separate account assets
16 with a value at least equal to the reserves and other contract liabilities with respect to the
17 account, except as may otherwise be approved by the Commissioner."

18

19 PART VII. INSURANCE COMPANY CONSOLIDATION.

20 **SECTION 7.1.** G.S. 58-7-150(a) reads as rewritten:

21 "(a) A domestic insurer may consolidate with another insurer, subject to the
22 following conditions:

- 23 (1) The plan of consolidation must be submitted to and be approved by the
24 Commissioner ~~in advance of~~ before the consolidation.
- 25 (2) The Commissioner shall not approve ~~any such plan unless, after a~~
26 ~~hearing, he~~ the plan unless the Commissioner finds that it is fair,
27 equitable to policyholders, consistent with law, and will not conflict
28 with the public interest. If the Commissioner ~~fails to approve~~
29 ~~disapproves~~ the plan, he the Commissioner shall state his the reasons
30 for such failure in his order made on such hearing. the disapproval and
31 call for a hearing.
- 32 (3) No director, officer, member or subscriber of any such insurer, except
33 as is expressly provided by the plan of consolidation, shall receive any
34 fee, commission, other compensation or valuable consideration
35 whatever, for in any manner aiding, promoting or assisting in the
36 consolidation.
- 37 (4) Any consolidation as to an incorporated domestic insurer shall in other
38 respects be governed by the general laws of this State relating to
39 ~~business corporations, except that the~~ corporations. The consolidation
40 of a domestic mutual insurer may be effected by vote of two thirds of
41 the members voting thereon pursuant to such notice and procedure as
42 the Commissioner may prescribe."

1 **SECTION 7.2.** G.S. 58-7-150(b) reads as rewritten:

2 "(b) Reinsurance of all or substantially all of the insurance ~~in force obligations or~~
3 ~~risks of existing or in-force policies~~ of a domestic insurer by another insurer under an
4 ~~agreement whereby the reinsuring company succeeds to all of the liabilities of and~~
5 ~~supplants the domestic insurance company thereon~~ assumption reinsurance agreement,
6 as defined in G.S. 58-10-25(a)(2), shall be deemed a consolidation for the purposes of
7 this section. This section does not apply to consolidations to the extent regulated by
8 Article 19 or other Articles of this Chapter."

9
10 **PART VIII. INSURANCE COMPANY INVESTMENTS.**

11 **SECTION 8.1.** G.S. 58-7-170(b) reads as rewritten:

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

16 (1) The cost of investments made by insurers in stock authorized by G.S.
17 58-7-173 shall not exceed twenty-five percent (25%) of the insurer's
18 admitted assets, provided that no more than twenty percent (20%) of
19 the insurer's admitted assets shall be invested in common stock; and
20 the cost of an investment in stock of any one corporation shall not
21 exceed three percent (3%) of the insurer's admitted assets.
22 Notwithstanding any other provision in this Chapter, the financial
23 statement carrying value of all stock investments shall be used for the
24 purpose of determining the asset value against which the percentage
25 limitations are to be applied.

26 (2) ~~Other limitations, if any, that are expressly provided for in any~~
27 ~~provision under which the investment is authorized.~~The cost of
28 Canadian investments authorized by G.S. 58-7-173 shall not exceed
29 forty percent (40%) of the insurer's admitted assets in the aggregate,
30 provided that no more than twenty-five percent (25%) of the insurer's
31 admitted assets shall be invested in Canadian investments authorized
32 by G.S. 58-7-173(11)."

33 **SECTION 8.2.** G.S. 58-7-170(d) reads as rewritten:

34 "(d) Without the Commissioner's prior written approval, the cost of investments ~~in~~
35 ~~bonds, debentures, notes, commercial paper, or other debt obligations issued, assumed,~~
36 ~~or guaranteed by any solvent United States institution, any state, Canada, or any~~
37 ~~Canadian province,~~ permitted under G.S. 58-7-173 and G.S. 58-7-178, and that are
38 classified as medium to lower quality obligations, other than obligations of subsidiaries
39 or affiliated corporations as that term is defined in ~~G.S. 58-7-177,~~ G.S. 58-19-5, shall be
40 limited to:

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

- 1 (2) No more than ten percent (10%) of an insurer's admitted assets in
2 obligations that have been given a rating of 4, 5, or 6 by the Securities
3 Valuation Office of the NAIC;
- 4 (3) No more than three percent (3%) of an insurer's admitted assets in
5 obligations that have been given a rating of 5 or 6 by the Securities
6 Valuation Office of the NAIC; and
- 7 (4) No more than one percent (1%) of an insurer's admitted assets in
8 obligations that have been given a rating of 6 by the Securities
9 Valuation Office of the NAIC.
- 10 (5), (6) Repealed by Session Laws 1993, c. 452, s. 11."

11 **SECTION 8.3.** G.S. 58-7-173(9) reads as rewritten:

- 12 "(9) Bonds, debentures, or other securities of public housing authorities,
13 issued under the Housing Act, of 1949, the Municipal Housing
14 Commission Act, or the Rural Housing Commission Act, or issued by
15 any public housing authority or agency in the United States, if the
16 bonds, debentures, or other securities are secured by a pledge of annual
17 contributions to be paid by the United States or any United States
18 agency; ~~and the cost of investments made under this subdivision shall~~
19 ~~not exceed the lesser of three percent (3%) of the insurer's admitted~~
20 ~~assets or ten percent (10%) of the insurer's capital and surplus.~~agency."

21 **SECTION 8.4.** G.S. 58-7-173(10) reads as rewritten:

- 22 "(10) Obligations issued, assumed, or guaranteed by the International Bank
23 for Reconstruction and Development, the International Finance
24 Corporation, the Inter-American Development Bank, the Asian
25 Development Bank, or the African Development Bank; and the cost of
26 investments made under this subdivision in any one institution shall
27 not exceed ~~the lesser of three percent (3%) of the insurer admitted~~
28 ~~assets or ten percent (10%) of the insurer's capital and surplus.~~assets."

29 **SECTION 8.5.** G.S. 58-7-173(11) reads as rewritten:

- 30 "(11) Bonds, notes, or other interest-bearing or interest-accruing obligations
31 of any solvent institution organized under the laws of the United
32 States, of any state, Canada or any Canadian province; provided such
33 instruments are rated and valued by the Securities Valuation Office of
34 the NAIC. The cost of investments made under this subdivision in
35 ~~issuers from any one industry shall not exceed ten percent (10%) of an~~
36 ~~insurer's admitted assets, and the cost of investments made in any one~~
37 ~~issuer shall not exceed three percent (3%) of an insurer's admitted~~
38 ~~assets or ten percent (10%) of an insurer's capital and surplus,~~
39 ~~whichever is greater. As used in this subdivision, "industry" means a~~
40 ~~distinct and recognized area of economic activity that consists of the~~
41 ~~production, manufacture, or distribution of common goods, products,~~
42 ~~commodities, or services.~~assets."

1 **SECTION 8.6.** G.S. 58-7-173(12) reads as rewritten:

2 "(12) Secured obligations of duly constituted churches and of
3 church-holding companies; and the cost of investments made under
4 this subdivision shall not exceed ~~the lesser of one percent (1%) three~~
5 percent (3%) of the insurer's admitted assets ~~or five percent (5%) of~~
6 ~~the insurer's capital and surplus assets."~~

7 **SECTION 8.7.** G.S. 58-7-173(14) reads as rewritten:

8 "(14) Share or savings accounts of savings and loan associations or building
9 and loan associations; ~~and the cost of investments made under this~~
10 ~~subdivision shall not exceed the lesser of three percent (3%) of the~~
11 ~~insurer's admitted assets or five percent (5%) of the insurer's capital~~
12 ~~and surplus associations."~~

13 **SECTION 8.8.** G.S. 58-7-173(16) reads as rewritten:

14 "(16) Stocks, common or preferred, of any corporation created or existing
15 under the laws of the United States, any U.S. territory, Canada or any
16 Canadian province, or of any state. An insurer may invest in stocks,
17 common or preferred, of any corporation created or existing under the
18 laws of any foreign country other than Canada ~~if the stocks are listed~~
19 ~~and traded on a national securities exchange in the United States or if~~
20 ~~the investment in stocks of any corporation created or existing under~~
21 ~~the laws of any foreign country are first approved by the~~
22 ~~Commissioner. Nothing in this section applies to qualifying~~
23 ~~investments made by an insurer in a foreign country under authority of~~
24 ~~G.S. 58-7-178 subject to the provisions of G.S. 58-7-178."~~

25 **SECTION 8.9.** G.S. 58-7-177 is repealed.

26 **SECTION 8.10.** G.S. 58-23-26(c) reads as rewritten:

27 "(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134,
28 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71,
29 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50,
30 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168,
31 58-7-170, 58-7-172, 58-7-173, 58-7-175, ~~58-7-177~~, 58-7-179, 58-7-180, 58-7-183,
32 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and
33 Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S.
34 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal
35 year, subject to extension by the Commissioner."

36 **SECTION 8.11.** G.S. 58-7-178 reads as rewritten:

37 "**§ 58-7-178. Foreign or territorial investments.**

38 (a) An insurer authorized to transact insurance in a foreign country or any U.S.
39 territory may have funds invested in securities that may be required for that authority
40 and for the transaction of that ~~business~~ business, provided the funds and securities are
41 substantially of the same kinds, classes, and investment grades as those otherwise
42 eligible for investment under this Chapter. ~~Canadian securities eligible for investment~~

1 under other provisions of this Chapter are not subject to this section. Unless disapproved
2 by the Commissioner:

3 (1) ~~An insurer may invest in Eurodollar certificates of deposit issued by~~
4 ~~foreign branches of United States commercial banks.~~

5 (2) ~~In addition to Canadian securities eligible for investment and to~~
6 ~~investments in countries in which an insurer transacts insurance, an~~
7 ~~insurer may invest in bonds, notes, or stocks of any foreign country or~~
8 ~~alien corporation if the security meets the general requirements of G.S.~~
9 ~~58-7-167 and does not exceed, in total, five percent (5%) of admitted~~
10 ~~assets.~~

11 The aggregate amount of investments under this subsection shall not exceed the amount
12 that the insurer is required by law to invest in the foreign country or United States
13 territory, or one and one-half times the amount of reserves and other obligations under
14 the contracts, whichever is greater.

15 (b) An insurer, whether or not it is authorized to do business or has outstanding
16 insurance contracts on lives or risks in any foreign country, may invest in bonds, notes,
17 or stocks of any foreign country or alien corporation that are substantially of the same
18 kinds, classes, and investment grades as those otherwise eligible for investment under
19 this Chapter. The aggregate amount of investments under this subsection shall not
20 exceed ten percent (10%) of the insurer's admitted assets, provided that the cost of
21 investments in any foreign country under this subsection shall not exceed three percent
22 (3%) of the insurer's admitted assets.

23 (c) Canadian securities eligible for investment under other provisions of this
24 Chapter are not subject to this section."

25 **SECTION 8.12.** G.S. 58-7-185(a)(2) reads as rewritten:

26 "(2) Except with the Commissioner's consent, securities issued by any
27 corporation or enterprise, the controlling interest of which is or will
28 after acquisition by the insurer be held directly or indirectly by the
29 insurer or any combination of the insurer and the insurer's directors,
30 officers, parent corporation, subsidiaries, or controlling stockholders.
31 Investments in subsidiaries under ~~G.S. 58-7-177~~ G.S. 58-19-10 are not
32 subject to this provision."

33 **SECTION 8.13.** G.S. 58-7-185(a)(3) is repealed.

34 **SECTION 8.14.** G.S. 58-7-192(d) reads as rewritten:

35 "(d) No valuations under this section shall be greater than any applicable valuation
36 or method contained in the latest edition of the NAIC ~~publication~~ publications entitled
37 'Valuations of Securities',— Securities' or the 'Accounting Practices and Procedures
38 Manual', unless the Commissioner determines that another valuation method is
39 appropriate when it results in a more conservative valuation."

40 **SECTION 8.15.** G.S. 58-7-200(b) reads as rewritten:

41 "(b) ~~Notwithstanding any expressed or implied prohibitions, an insurer may effect~~
42 ~~or maintain bona fide hedging transactions pertaining to securities otherwise eligible for~~

1 investment under this section, including, but not limited to (i) financial futures
2 contracts, warrants, options, calls and other rights to purchase; and (ii) puts and other
3 rights to require another person to purchase the securities. The contracts, options, calls,
4 puts and rights shall be traded on a securities exchange or board of trade regulated under
5 the laws of the United States. For the purposes of this subsection, "bona fide hedging
6 transaction" means a purchase or sale of such a contract, warrant, option, call, put or
7 right, entered into for the purpose of offsetting changes in the market value of a security
8 held by the company. An insurer may engage in derivative transactions under the
9 provisions and limitations of G.S. 58-7-205."

10 **SECTION 8.16.** G.S. 58-7-200(c) reads as rewritten:

11 "(c) No insurer shall make any direct or indirect loan to any of its directors,
12 officers, or controlling stockholders; nor shall the insurer make any loan to any other
13 person in which the officer, director, or stockholder is substantially interested; nor shall
14 any such director, officer, or stockholder directly or indirectly accept any such loan. No
15 insurer shall directly or indirectly invest in, or lend its funds to, any of its directors,
16 officers, controlling stockholders, or any other person in which an officer, director, or
17 controlling stockholder is substantially interested, nor shall any director, officer, or
18 controlling stockholder directly or indirectly accept the funds."

19 **SECTION 8.17.** Article 7 of Chapter 58 of the General Statutes is amended
20 by adding the following new section to read:

21 "**§ 58-7-205. Derivative transactions.**

22 (a) As used in this section, the following terms have the following meanings:

23 (1) 'Business entity' includes a sole proprietorship, corporation, limited
24 liability company, association, partnership, joint stock company, joint
25 venture, mutual fund, trust, joint tenancy or other similar form of
26 business organization, whether for-profit or not-for-profit.

27 (2) 'Counterparty exposure' amount means:

28 a. The amount of credit risk attributable to a derivative instrument
29 entered into with a business entity other than through a
30 qualified exchange, qualified foreign exchange, or cleared
31 through a qualified clearinghouse ('over-the-counter derivative
32 instrument'). The amount of credit risk equals:

- 33 1. The market value of the over-the-counter derivative
34 instrument if the liquidation of the derivative instrument
35 would result in a final cash payment to the insurer; or
- 36 2. Zero if the liquidation of the derivative instrument would
37 not result in a final cash payment to the insurer.

38 b. If over-the-counter derivative instruments are entered into under
39 a written master agreement which provides for netting of
40 payments owed by the respective parties and the domicile of the
41 counterparty is either within the United States or, if not within
42 the United States, within a foreign jurisdiction listed in the

Purposes and Procedures of the Securities Valuation Office of the NAIC as eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum of:

1. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

2. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

c. For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.

(3) 'Derivative instrument' means an agreement, option, instrument, or a series or combination thereof:

a. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

b. That has a price, performance, value, or cash flow based primarily upon the actual or expected price level, performance, value, or cash flow of one or more underlying interests.

Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof. Derivative instruments shall additionally include any agreements, options, or instruments permitted under rules adopted under subsection (c) of this section. Derivative instruments shall not include an investment authorized by G.S. 58-7-173, 58-7-175, 58-7-178, 58-7-179, 58-7-180, and 58-7-187.

(4) 'Derivative transaction' means any transaction involving the use of one or more derivative instruments.

(5) 'Qualified clearinghouse' means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange. The clearinghouse provides clearing services, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risk as to each other.

(6) 'Qualified exchange' means:

- 1 a. A securities exchange registered as a national securities
2 exchange, or a securities market regulated under the Securities
3 Exchange Act of 1934 (15 U.S.C. §§ 78, et seq.), as amended;
4 b. A board of trade or commodities exchange designated as a
5 contract market by the Commodity Futures Trading
6 Commission, or any successor thereof;
7 c. Private Offerings, Resales and Trading through Automated
8 Linkages (PORTAL);
9 d. A designated offshore securities market as defined in Securities
10 Exchange Commission Regulation S, 17 C.F.R. Part 230, as
11 amended; or
12 e. A qualified foreign exchange.
13 (7) 'Qualified foreign exchange' means a foreign exchange, board of trade,
14 or contract market located outside the United States, its territories or
15 possessions:
16 a. That has received regulatory comparability relief under
17 Commodity Futures Trading Commission Rule 30.10 (as set
18 forth in Appendix C to Part 30 of the CFTC's Regulations, 17
19 C.F.R. Part 30);
20 b. That is, or its members are, subject to the jurisdiction of a
21 foreign futures authority that has received regulatory
22 comparability relief under Commodity Futures Trading
23 Commission Rule 30.10 (as set forth in Appendix C to Part 30
24 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures
25 transactions in the jurisdiction where the exchange, board of
26 trade, or contract market is located; or
27 c. Upon which foreign stock index futures contracts are listed that
28 are the subject of no-action relief issued by the CFTC's Office
29 of General Counsel, but an exchange, board of trade, or contract
30 market that qualifies as a 'qualified foreign exchange' only
31 under this paragraph shall only be a 'qualified foreign exchange'
32 as to foreign stock index futures contracts that are the subject of
33 the no-action relief under this paragraph.
34 (8) 'Replication transaction' means a derivative transaction that is intended
35 to replicate the investment in one or more assets that an insurer is
36 authorized to acquire or sell under this section or G.S. 58-7-165. A
37 derivative transaction that is entered into as a hedging transaction shall
38 not be considered a replication transaction.
39 (b) An insurer may, directly or indirectly through an investment subsidiary,
40 engage in derivative transactions under this section under the following conditions:

- 1 (1) An insurer may use derivative instruments under this section to engage
2 in hedging transactions and certain income generation transactions as
3 may be further defined by rules adopted by the Commissioner.
- 4 (2) An insurer shall be able to demonstrate to the Commissioner the
5 intended hedging characteristics and the ongoing effectiveness of the
6 derivative transaction or combination of the transactions through cash
7 flow testing or other appropriate analyses.
- 8 (c) The Commissioner may adopt reasonable rules for investments and
9 transactions under this section including, but not limited to, rules which impose
10 financial solvency standards, valuation standards, and reporting requirements.
- 11 (d) An insurer may enter into hedging transactions under this section if, as a
12 result of and after giving effect to the transaction:
- 13 (1) The aggregate statement value of options, caps, floors, and warrants
14 not attached to another financial instrument purchased and used in
15 hedging transactions then engaged in by the insurer does not exceed
16 seven and one-half percent (7.5%) of its admitted assets;
- 17 (2) The aggregate statement value of options, caps, and floors written in
18 hedging transactions then engaged in by the insurer does not exceed
19 three percent (3%) of its admitted assets; and
- 20 (3) The aggregate potential exposure of collars, swaps, forwards, and
21 futures used in hedging transactions then engaged in by the insurer
22 does not exceed six and one-half percent (6.5%) of its admitted assets.
- 23 (e) An insurer may enter into the following types of income generation
24 transactions if, as a result of and after giving effect to the transactions, the aggregate
25 statement value of the fixed income assets that are subject to call or that generate the
26 cash flows for payments under the caps or floors, plus the face value of fixed income
27 securities underlying a derivative instrument subject to call, plus the amount of the
28 purchase obligations under the puts, does not exceed ten percent (10%) of its admitted
29 assets:
- 30 (1) Sales of covered call options on noncallable fixed-income securities,
31 callable fixed-income securities if the option expires by its terms
32 before the end of the noncallable period, or derivative instruments
33 based on fixed income securities;
- 34 (2) Sales of covered call options on equity securities, if the insurer holds
35 in its portfolio, or can immediately acquire through the exercise of
36 options, warrants, or conversion rights already owned, the equity
37 securities subject to call during the complete term of the call option
38 sold;
- 39 (3) Sales of covered puts on investments that the insurer is permitted to
40 acquire under this Chapter, if the insurer has escrowed or entered into
41 a custodian agreement segregating cash or cash equivalents with a

- 1 market value equal to the amount of its purchase obligations under the
2 put during the complete term of the put option sold; or
- 3 (4) Sales of covered caps or floors, if the insurer holds in its portfolio the
4 investments generating the cash flow to make the required payments
5 under the caps or floors during the complete term that the cap or floor
6 is outstanding.
- 7 (f) An insurer shall include all counterparty exposure amounts in determining
8 compliance with the limitations of G.S. 58-7-170.
- 9 (g) Under rules that may be adopted by the Commissioner, additional
10 transactions involving the use of derivative instruments in excess of the limits of
11 subsection (d) of this section or for other risk management purposes may be approved
12 by the Commissioner.
- 13 (h) An insurer shall establish guidelines and internal procedures as follows:
- 14 (1) Before engaging in a derivative transaction, an insurer shall establish
15 written guidelines that shall be used for effecting and maintaining the
16 transactions. The guidelines shall:
- 17 a. Address investment or, if applicable, underwriting objectives,
18 and risk constraints such as credit risk limits;
- 19 b. Address permissible transactions and the relationship of those
20 transactions to its operations, such as a precise identification of
21 the risks being hedged by a derivative transaction; and
- 22 c. Require compliance with internal control procedures.
- 23 (2) An insurer shall have a system for determining whether a derivative
24 instrument used for hedging has been effective.
- 25 (3) An insurer shall have a credit risk management system for over-the-
26 counter derivative transactions that measures credit risk exposure
27 using the counterparty exposure amount.
- 28 (4) An insurer's board of directors shall, in accordance with G.S. 58-7-
29 168:
- 30 a. Approve the guidelines required by subdivision (1) of this
31 subsection and the systems required by subdivisions (2) and (3)
32 of this subsection; and
- 33 b. Determine whether the insurer has adequate professional
34 personnel, technical expertise and systems to implement
35 investment practices involving derivatives.
- 36 (i) An insurer shall maintain documentation and records relating to each
37 derivative transaction, such as:
- 38 (1) The purpose or purposes of the transaction;
- 39 (2) The assets or liabilities to which the transaction relates;
- 40 (3) The specific derivative instrument used in the transaction;
- 41 (4) For over-the-counter derivative instrument transactions, the name of
42 the counterparty and counterparty exposure amount; and

- 1 (5) For exchange-traded derivative instruments, the name of the exchange
2 and the name of the firm that handled the trade.
- 3 (j) Each derivative instrument shall be:
- 4 (1) Traded on a qualified exchange;
5 (2) Entered into with, or guaranteed by, a business entity;
6 (3) Issued or written by or entered into with the issuer of the underlying
7 interest on which the derivative instrument is based; or
8 (4) Entered into with a qualified foreign exchange."

9 **SECTION 8.18.** G.S. 58-67-60 reads as rewritten:

10 **"§ 58-67-60. Investments.**

11 With the exception of investments made in accordance with G.S. 58-67-35(a)(1) and
12 (2) and G.S. 58-67-35(b), the ~~investable~~ funds of a health maintenance organization
13 shall be invested or maintained only in ~~securities or securities~~, other ~~investments~~
14 investments, or other assets permitted by the laws of this State for the investment of
15 assets constituting the legal reserves of life insurance companies or such other securities
16 or investments as the Commissioner may permit."

17

18 **PART IX. MUTUAL INSURANCE COMPANIES.**

19 **SECTION 9.1.** G.S. 58-8-5(a)(3) reads as rewritten:

20 "~~(3) Said officers shall cause said certificate to be published once a week~~
21 ~~for two consecutive weeks in a newspaper in Raleigh and in the county~~
22 ~~where the company's principal office is located, or posted at the~~
23 ~~courthouse door if no newspaper be published within the county. Said~~
24 ~~printed or posted notices shall be in such form and of such size as the~~
25 ~~Commissioner may approve, and in addition to setting forth in full the~~
26 ~~certificate required in subdivision (2) shall state that application for~~
27 ~~amending the company's charter in the manner specified has been~~
28 ~~proposed by the board of directors, and shall also state the time set for~~
29 ~~a meeting of policyholders thereby called to be held at the principal~~
30 ~~office of the company to take action on the proposed amendment. A~~
31 ~~true copy of such notice shall be filed with the Commissioner, and also~~
32 ~~with that official who performs the functions of Commissioner in each~~
33 ~~state where the company is licensed to do business. Such publication~~
34 ~~and filing of notices shall be completed at least 30 days prior to the~~
35 ~~date set therein for the meeting of policyholders and due proof thereof~~
36 ~~shall be filed with the Commissioner at least 15 days prior to the date~~
37 ~~of such meeting. If the meeting at which the proposed amendment is to~~
38 ~~be considered is a special meeting, rather than a regular annual~~
39 ~~meeting of policyholders, such special meeting can be called only after~~
40 ~~the Commissioner has given his approval in writing, and the published~~
41 ~~notice shall show the fact of such approval;~~writing;"

42 **SECTION 9.2.** G.S. 58-8-25 reads as rewritten:

1 **"§ 58-8-25. Dividends to policyholders.**

2 (a) Any participating or dividend-paying company, stock or mutual or foreign or
3 domestic, that writes other than life insurance or workers' compensation insurance and
4 employers' liability insurance in connection therewith, may declare and pay a dividend
5 to policyholders from its ~~surplus, unassigned surplus~~, as reflected in the company's most
6 recent annual or quarterly statement filed with the Commissioner under G.S. 58-2-165,
7 which shall include only its surplus in excess of any required minimum surplus. No
8 such dividend shall be paid unless it is fair and equitable and for the best interest of the
9 company and its policyholders. In declaring any dividend to its policyholders, any such
10 company may make reasonable classifications of policies expiring during a fixed period,
11 upon the basis of each general kind of insurance covered by ~~such those~~ policies and by
12 territorial divisions of the location of risks by states, except that in fixing the amount of
13 dividends to be paid on each general kind of insurance, ~~which the~~ dividends shall be
14 uniform in rate and applicable to the majority of risks within ~~such that~~ general kind of
15 insurance, and exceptions may be made as to any class or classes of risk and a different
16 rate or amount of dividends paid on ~~such the~~ class or classes if the conditions applicable
17 to ~~such the~~ class or classes differ substantially from the condition applicable to the kind
18 of insurance as a whole. Every such company shall have an equal rate of dividend for
19 the same term on all policies insuring risks in the same classification. The payment of
20 dividends to policyholders shall not be contingent upon the maintenance or renewal of
21 the policy. All dividends shall be paid to the policyholder unless a written assignment
22 ~~thereof be of those dividends is~~ executed. Neither the payment of dividends nor the rate
23 ~~thereof of the dividends~~ may be guaranteed by any company, or its agent, ~~prior to before~~
24 the declaration of the dividend by the board of directors of ~~such the~~ company. The
25 holders of policies of insurance issued by a company in compliance with the orders of
26 any public official, bureau or committee, in conformity with any statutory requirement
27 or voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable
28 to the company, may be established as a separate class of risks.

29 (b) Any participating or dividend-paying company, stock or mutual or foreign or
30 domestic, that writes workers' compensation insurance and employers' liability
31 insurance in connection therewith may declare and pay a dividend to policyholders from
32 its ~~surplus, unassigned surplus~~, as reflected in the company's most recent statement filed
33 with the Commissioner under G.S. 58-2-165, which shall include only its surplus in
34 excess of any required minimum surplus. No such dividend shall be paid unless it is fair
35 and equitable and for the best interest of the company and its policyholders. In declaring
36 any dividend to its policyholders, any such company may make reasonable
37 classifications of policies expiring during a fixed period. The payment of dividends to
38 policyholders shall not be contingent upon the maintenance or renewal of the policy. All
39 dividends shall be paid to the policyholder unless a written assignment ~~thereof be of~~
40 those dividends is executed. Neither the payment of dividends nor the rate ~~thereof of the~~
41 dividends may be guaranteed by any company, or its agent, ~~prior to before~~ the
42 declaration of the dividend by the board of directors of ~~such the~~ company. The holders

1 of policies of insurance issued by a company in compliance with the orders of any
2 public official, bureau, or committee, in conformity with any statutory requirement or
3 voluntary arrangement, for the issuance of insurance to risks not otherwise acceptable to
4 the company, may be established as a separate class of risks."

5 **SECTION 9.3.** The title of G.S. 58-10-1 reads as rewritten:

6 "~~§ 58-10-1. Domestic stock life insurance corporations authorized to convert into~~
7 ~~mutual corporations; procedure.~~Stock to mutual insurer conversion."

8 **SECTION 9.4.** The title of Part 1 of Article 10 of Chapter 58 of the General
9 Statutes reads as rewritten:

10 "Article 10.

11 Miscellaneous Insurer Financial Provisions.

12 Part 1. Conversion ~~from~~ of Stock to and Mutual Corporation Insurers."

13 **SECTION 9.5.** The title of G.S. 58-10-10 reads as rewritten:

14 "~~§ 58-10-10. Mutual conversion to stock insurer.~~insurer conversion."

15 **SECTION 9.6.** Part 1 of Article 10 of Chapter 58 of the General Statutes is
16 amended by adding a new section to read:

17 "§ 58-10-12. Conversion plan requirements.

18 (a) As used in this section:

19 (1) 'Closed block' means an allocation of assets for a defined group of in-
20 force policies which, together with the premiums of those policies and
21 related investment earnings, are expected to be sufficient to maintain
22 the payments of guaranteed benefits, certain expenses, and
23 continuation of the current dividend scale on the closed block, if
24 experience does not change.

25 (2) 'Converting mutual' means a domestic mutual insurance company that
26 has adopted a plan of conversion and an amendment to its articles of
27 incorporation under this section that will, upon consummation, result
28 in the domestic mutual insurance company converting into a domestic
29 stock insurance company.

30 (3) 'Eligible member' means a person who:

31 a. Is a member of the converting mutual on the date the converting
32 mutual's board of directors adopts a resolution proposing a plan
33 of conversion and an amendment to the articles of
34 incorporation; and
35 b. Continues to be a member of the converting mutual on the
36 effective date of the conversion.

37 (4) 'Former mutual' means the domestic stock insurance company
38 resulting from the conversion of a converting mutual to a stock
39 insurance company under a plan of conversion and an amendment to
40 its articles of incorporation under this section.

- 1 (5) 'Member' means a person that, according to the records, articles of
2 incorporation, and bylaws of a converting mutual, is a member of the
3 converting mutual.
- 4 (6) 'Membership interests' means:
5 a. The voting rights of members of a domestic mutual insurance
6 company as provided by law and by the company's articles of
7 incorporation and bylaws; and
8 b. The rights of members of a domestic mutual insurance company
9 to receive cash, stock, or other consideration in the event of a
10 conversion to a stock insurance company under this section or a
11 dissolution as provided by the company's articles of
12 incorporation and bylaws.
- 13 (7) 'Parent company' means a corporation that, upon the effective date of a
14 conversion, owns all of the stock of the former mutual.
- 15 (8) 'Plan of conversion' means the plan of conversion described in
16 subsection (b) of this section.
- 17 (b) The plan of conversion under G.S. 58-10-10 shall:
18 (1) Describe the manner in which the proposed conversion will occur and
19 the insurance and any other companies that will result from or be
20 directly affected by the conversion, including the former mutual and
21 any parent company.
- 22 (2) Provide that the membership interests in the converting mutual will be
23 extinguished as of the effective date of the conversion.
- 24 (3) Require the distribution to the eligible members, upon the
25 extinguishing of their membership interests, of aggregate consideration
26 equal to the fair value of the converting mutual.
- 27 (4) Describe the manner in which the fair value of the converting mutual
28 has been or will be determined.
- 29 (5) Describe the form or forms and amount, if known, of consideration to
30 be distributed to the eligible members.
- 31 (6) Specify relevant classes, categories, or groups of eligible members and
32 describe and explain any differences in the form or forms and amount
33 of consideration to be distributed to or among the eligible members.
- 34 (7) Require and describe the method or formula for the fair and equitable
35 allocation of the consideration among the eligible members.
- 36 (8) Provide for the determination and preservation of the reasonable
37 dividend expectations of eligible members and other policyholders
38 with policies that provide for the distribution of policy dividends,
39 through establishment of a closed block or other method acceptable to
40 the Commissioner.
- 41 (9) Provide that each member and other policyholder of the converting
42 mutual will receive notification of the address and telephone number

1 of the converting mutual and the former mutual, if different, along
2 with the notice of hearing as approved by the Commissioner.

3 (10) Include other provisions as the converting mutual determines to be
4 necessary.

5 (c) After the adoption by the board of directors of the resolution proposing the
6 plan of conversion under G.S. 58-10-10 and the amendment to its articles of
7 incorporation, the converting mutual shall file with the Commissioner an application for
8 approval of the plan and amendment. The application must contain the following
9 information, together with any additional information as the Commissioner may require:

10 (1) The plan of conversion and a certificate of the secretary of the
11 converting mutual certifying the adoption of the plan by the board of
12 directors.

13 (2) A statement of the reasons for the proposed conversion and why the
14 conversion is in the best interests of the converting mutual, the eligible
15 members, and the other policyholders. The statement must include an
16 analysis of the risks and benefits to the converting mutual and its
17 members of the proposed conversion and a comparison of the risks and
18 benefits of the conversion with the risks and benefits of reasonable
19 alternatives to a conversion.

20 (3) A five-year business plan and at least two years of financial forecasts
21 of the former mutual and any parent company.

22 (4) Any plans that the former mutual or any parent company may have to:
23 a. Raise additional capital through the issuance of stock or
24 otherwise;
25 b. Sell or issue stock to any person, including any compensation or
26 benefit plan for directors, officers, or employees under which
27 stock may be issued;
28 c. Liquidate or dissolve any company or sell any material assets;
29 d. Merge or consolidate or pursue any other form of
30 reorganization with any person; or
31 e. Make any other material change in investment policy, business,
32 corporate structure, or management.

33 (5) Any plans for a delayed distribution of consideration to eligible
34 members or restrictions on sale or transfer of stock or other securities.

35 (6) A copy of the form of trust agreement, if a distribution of
36 consideration is to be delayed by more than six months after the
37 effective date of the conversion.

38 (7) A plan of operation for a closed block, if a closed block is used for the
39 preservation of the reasonable dividend expectations of eligible
40 members and other policyholders with policies that provide for the
41 distribution of policy dividends.

- 1 (8) Copies of the amendment to the articles of incorporation proposed by
2 the board of directors and proposed bylaws of the former mutual and
3 copies of the existing and any proposed articles of incorporation and
4 bylaws of any parent company.
- 5 (9) A list of all individuals who are or have been selected to become
6 directors or officers of the former mutual and any parent company, or
7 the individuals who perform or will perform duties customarily
8 performed by a director or officer, and the following information
9 concerning each individual on the list unless the information is already
10 on file with the Commissioner:
- 11 a. The individual's principal occupation.
12 b. All offices and positions the individual has held in the
13 preceding five years.
14 c. Any crime of which the individual has been convicted (other
15 than traffic violations) in the preceding 10 years.
16 d. Information concerning any personal bankruptcy of the
17 individual or the individual's spouse during the previous seven
18 years.
19 e. Information concerning the bankruptcy of any corporation or
20 other entity of which the individual was an officer or director
21 during the previous seven years.
22 f. Information concerning allegations of state or federal securities
23 law violations made against the individual that within the
24 previous 10 years resulted in (i) a determination that the
25 individual violated state or federal securities laws; (ii) a plea of
26 nolo contendere; or (iii) a consent decree.
27 g. Information concerning the suspension, revocation, or other
28 disciplinary action during the previous 10 years of any state or
29 federal license issued to the individual.
30 h. Information as to whether the individual was refused a bond
31 during the previous 10 years.
- 32 (10) A fairness opinion addressed to the board of directors of the converting
33 mutual from a qualified, independent financial adviser asserting:
- 34 a. That the provision of stock, cash, policy benefits, or other forms
35 of consideration upon the extinguishing of the converting
36 mutual's membership interests under the plan of conversion and
37 the amendment to the articles of incorporation is fair to the
38 eligible members, as a group, from a financial point of view;
39 and
40 b. Whether the total consideration under sub-subdivision a. of this
41 subdivision is equal to or greater than the surplus of the
42 converting mutual.

1 The Commissioner may waive the fairness opinion in situations
2 involving a straightforward issuance of stock to members of the former
3 mutual.

4 (11) An actuarial opinion as to the following:

5 a. The reasonableness and appropriateness of the methodology or
6 formulas used to allocate consideration among eligible
7 members, consistent with this Article.

8 b. The reasonableness of the plan of operation and sufficiency of
9 the assets allocated to the closed block, if a closed block is used
10 for the preservation of the reasonable dividend expectations of
11 eligible members and other policyholders with policies that
12 provide for the distribution of policy dividends.

13 (12) If any of the consideration to be distributed to eligible members
14 consists of stock or other securities, subject to the limitations of G.S.
15 58-10-10(b)(6), a description of the plans made by the former mutual
16 or its parent company to assure that an active public trading market for
17 the stock or other securities will develop within a reasonable amount
18 of time after the effective date of the plan of conversion and that
19 eligible members who receive stock or other securities will be able to
20 sell their stock or other securities, subject to any delayed distribution
21 or transfer restrictions, at reasonable cost and effort.

22 (13) Any additional information, documents, or materials that the
23 converting mutual determines to be necessary.

24 (d) Distribution of all or part of the consideration to some or all of the eligible
25 members may be delayed, or restrictions on sale or transfer of any stock or other
26 securities to be distributed to eligible members may be required, for a reasonable period
27 of time following the effective date of the conversion. However, the period of time shall
28 not exceed six months unless otherwise approved by the Commissioner.

29 (e) Except as specifically provided in a plan of conversion, for five years
30 following the effective date of the conversion, no person or persons acting in concert
31 (other than the former mutual, any parent company, or any employee benefit plans or
32 trusts sponsored by the former mutual or a parent company) shall directly or indirectly
33 acquire, or agree or offer to acquire, in any manner the beneficial ownership of five
34 percent (5%) or more of the outstanding shares of any class of a voting security of the
35 former mutual or any parent company without the prior approval of the Commissioner
36 of a statement filed by that person with the Commissioner. The statement shall contain
37 the information required by G.S. 58-19-15(b) and any other information required by the
38 Commissioner. The Commissioner shall not approve an acquisition under this
39 subsection unless the Commissioner finds that:

40 (1) The requirements of G.S. 58-19-15(e) will be satisfied.

- 1 (2) The acquisition will not frustrate the plan of conversion or the
2 amendment to the articles of incorporation as approved by the
3 members and the Commissioner.
- 4 (3) The boards of directors of the former mutual and any parent company
5 have approved the acquisition.
- 6 (4) The acquisition would be in the best interest of the present and future
7 policyholders of the former mutual without regard to any interest of
8 policyholders as shareholders of the former mutual or any parent
9 company."

10

11 **PART X. REINSURANCE INTERMEDIARIES.**

12 **SECTION 10.1.** G.S. 58-9-6(a) reads as rewritten:

13 "(a) The Commissioner shall issue an intermediary license or an exemption from
14 the license, subject to G.S. 58-9-2(b)(2) or G.S. 58-9-2(c)(3), to any person who has
15 complied with the requirements of this Article. A license issued to a non corporate
16 entity authorizes all of the members of the entity and any designated employees to act as
17 intermediaries under the license, and those persons shall be named in the application
18 and any supplements. A license issued to a corporation authorizes all of the officers and
19 any designated employees and directors of the corporation to act as intermediaries on
20 behalf of the corporation, and those persons shall be named in the application and any
21 supplements."

22 **SECTION 10.2.** G.S. 58-9-11(b) reads as rewritten:

23 "(b) An insurer shall not engage the services of any person to act as a broker on its
24 behalf unless the person is licensed under ~~G.S. 58-9-6~~ G.S. 58-9-6 or exempted under
25 this Article. An insurer shall not employ an individual who is employed by a broker
26 with which it transacts business, unless the broker is under common control with the
27 insurer under Article 19 of this Chapter."

28 **SECTION 10.3.** G.S. 58-9-21(a) reads as rewritten:

29 "(a) A reinsurer shall not engage the services of any person to act as a manager on
30 its behalf unless the person is licensed under ~~G.S. 58-9-6~~ G.S. 58-9-6 or exempted under
31 this Article."

32

33 **PART XI. MORTGAGE GUARANTY INSURANCE.**

34 **SECTION 11.** Article 10 of Chapter 58 of the General Statutes is amended
35 by adding the following new Part to read:

36 "Part 5. Mortgage Guaranty Insurance.

37 **"§ 58-10-120. Definitions.**

38 As used in this Part:

- 39 (1) 'Mortgage guaranty insurers report of policyholders position' means
40 the annual supplementary report required by the Commissioner.

(2) 'Policyholders position' means the contingency reserve established under G.S. 58-10-135 and policyholders' surplus. 'Minimum policyholders position' is calculated as described in G.S. 58-10-125.

(3) 'Policyholders surplus' means an insurer's net worth; the difference between its assets and liabilities, as reported in its annual statement.

"§ 58-10-125. Minimum policyholders position.

(a) For the purpose of complying with G.S. 58-7-75, a mortgage guaranty insurer shall maintain at all times a minimum policyholders position in the amount required by this section. The policyholders position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) If a mortgage guaranty insurer does not have the minimum amount of policyholders position required by this section it shall cease transacting new business until the time that its policyholders position is in compliance with this section.

(c) If a policy of mortgage guaranty insurance insures individual loans with a percentage claim settlement option on those loans, a mortgage guaranty insurer shall maintain a policyholders position based on each one hundred dollars (\$100.00) of the face amount of the mortgage, the percentage coverage, and the loan-to-value category. The minimum amount of policyholders position shall be calculated in the following manner:

(1) If the loan-to-value is greater than seventy-five percent (75%), the minimum policyholders position per one hundred dollars (\$100.00) of the face amount of the mortgage for the specific percent coverage shall be as shown in the schedule below:

<u>Percent Coverage</u>	<u>Policyholders Position Per \$100 of the Face Amount of the Mortgage</u>	<u>Percent Coverage</u>	<u>Policyholders Position Per \$100 of the Face Amount of the Mortgage</u>
<u>5</u>	<u>\$0.20</u>	<u>55</u>	<u>\$1.50</u>
<u>10</u>	<u>0.40</u>	<u>60</u>	<u>1.55</u>
<u>15</u>	<u>0.60</u>	<u>65</u>	<u>1.60</u>
<u>20</u>	<u>0.80</u>	<u>70</u>	<u>1.65</u>
<u>25</u>	<u>1.00</u>	<u>75</u>	<u>1.75</u>
<u>30</u>	<u>1.10</u>	<u>80</u>	<u>1.80</u>
<u>35</u>	<u>1.20</u>	<u>85</u>	<u>1.85</u>
<u>40</u>	<u>1.30</u>	<u>90</u>	<u>1.90</u>
<u>45</u>	<u>1.35</u>	<u>95</u>	<u>1.95</u>
<u>50</u>	<u>1.40</u>	<u>100</u>	<u>2.00</u>

(2) If the loan-to-value is at least fifty percent (50%) and not more than seventy-five percent (75%), the minimum amount of the policyholders

position shall be fifty percent (50%) of the minimum of the amount calculated under subdivision (c)(1) of this section.

(3) If the loan-to-value is less than fifty percent (50%), the minimum amount of policyholders position shall be twenty-five percent (25%) of the amount calculated under subdivision (c)(1) of this section.

(d) If a policy of mortgage guaranty insurance provides coverage on a group of loans subject to an aggregate loss limit, the policyholders position shall be:

(1) If the equity is not more than fifty percent (50%) and is at least twenty percent (20%), or equity plus prior insurance or a deductible is at least twenty-five percent (25%) and not more than fifty-five percent (55%), the minimum amount of policyholders position shall be calculated as follows:

<u>Percent Coverage</u>	<u>Policyholders Position Per \$100 of the Face Amount of the Mortgage</u>	<u>Percent Coverage</u>	<u>Policyholders Position Per \$100 of the Face Amount of the Mortgage</u>
<u>1</u>	<u>\$0.30</u>	<u>50</u>	<u>\$0.825</u>
<u>5</u>	<u>0.50</u>	<u>60</u>	<u>0.85</u>
<u>10</u>	<u>0.60</u>	<u>70</u>	<u>0.875</u>
<u>15</u>	<u>0.65</u>	<u>75</u>	<u>0.90</u>
<u>20</u>	<u>0.70</u>	<u>80</u>	<u>0.925</u>
<u>25</u>	<u>0.75</u>	<u>90</u>	<u>0.95</u>
<u>30</u>	<u>0.775</u>	<u>100</u>	<u>1.00</u>
<u>40</u>	<u>0.80</u>		

(2) If the equity is less than twenty percent (20%), or the equity plus prior insurance or a deductible is less than twenty-five percent (25%), the minimum amount of policyholders position shall be two hundred percent (200%) of the amount required by subdivision (d)(1) of this section.

(3) If the equity is more than fifty percent (50%), or the equity plus prior insurance or a deductible is more than fifty-five percent (55%), the minimum amount of policyholders position shall be fifty percent (50%) of the amount required by subdivision (d)(1) of this section.

(e) If a policy of mortgage guaranty insurance provides for layers of coverage, deductibles, or excess reinsurance, the minimum amount of policyholders position shall be computed by subtraction of the minimum position for the lower percentage coverage limit from the minimum position for the upper or greater coverage limit.

(f) If a policy of mortgage guaranty insurance provides for coverage on loans secured by junior liens, the policyholders position shall be:

1 (1) If the policy provides coverage on individual loans, the minimum
2 amount of policyholders position shall be calculated as in subsection
3 (c) of this section as follows:

4 a. The loan-to-value percent is the entire loan indebtedness on the
5 property divided by the value of the property;

6 b. The percent coverage is the insured portion of the junior loan
7 divided by the entire loan indebtedness on the collateral
8 property; and

9 c. The face amount of the insured mortgage is the entire loan
10 indebtedness on the property.

11 (2) If the policy provides coverage on a group of loans subject to an
12 aggregate loss limit, the policyholders position shall be calculated
13 according to subsection (d) of this section as follows:

14 a. The equity is the complement of the loan-to-value percent
15 calculated as in subdivision (d)(1) of this section;

16 b. The percent coverage is calculated as in subdivision (d)(1) of
17 this section; and

18 c. The face amount of the insured mortgage is the entire loan
19 indebtedness on the property.

20 (g) If a policy of mortgage guaranty insurance provides for coverage on leases,
21 the policyholders position shall be four dollars (\$4.00) for each one hundred dollars
22 (\$100.00) of the insured amount of the lease.

23 (h) If a policy of mortgage guaranty insurance insures loans with a percentage
24 loss settlement option coverage between any of the entries in the schedules in this
25 section, then the factor for policyholders position per one hundred dollars (\$100.00) of
26 the face amount of the mortgage shall be prorated between the factors for the nearest
27 percent coverage listed.

28 **"§ 58-10-130. Unearned premium reserve.**

29 (a) The unearned premium reserve shall be computed as follows:

30 (1) The unearned premium reserve for premiums paid in advance annually
31 shall be calculated on the monthly pro rata fractional basis.

32 (2) Premiums paid in advance for 10-year coverage shall be placed in the
33 unearned premium reserve and shall be released from this reserve as
34 follows:

35 a. 1st month - 1/132;

36 b. 2nd through 12th month - 2/132 each month;

37 c. 13th month - 3/264;

38 d. 14th through 120th month - 1/132 per month;

39 e. 121st month - 1/264.

40 (3) Premiums paid in advance for periods in excess of 10 years. During
41 the first 10 years of coverage the unearned portion of the premium
42 shall be the premium collected minus an amount equal to the premium

1 that would have been earned had the applicable premium for 10 years
2 of coverage been received. The premium remaining after 10 years shall
3 be released from the unearned premium reserve monthly pro rata over
4 the remaining term of coverage.

5 (b) Fifty percent (50%) of the premium remaining after establishment of the
6 premium reserve specified in subsection (a) of this section shall be maintained as a
7 special contingency reservation of premium and reported in the financial statement as a
8 liability.

9 (c) The case basis method shall be used to determine the loss reserve which shall
10 include a reserve for claims reported and unpaid and a reserve for claims incurred but
11 not reported.

12 **"§ 58-10-135. Contingency reserve.**

13 (a) Subject to G.S. 58-7-21, a mortgage guaranty insurer shall make an annual
14 contribution to the contingency reserve which in the aggregate shall be the greater of:

15 (1) Fifty percent (50%) of the net earned premium reported in the annual
16 statement; or

17 (2) The sum of:

18 a. The policyholders position established under G.S. 58-10-125 on
19 residential buildings designed for occupancy by not more than
20 four families divided by seven;

21 b. The policyholders position established under G.S. 58-10-125 on
22 residential buildings designed for occupancy by five or more
23 families divided by five;

24 c. The policyholders position established under G.S. 58-10-125 on
25 buildings occupied for industrial or commercial purposes
26 divided by three; and

27 d. The policyholders position established under G.S. 58-10-125
28 for leases divided by 10.

29 (b) If the mortgage guaranty coverage is not expressly provided for in this
30 section, the Commissioner may establish a rate formula factor that will produce a
31 contingency reserve adequate for the risk assumed.

32 (c) The contingency reserve established by this section shall be maintained for
33 120 months. That portion of the contingency reserve established and maintained for
34 more than 120 months shall be released and shall no longer constitute part of the
35 contingency reserve.

36 (d) With the approval of the Commissioner, withdrawals may be made from the
37 contingency reserve when incurred losses and incurred loss expenses exceed the greater
38 of either thirty-five percent (35%) of the net earned premium or seventy percent (70%)
39 of the amount which subsection (a) of this section requires to be contributed to the
40 contingency reserve in such year. On a quarterly basis, provisional withdrawals may be
41 made from the contingency reserve in an amount not to exceed seventy-five percent

1 (75%) of the withdrawal calculated in accordance with subdivision (d)(1) of G.S. 58-10-
2 125.

3 (e) With the approval of the Commissioner, a mortgage guaranty insurer may
4 withdraw from the contingency reserve any amounts which are in excess of the
5 minimum policyholders position as filed with the most recently filed annual statement.
6 In reviewing a request for withdrawal pursuant to this subsection, the Commissioner
7 may consider loss development and trends. If any portion of the contingency reserve for
8 which withdrawal is requested pursuant to this subsection is maintained by a reinsurer,
9 the Commissioner may also consider the financial condition of the reinsurer. If any
10 portion of the contingency reserve for which withdrawal is requested pursuant to this
11 subsection is maintained in a segregated account or segregated trust and such
12 withdrawal would result in funds being removed from the segregated account or
13 segregated trust, the Commissioner may also consider the financial condition of the
14 reinsurer.

15 (f) Releases and withdrawals from the contingency reserve shall be accounted
16 for on a first-in-first-out basis as prescribed by the Commissioner.

17 (g) The calculations to develop the contingency reserve shall be made in the
18 following sequence:

19 (1) The additions required by subsections (a) and (b) of this section;

20 (2) The releases permitted by subsection (c) of this section;

21 (3) The withdrawals permitted by subsection (d) of this section; and

22 (4) The withdrawals permitted by subsection (e) of this section.

23 (h) Whenever the laws or regulations of another jurisdiction in which a mortgage
24 guaranty insurer, subject to the requirements of this Part is licensed, require a larger
25 unearned premium reserve or a larger contingency reserve in the aggregate than that set
26 forth in this Part, the establishment and maintenance of the larger unearned premium
27 reserve or contingency reserve shall be deemed to be in compliance with this Part."

29 **PART XII. RISK-BASED CAPITAL REQUIREMENTS.**

30 **SECTION 12.1.** G.S. 58-12-2(3) reads as rewritten:

31 "(3) Domestic insurer. – Any insurance company or health organization
32 organized in this State under Article ~~77~~ 7, 15, 65, or 67 of this
33 Chapter."

34 **SECTION 12.2.** G.S. 58-12-2(4) reads as rewritten:

35 "(4) Foreign insurer. – Any insurance company or health organization that
36 is admitted to do business in this State under Article 16 or 67 of this
37 Chapter but is not domiciled in this State."

38 **SECTION 12.3.** G.S. 58-12-2 is amended by adding the following new
39 subdivision to read:

40 "(4b) Health organization. – Any health maintenance organization, limited
41 health service organization, dental or vision plan, hospital, medical, or
42 dental indemnity or service corporation, or other organization licensed

1 under Article 65 or 67 of this Chapter. 'Health organization' does not
2 include an insurer that is licensed as either a life or health insurer or a
3 property or casualty insurer under this Chapter and that is otherwise
4 subject to either the life or property and casualty risk-based capital
5 requirements."

6 **SECTION 12.4.** G.S. 58-12-6(d) reads as rewritten:

7 "(d) A property or casualty insurer's risk-based capital and a health organization's
8 risk-based capital shall be determined in accordance with the formula set forth in the
9 risk-based capital instructions. The formula shall take into account (and may adjust for
10 the covariance between):

- 11 (1) Asset risk;
- 12 (2) Credit risk;
- 13 (3) Underwriting risk; and
- 14 (4) All business and other relevant risks set forth in the risk-based capital
15 instructions, determined in each case by applying the factors in the
16 manner set forth in the risk-based capital instructions."

17 **SECTION 12.5.** G.S. 58-12-11(a)(1)a. reads as rewritten:

18 "a. The insurer's total adjusted capital is greater than or equal to its
19 regulatory action level risk-based capital but less than its
20 company action level risk-based ~~capital; capital, if the insurer is~~
21 a property or casualty insurer or a health organization; or".

22 **SECTION 12.6.** G.S. 58-12-11(b)(3) reads as rewritten:

23 "(3) Provides forecasts of the insurer's financial results in the current year
24 and at least the four succeeding years, both in the absence of proposed
25 corrective actions and giving effect to the proposed corrective actions,
26 including forecasts of statutory operating income, net income, capital,
27 or surplus (the forecasts for both new and renewal business should
28 include separate forecasts for each major line of business and
29 separately identify each significant income, expense, and benefit
30 component). For a health organization, the forecasted financial results
31 shall be for the current year and at least two succeeding years and shall
32 include statutory balance sheets, operating income, net income, capital
33 and surplus, and risk-based capital levels."

34 **SECTION 12.7.** G.S. 58-12-25(b) reads as rewritten:

35 "(b) In the event of a mandatory control level ~~event, event with respect to a life~~
36 insurer or a health organization, the Commissioner shall take actions as are necessary to
37 cause the insurer to be placed under regulatory control under Article 30 of this Chapter.
38 The mandatory control level event is sufficient grounds for the Commissioner to take
39 action under Article 30 of this Chapter, and the Commissioner shall have the rights,
40 powers, and duties with respect to the insurer as are set forth in Article 30 of this
41 Chapter. If the Commissioner takes actions pursuant to an adjusted risk-based capital
42 report, the insurer shall be entitled to such protections as are afforded to insurers under

1 the provisions of Article 30 of this Chapter pertaining to summary proceedings.
2 Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90
3 days after the mandatory control level event if the Commissioner finds there is a
4 reasonable expectation that the mandatory control level event may be eliminated within
5 the 90-day period."

6 **SECTION 12.8.** G.S. 58-12-25 is amended by adding the following new
7 subsection to read:

8 "(c) In the event of a mandatory control level event with respect to a property and
9 casualty insurer, the Commissioner shall take actions as are necessary to cause the
10 insurer to be placed under regulatory control under Article 30 of this Chapter, or, in the
11 case of an insurer which is writing no business and which is running off its existing
12 business, may allow the insurer to continue its runoff under the supervision of the
13 Commissioner. In either event, the mandatory control level event is sufficient grounds
14 for the Commissioner to take action under Article 30 of this Chapter, and the
15 Commissioner shall have the rights, powers, and duties with respect to the insurer as are
16 set forth in Article 30 of this Chapter. If the Commissioner takes actions under an
17 adjusted risk-based capital report, the insurer shall be entitled to such protections as are
18 afforded to insurers under the provisions of Article 30 of this Chapter pertaining to
19 summary proceedings. Notwithstanding any of the foregoing, the Commissioner may
20 forego action for up to 90 days after the mandatory control level event if the
21 Commissioner finds there is a reasonable expectation that the mandatory control level
22 event may be eliminated within the 90-day period."

23 **SECTION 12.9.** Article 12 of Chapter 58 of the General Statutes is amended
24 by adding the following new section to read:

25 "**§ 58-12-65. Health organization phase-in provision.**

26 For risk-based capital reports required to be filed by health organizations with
27 respect to calendar year 2001, the following requirements apply in lieu of the provisions
28 of G.S. 58-12-11, 58-12-16, 58-12-21, and 58-12-25:

- 29 (1) In the event of a company action level event with respect to a domestic
30 insurer, the Commissioner shall take no regulatory action under this
31 Article.
- 32 (2) In the event of a regulatory action level event under G.S. 58-12-
33 16(a)(1), (2), or (3), the Commissioner shall take the actions required
34 under G.S. 58-12-11.
- 35 (3) In the event of a regulatory action level event under G.S. 58-12-
36 16(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event,
37 the Commissioner shall take the actions required under G.S. 58-12-16
38 with respect to the insurer.
- 39 (4) In the event of a mandatory control level event with respect to an
40 insurer, the Commissioner shall take the actions required under G.S.
41 58-12-21 with respect to the insurer."

1 **SECTION 12.10.** Article 12 of Chapter 58 of the General Statutes is
2 amended by adding a new section to read:

3 **"§ 58-12-70. HMO net worth requirements.**

4 The Commissioner may require an HMO to have and maintain a larger amount of
5 net worth than prescribed in G.S. 58-67-110, based upon the principles of risk-based
6 capital as determined by the NAIC or the Commissioner."

7
8 **PART XIII. INSURANCE COMPANY ASSET PROTECTION.**

9 **SECTION 13.1.** G.S. 58-13-10 reads as rewritten:

10 **"§ 58-13-10. Scope.**

11 This Article applies to all domestic insurers and to all kinds of insurance written by
12 those insurers under ~~Articles 1 through 68~~ of this Chapter. Foreign insurers shall comply
13 in substance with the requirements and limitations of this Article. ~~This Article does not~~
14 ~~apply to variable contracts for which separate accounts are required to be maintained~~
15 ~~nor to statutory deposits that are required to be maintained by insurance regulatory~~
16 ~~agencies as a requirement for doing business in such jurisdictions.~~ This Article does not
17 apply to the following:

- 18 (1) Variable contracts or guaranteed investment contracts for which
19 separate accounts are required to be maintained.
20 (2) Statutory deposits that are required by insurance regulatory agencies to
21 be maintained as a requirement for doing business in such
22 jurisdictions.
23 (3) Real estate, authorized under G.S. 58-7-187, encumbered by a
24 mortgage loan with a first lien."

25 **SECTION 13.2.** G.S. 58-13-15(3) reads as rewritten:

- 26 (3) "Reserve assets" means those assets of an insurer that are authorized
27 investments for policy reserves in accordance with ~~Articles 1 through~~
28 ~~64 of this Chapter and G.S. 58-65-95.~~ this Chapter."

29 **SECTION 13.3.** G.S. 58-13-15(4) reads as rewritten:

- 30 (4) "Policyholder-related liabilities" means those liabilities that are
31 required to be established by an insurer for all of its outstanding
32 insurance policies in accordance with ~~Articles 1 through 64 of this~~
33 ~~Chapter and G.S. 58-65-95.~~ this Chapter."

34 **SECTION 13.4.** G.S. 58-13-20(b) reads as rewritten:

35 (b) The Commissioner has the right to examine any of such assets, reinsurance
36 agreements, or deposit arrangements at any time in accordance with his authority to
37 make examinations of insurers as conferred by other provisions of ~~Articles 1 through 64~~
38 ~~of this Chapter."~~

39
40 **PART XIV. FOREIGN INSURANCE COMPANIES.**

41 **SECTION 14.1.** G.S. 58-16-5 reads as rewritten:

42 **"§ 58-16-5. Conditions of admission.licensure.**

1 A foreign or alien insurance company may be ~~admitted and authorized~~ licensed to do
2 business when it:

- 3 (1) Deposits with the Commissioner a certified copy of its charter or
4 certificate of organization and a statement of its financial condition
5 and business, in ~~such the~~ form and detail as ~~he that the~~ Commissioner
6 requires, signed and sworn to by its president and secretary or other
7 proper officer, and pays for the filing of this statement the sum
8 required by law.
- 9 (2) Satisfies the Commissioner that it is fully and legally organized under
10 the laws of its state or government to do the business it proposes to
11 ~~transact,~~ transact as direct insurance or assumed reinsurance, and that
12 it has been successful in the conduct of ~~such the~~ business; that it has, if
13 a stock company, a free surplus and a fully paid-up and unimpaired
14 capital, exclusive of stockholders' obligations of any description of an
15 amount not less than that required for the organization of a domestic
16 company writing the same kinds of business; and if a mutual company
17 that its free surplus is not less than that required for the organization of
18 a domestic company writing the same kind of business, and that ~~such~~
19 the capital, surplus, and other funds are invested ~~in substantial~~
20 substantially in accordance with the requirements of ~~Articles 1 through~~
21 64 of this Chapter.
- 22 (3) Repealed by Session Laws 1995, c. 517, s. 6.
- 23 (4) Repealed by Session Laws 1987, c. 629, s. 20.
- 24 (5) Files with the Commissioner a certificate that it has complied with the
25 laws of the state or government under which it was organized and is
26 authorized to make contracts of insurance.
- 27 (6) Satisfies the Commissioner that it is in substantial compliance with ~~the~~
28 ~~provisions of~~ G.S. 58-7-21, 58-7-26, 58-7-30, and 58-7-31 and Article
29 13 of this Chapter.
- 30 (7) Satisfies the Commissioner that it is in compliance with the company
31 name requirements of G.S. 58-7-35.
- 32 (8) Satisfies the Commissioner that the operation of the company in this
33 State would not be hazardous to prospective policyholders, creditors,
34 or the general public.
- 35 (9) Satisfies the Commissioner that it is in substantial compliance with the
36 requirements of G.S. 58-7-37 pertaining to the background of its
37 officers and directors.
- 38 (10) Files with the Commissioner an instrument appointing the
39 Commissioner as the company's agent on whom any legal process
40 under G.S. 58-16-30 may be served. This appointment is irrevocable as
41 long as any liability of the company remains outstanding in this State.
42 A copy of this instrument, certified by the Commissioner, is sufficient

1 evidence of this appointment; and service upon the Commissioner is
2 sufficient service upon the company."

3 **SECTION 14.2.** G.S. 58-16-6 reads as rewritten:

4 **"§ 58-16-6. Conditions of continued licensure.**

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

10
11 **PART XV. PROMOTING AND HOLDING COMPANIES.**

12 **SECTION 15.** Article 18 of Chapter 58 of the General Statutes, comprising
13 G.S. 58-18-1 through G.S. 58-18-25 is repealed.

14
15 **PART XVI. INSURANCE HOLDING COMPANY SYSTEMS.**

16 **SECTION 16.1.** G.S. 58-19-5(5) reads as rewritten:

17 "(5) "Person" means an individual, corporation, partnership, limited
18 liability company, association, joint stock company, trust,
19 unincorporated organization, or any similar entity or any combination
20 of the foregoing acting in concert."

21 **SECTION 16.2.** The introductory paragraph of G.S. 58-19-10(b) reads as
22 rewritten:

23 "(b) In addition to investments in common stock, preferred stock, debt obligations,
24 and other securities permitted under ~~all other sections of Articles 1 through 64~~ of this
25 Chapter, a domestic insurer may also:"

26 **SECTION 16.3.** G.S. 58-19-10(b)(1) reads as rewritten:

27 "(1) Invest, in common stock, preferred stock, debt obligations, and other
28 securities of one or more subsidiaries, amounts that do not exceed the
29 lesser of ten percent (10%) of ~~such the~~ insurer's admitted assets or fifty
30 percent (50%) of ~~such the~~ insurer's ~~surplus as regards policyholders,~~
31 policyholders' surplus, provided that after ~~such those~~ investments, the
32 insurer's ~~surplus as regards policyholders~~ policyholders' surplus will be
33 reasonable in relation to the insurer's outstanding liabilities and
34 adequate to its financial needs. In calculating the amount of ~~such the~~
35 investments, investments in domestic or foreign insurance subsidiaries
36 and health maintenance organizations shall be excluded, and there
37 shall be included: (i) total net monies or other consideration expended
38 and obligations assumed in the acquisition or formation of a
39 subsidiary, including all organizational expenses and contributions to
40 capital and surplus of ~~such the~~ subsidiary whether or not represented by
41 the purchase of capital stock or issuance of other securities; and (ii) all
42 amounts expended in acquiring additional common stock, preferred

1 stock, debt obligations, and other securities, and all contributions to the
2 capital or surplus, of a subsidiary subsequent to its acquisition or
3 formation;".

4 **SECTION 16.4.** G.S. 58-19-10(b)(3) reads as rewritten:

5 "(3) With the approval of the Commissioner, invest any greater amount in
6 common stock, preferred stock, debt obligations, or other securities of
7 one or more subsidiaries; provided that after such investment the
8 insurer's ~~surplus as regards policyholders~~ policyholders' surplus will be
9 reasonable in relation to the insurer's outstanding liabilities and
10 adequate to its financial needs."

11 **SECTION 16.5.** G.S. 58-19-15(h) reads as rewritten:

12 "(h) The provisions of this section do not apply to any offer, request, invitation,
13 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not
14 having been made or entered into for the purpose and not having the effect of changing
15 or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended
16 within the purposes of this section. Any acquisition of stock of a former domestic
17 mutual insurer by a parent company that occurs in connection with the conversion of a
18 mutual insurer to a stock insurer under G.S. 58-10-10 is not subject to this section,
19 provided that no person acquires control of the parent company."

20 **SECTION 16.6.** G.S. 58-19-25(a) reads as rewritten:

21 "(a) Every insurer that is licensed to do business in this State and that is a member
22 of an insurance holding company system shall register with the Commissioner, except a
23 foreign insurer subject to the registration requirements and standards adopted by statute
24 or regulation in the jurisdiction of its domicile that are substantially similar to those
25 contained in this section and G.S. 58-19-30 or a provision such as the following: ~~Each~~
26 ~~registered insurer shall keep current the information required to be disclosed in its~~
27 ~~registration statement by reporting all material changes or additions within 15 days after~~
28 ~~the end of the month in which it learns of each change or addition. The insurer shall also~~
29 ~~file a copy of its registration statement and any amendments to the statement in each~~
30 ~~state in which that insurer is authorized to do business if requested by the insurance~~
31 ~~regulator of that state. in:~~

32 (1) This section.

33 (2) G.S. 58-19-30(a), G.S. 58-19-30(c), and G.S. 58-19-30(d).

34 (3) G.S. 58-19-30(b) or a statutory or regulatory provision such as the
35 following: Each registered insurer shall keep current the information
36 required to be disclosed in its registration statement by reporting all
37 material changes or additions within 15 days after the end of the month
38 in which it learns of each change or addition. The insurer shall also file
39 a copy of its registration statement and any amendments to the
40 statement in each state in which that insurer is authorized to do
41 business, if requested by the insurance regulator of that state.

1 Any insurer that is subject to registration under this section shall register within 30 days
2 after it becomes subject to registration, and an amendment to the registration statement
3 shall be filed by ~~March 1~~ April 1 of each year for the previous calendar year; unless the
4 Commissioner for good cause shown extends the time for registration or filing, and then
5 within the extended time. All registration statements shall contain a summary, on a form
6 prescribed by the Commissioner, outlining all items in the current registration statement
7 representing changes from the prior registration statement. The Commissioner may
8 require any insurer that is a member of a holding company system that is not subject to
9 registration under this section to furnish a copy of the registration statement or other
10 information filed by the insurance company with the insurance regulator of its
11 domiciliary jurisdiction."

12 **SECTION 16.7.** G.S. 58-19-30(b)(4) reads as rewritten:

13 "(4) All management agreements, service contracts, guarantees, or
14 cost-sharing arrangements."

16 PART XVII. SURPLUS LINES INSURANCE.

17 **SECTION 17.1.** G.S. 58-21-20(a)(2) reads as rewritten:

18 "(2) Qualifies under one of the following subdivisions:

- 19 a. Has capital and surplus or its equivalent under the laws of its
20 domiciliary jurisdiction, which equals either:
- 21 1. This State's minimum capital and surplus requirements
22 under G.S. 58-7-75, or
 - 23 2. Fifteen million dollars (\$15,000,000),
24 whichever is greater, except that nonadmitted insurers already
25 qualified under this Article must have ten million dollars
26 (\$10,000,000) by December 31, 1991, twelve million five
27 hundred thousand dollars (\$12,500,000) by December 31, 1992,
28 and fifteen million dollars (\$15,000,000) by December 31,
29 1993. The requirements of this sub-subdivision may be satisfied
30 by an insurer possessing less than the commitment capital and
31 surplus upon an affirmative finding of acceptability by the
32 Commissioner. The finding shall be based upon such factors as
33 quality of management, capital and surplus of any parent
34 company, company underwriting profit and investment income
35 trends, and the insurer's record and reputation within the
36 industry. In no event shall the Commissioner make an
37 affirmative finding of acceptability when the insurer's capital
38 and surplus is less than four million five hundred thousand
39 dollars (\$4,500,000).

40 In addition, an alien insurer qualifies under this subdivision
41 if it complies with the capital and surplus requirements of this
42 subdivision and maintains in the United States an irrevocable

1 trust fund in either a national bank or a member of the Federal
2 Reserve System, in an amount not less than ~~two million five~~
3 ~~hundred thousand dollars (\$2,500,000)~~ five million four
4 hundred thousand dollars (\$5,400,000) for the protection of all
5 of its policyholders in the United States, and the trust fund
6 consists of cash, securities, letters of credit, or of investment of
7 substantially the same character and quality as those which are
8 eligible investments for the capital and statutory reserves of
9 admitted insurers authorized to write like kinds of insurance in
10 this State. The trust fund, which shall be included in any
11 calculation of capital and surplus or its equivalent, shall have an
12 expiration date which at no time shall be less than five years; or

13 b. In the case of any Lloyd's plans or other similar ~~unincorporated~~
14 ~~group of insurers, which includes individual insurers,~~ consists
15 of unincorporated individual insurers, or a combination of both
16 unincorporated and incorporated insurers, maintains a trust fund
17 in an amount of not less than ~~fifty million dollars (\$50,000,000)~~
18 one hundred million dollars (\$100,000,000) as security to the
19 full amount thereof for all policyholders and creditors in the
20 United States of each member of the group, and the trust shall
21 likewise comply with the terms and conditions established in
22 subdivision (2)a. of this section for alien insurers; and

23 c. In the case of an "insurance exchange" created by the laws of
24 individual states, maintain capital and surplus, or the substantial
25 equivalent thereof, of not less than ~~fifty million dollars~~
26 ~~(\$50,000,000)~~ seventy-five million dollars (\$75,000,000) in the
27 aggregate. For insurance exchanges which maintain funds in an
28 amount of not less than fifteen million dollars (\$15,000,000) for
29 the protection of all insurance exchange policyholders, each
30 individual syndicate shall maintain minimum capital and
31 surplus, or the substantial equivalent thereof, of not less than
32 ~~three million dollars (\$3,000,000).~~ five million dollars
33 (\$5,000,000). If the insurance exchange does not maintain funds
34 in an amount of not less than fifteen million dollars
35 (\$15,000,000) for the protection of all insurance exchange
36 policyholders, each individual syndicate shall meet the
37 minimum capital and surplus requirements of subdivision (2)a.
38 of this section.

39 d. In the case of a group of incorporated insurers under common
40 administration, which has continuously transacted an insurance
41 business outside the United States for at least three years
42 immediately before this time, and which submits to this State's

1 authority to examine its books and records and bears the
2 expense of the examination, and maintains an aggregate
3 policyholders' surplus of not less than ten billion dollars
4 (\$10,000,000,000), and maintains in trust a surplus of not less
5 than one hundred million dollars (\$100,000,000) for the benefit
6 of United States surplus lines policyholders of any member of
7 the group, and each insurer maintains capital and surplus of not
8 less than twenty-five million dollars (\$25,000,000) per
9 company."

10 **SECTION 17.2.** G.S. 58-21-30 reads as rewritten:

11 **"§ 58-21-30. Withdrawal of eligibility from a surplus lines insurer.**

12 If at any time the Commissioner has reason to believe that an eligible surplus lines
13 insurer:

- 14 (1) Is in unsound financial ~~condition~~condition or has acted in an
15 untrustworthy manner,
16 (2) Is no longer eligible under G.S. 58-21-20,
17 (3) Has willfully violated the laws of this State, or
18 (4) Does not make reasonably prompt payment of just losses and claims in
19 this State or elsewhere, the Commissioner may declare it ineligible.
20 The Commissioner shall promptly mail notice of all such declarations
21 to each surplus lines licensee."
22

23 **PART XVIII. RISK RETENTION GROUPS.**

24 **SECTION 18.** G.S. 58-22-10(3) reads as rewritten:

- 25 "(3) "Hazardous financial condition" means that, based on its present or
26 reasonably anticipated financial condition, a risk retention ~~group,~~
27 group is insolvent or, although not yet financially impaired or
28 insolvent, is unlikely to be able:
29 a. To meet obligations to policyholders with respect to known
30 claims and reasonably anticipated claims; or
31 b. To pay other obligations in the normal course of business."
32

33 **PART XIX. INSURANCE COMPANY RECEIVERSHIPS.**

34 **SECTION 19.** G.S. 58-30-75(7) reads as rewritten:

- 35 "(7) Without first obtaining the written consent of the ~~Commissioner~~
36 ~~pursuant to G.S. 58-7-150, Commissioner,~~ the insurer has (i)
37 transferred, or attempted to transfer, in a manner contrary to Article 19
38 of this Chapter, substantially its entire property or business, or (ii) has
39 entered into any transaction, the effect of which is to merge,
40 consolidate, or reinsure substantially its entire property or business in
41 or with the property or business of any other person."
42

PART XX. MANAGING GENERAL AGENTS.**SECTION 20.1.** G.S. 58-34-2(a) reads as rewritten:

"(a) As used in this Article:

(1) "Control", including the terms "controlling", "controlled by", and "under common control", means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(1a) "Custodial agreement" means any agreement or contract under which any person is delegated authority to safekeep assets of the insurer.

(2) "Insurer" means a domestic insurer but does not mean a reciprocal regulated under Article 15 of this Chapter.

(2a) "Management contract" means any agreement or contract under which any person is delegated management duties or control of an insurer or transfers a substantial part of any major function of an insurer, such as adjustment of losses, production of business, investment of assets, or general servicing of the insurer's business.

(3) "Managing general agent" or "MGA" means any person who manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with persons under common control, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced: (i) adjusts or pays any claims, or (ii) negotiates reinsurance on behalf of the insurer. "MGA" does not mean an employee of the insurer; an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Article 19 of this Chapter, and whose compensation is not based on the volume of premiums written; a person who, under Article 15 of this Chapter, is designated and authorized by subscribers as the attorney-in-fact for a reciprocal having authority to obligate them on reciprocal and other insurance contracts; or a U.S. Manager of the United States branch of an alien insurer.

1 (4) "Qualified actuary" means a person who meets the standards of a
2 qualified actuary as specified in the NAIC Annual Statement
3 Instructions, as amended or clarified by rule, order, directive, or
4 bulletin of the Department, for the type of insurer for which the MGA
5 is establishing loss reserves.

6 (5) "Underwrite" means the authority to accept or reject risk on behalf of
7 the insurer."

8 **SECTION 20.2.** G.S. 58-34-2(j) reads as rewritten:

9 "(j) The Commissioner shall disapprove any such contract that:

10 (1) Does not contain the required contract provisions specified in
11 subsection (d) of this section;

12 (2) Subjects the insurer to excessive charges for expenses or commission;

13 (3) Vests in the MGA any control over the management of the affairs of
14 the insurer to the exclusion of the board of directors of the insurer;

15 (4) Is entered into with any person if the person or its officers and
16 directors are of known bad character or have been affiliated directly or
17 indirectly through ownership, control, management, reinsurance
18 transactions, or other insurance or business relationships with any
19 person known to have been involved in the improper manipulation of
20 assets, accounts, or reinsurance; or

21 (5) Is determined by the Commissioner to contain provisions that are not
22 fair and reasonable to the insurer.

23 Failure of the Commissioner to disapprove any such contract within 30 days after the
24 contract has been filed with the Commissioner constitutes the Commissioner's approval
25 of the contract. An insurer may continue to accept business from ~~such~~the person until
26 the Commissioner disapproves the contract. Any disapproval shall be in writing. The
27 Commissioner ~~may, after a hearing held under G.S. 58-2-50, may~~ withdraw approval of
28 any contract the Commissioner has previously approved ~~upon finding if the~~
29 Commissioner determines that the basis of the original approval no longer exists or that
30 the contract has, in actual operation, shown itself to be subject to disapproval on any of
31 the grounds in this subsection. If the Commissioner withdraws approval of a contract,
32 the Commissioner shall give the insurer notice of, and written reasons for, the
33 withdrawal of approval. The Commissioner shall grant any party to the contract a
34 hearing upon request."

35 **SECTION 20.3.** G.S. 58-34-10 reads as rewritten:

36 "**§ 58-34-10. Management contracts.**

37 (a) Subject to G.S. 58-19-30(b)(4), any domestic insurer that enters into a
38 management contract or custodial agreement must file that contract or agreement with
39 the Commissioner on or before its effective date. ~~As used in this section, "management~~
40 ~~contract" means any agreement or contract under which any person is delegated~~
41 ~~management duties or control of an insurer, or transfers a substantial part of any major~~

1 ~~function of an insurer, such as adjustment of losses, production of business, investment~~
2 ~~of assets, or general servicing of the insurer's business.~~

3 (b) Any domestic insurer that has a management contract or custodial agreement
4 shall file a statement with the initial filing of that contract that discloses (i) criteria on
5 which charges to the insurer are based for that contract; (ii) whether management
6 personnel or other employees of the insurer are to be performing management functions
7 and receiving any remuneration therefor through that contract in addition to the
8 compensation by way of salary received directly from the insurer for their services; (iii)
9 whether the contract transfers substantial control of the insurer or any of the powers
10 vested in the board of directors, by statute, articles of incorporation, or bylaws, or
11 substantially all of the basic functions of the insurer's management; (iv) biographical
12 information for each officer and director of the management firm; and (v) other
13 information concerning the contract or the management or custodian firm as may be
14 included from time to time in any registration forms adopted or approved by the
15 Commissioner. ~~Such~~The statement shall be filed on a form prescribed by the
16 Commissioner.

17 (c) Any domestic insurer that amends or cancels a management contract or
18 custodial agreement filed ~~pursuant to~~under subsection (a) of this section shall notify the
19 Commissioner ~~thereof~~ within 15 business days after the amendment or cancellation. If
20 the contract is amended, the notice shall provide a copy of the amended contract and
21 shall disclose if the amendment affects any of the items in subsection (b) of this section.
22 The Commissioner may prescribe a form to be used to provide notice under this
23 subsection.

24 (d) Any domestic insurer that has a management contract or custodial agreement
25 shall file a statement on or before March 1 of each year, for the preceding calendar year,
26 disclosing (i) total charges incurred by the insurer under the contract; (ii) any salaries,
27 commissions, or other valuable consideration paid by the insurer directly to any officer,
28 director, or shareholder of the management or custodian firm; and (iii) other information
29 concerning the contract or the management or custodian firm as may be included from
30 time to time in any registration forms adopted or approved by the Commissioner. The
31 Commissioner may prescribe a form to be used to provide the information required by
32 this subsection.

33 (e) Any domestic insurer that has a management contract may request an
34 exemption from the filing requirements of this section if the contract is for a group of
35 affiliated insurers on a pooled funds basis or service company management basis, where
36 costs to the individual member insurers are charged on an actually incurred or closely
37 estimated basis. The request for an exemption must be in writing, must explain the basis
38 for the exemption, and must be received by the Commissioner on or before the effective
39 date of the contract. As used in this subsection, "affiliated" has the same meaning as in
40 G.S. 58-19-5(1). Management contracts exempted under this subsection must still be
41 reduced to written form."

42 **SECTION 20.4.** G.S. 58-34-15 reads as rewritten:

1 **"§ 58-34-15. Grounds for disapproval.**

2 (a) The Commissioner must disapprove any management contract or custodial
3 agreement filed under G.S. 58-34-10 if, at any time, the Commissioner finds:

4 (1) That the service or management charges are based upon criteria
5 unrelated either to the managed insurer's profits or to the reasonable
6 customary and usual charges for ~~such~~the services or are based on
7 factors unrelated to the value of ~~such~~the services to the insurer; or

8 (2) That management personnel or other employees of the insurer are to be
9 performing management functions and receiving any remuneration
10 ~~therefor~~for those functions through the management or service contract
11 in addition to the compensation by way of salary received directly
12 from the insurer for their services; or

13 (3) That the contract would transfer substantial control of the insurer or
14 any of the powers vested in the board of directors, by statute, articles
15 of incorporation, or bylaws, or substantially all of the basic functions
16 of the insurance company management; or

17 (4) That the contract contains provisions that would be clearly detrimental
18 to the best interest of policyholders, stockholders, or members of the
19 insurer; or

20 (5) That the officers and directors of the management or custodial firm are
21 of known bad character or have been affiliated, directly or indirectly,
22 through ownership, control, management, reinsurance transactions, or
23 other insurance or business relations with any person known to have
24 been involved in the improper manipulation of assets, accounts, or
25 reinsurance.

26 (6) That the custodial agreement is not substantially the same as the form
27 adopted by the Commissioner.

28 (b) If the Commissioner disapproves any management ~~contract,~~contract or
29 custodial agreement, notice of ~~such action~~the disapproval shall be given to the insurer
30 ~~assigning~~stating the reasons ~~therefor~~for the disapproval in writing. The Commissioner
31 shall grant any party to the contract a ~~hearing upon request according to G.S. 58-2-~~
32 ~~50~~hearing if the party requests a hearing."

33 **SECTION 20.5.** G.S. 58-67-30 reads as rewritten:

34 **"§ 58-67-30. Management and ~~exclusive contracts.~~exclusive agreements; custodial**
35 **agreements.**

36 (a) No health maintenance organization shall enter into an exclusive ~~agency~~
37 ~~contract or management contract~~agency, management, or custodial agreement unless
38 the ~~contract~~ agreement is first filed with the Commissioner and approved under this
39 section within 45 days after filing or such reasonable extended period as the
40 Commissioner shall specify by notice that is given within the 45 day period.

1 (b) The Commissioner shall disapprove ~~a contract~~ an agreement submitted under
2 subsection (a) of this section if ~~he finds that~~ the Commissioner determines that the
3 agreement:

- 4 (1) ~~It subjects~~ Subjects the health maintenance organization to excessive
5 charges;
- 6 (2) ~~The contract extends~~ Extends for an unreasonable period of time;
- 7 (3) ~~The contract does~~ Does not contain fair and adequate standards of
8 performance;
- 9 (4) ~~The persons empowered~~ Enables persons under the contract to manage
10 the health maintenance organization ~~are not who are not~~ are not sufficiently
11 trustworthy, competent, experienced, and free from conflict of interest
12 to manage the health maintenance organization with due regard for the
13 interests of its enrollees, creditors, or the public; or
- 14 (5) ~~The contract contains~~ Contains provisions that impair the interests of
15 the organization's enrollees, creditors, or the public."
16

17 PART XXI. SELF-INSURED WORKERS' COMPENSATION.

18 **SECTION 21.1.** G.S. 58-47-60(9) reads as rewritten:

19 "(9) "Hazardous financial condition" means that, based on its present or
20 reasonably anticipated financial condition, a person is insolvent or,
21 although not financially impaired or insolvent, is unlikely to be ~~able to~~
22 ~~meet obligations for known claims and reasonably anticipated claims~~
23 ~~or to pay other obligations in the normal course of business.~~ able:

24 a. To meet obligations for known claims and reasonably
25 anticipated claims; or

26 b. To pay other obligations in the normal course of business."

27 **SECTION 21.2.** G.S. 58-47-80 reads as rewritten:

28 "**§ 58-47-80. Assets and invested assets.**

29 Funds shall be held and invested by the board under G.S. 58-7-160, 58-7-162,
30 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, ~~58-7-177,~~
31 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192,
32 58-7-193, 58-7-195, 58-7-197, ~~and 58-7-200.~~ 58-7-200, and 58-19-10."

33 **SECTION 21.3.** Part 3 of Article 47 of Chapter 58 of the General Statutes,
34 comprising G.S. 58-47-210 through G.S. 58-47-220, is repealed.
35

36 PART XXII. CONTINUING CARE RETIREMENT COMMUNITIES.

37 **SECTION 22.1.** G.S. 58-64-005(a) reads as rewritten:

38 "(a) No provider shall engage in the business of offering or providing continuing
39 care in this State without a license to do so obtained from the Commissioner as provided
40 in this Article. It is a Class 1 misdemeanor for any person, other than a provider licensed
41 under this Article, to advertise or market to the general public any product similar to
42 continuing care through the use of such terms as 'life care', 'continuing care', or

1 'guaranteed care for life', or similar terms, words, or phrases. The licensing process may
2 involve a series of steps pursuant to rules adopted by the Commissioner under this
3 Article."

4 **SECTION 22.2.** G.S. 58-64-20 is amended by adding the following new
5 subsections:

6 "(e) The disclosure statement shall be in plain English and in language
7 understandable by a layperson and combine simplicity and accuracy to fully advise
8 residents of the items required by this section.

9 (f) The Department may require a provider to alter or amend its disclosure statement
10 in order to provide full and fair disclosure to prospective residents. The Department may
11 also require the revision of a disclosure statement which it finds to be unnecessarily
12 complex, confusing or illegible."

13 **SECTION 22.3** G.S. 58-64-40(b) reads as rewritten:

14 "(b) The board of directors or other governing body of a facility or its designated
15 representative shall hold ~~annual~~ semiannual meetings with the residents of the facility
16 for free discussions of subjects including, but not limited to, income, expenditures, and
17 financial trends and problems as they apply to the facility and discussions of proposed
18 changes in policies, programs, and services. Upon request of the most representative
19 residents' organization, a member of the governing body of the provider, such as a
20 board member, a general partner, or a principal owner shall attend such meetings.
21 Residents shall be entitled to at least seven days advance notice of each meeting. An
22 agenda and any materials that will be distributed by the governing body at the meetings
23 shall remain available upon request to residents."
24

25 **PART XXIII. MISCELLANEOUS TECHNICAL AMENDMENTS.**

26 **SECTION 23.1.** The title of Article 4 of Chapter 58 of the General Statutes
27 reads as rewritten:

28 "Article 4.

29 ~~NAIC Insurance Regulatory Information System Filing Requirements."~~

30 **SECTION 23.2.** G.S. 58-5-63(a) reads as rewritten:

31 "(a) All insurance companies making deposits under this Article are entitled to
32 interest on those ~~deposits, which shall remain in the deposit accounts.~~ deposits. The
33 right to interest is subject to a company paying its insurance policy liabilities. If any
34 company fails to pay those liabilities, interest accruing after the failure is payable to the
35 Commissioner for the payment of those liabilities under subsection (b) of this section."
36

37 **PART XXIV. INSURER INSOLVENCY REFUND THRESHOLDS.**

38 **SECTION 24.1.** G.S. 58-5-70 reads as rewritten:

39 **"§ 58-5-70. Lien of policyholders; action to enforce.**

40 Upon the securities deposited with the Commissioner by any foreign or alien
41 insurance company, the holders of all contracts of the company who are citizens or
42 residents of this State at the time, or who hold policies issued upon property in the State,

1 shall have a lien for ~~the~~ amounts in excess of fifty dollars (\$50.00) due them,
2 respectively, under or in consequence of the contracts for losses, equitable values, return
3 premiums, or otherwise, and shall be entitled to be paid ratably out of the proceeds of
4 the securities, if the proceeds are not sufficient to pay all of the contract holders. When
5 any foreign or alien insurance company depositing securities under this Article becomes
6 insolvent or bankrupt or makes an assignment for the benefit of its creditors, any holder
7 of the contract may begin an action in the Superior Court of the County of Wake to
8 enforce the lien for the benefit of all the holders of the contracts. The Commissioner
9 shall be a party to the suit, and the funds shall be distributed by the court, but the cost of
10 the action shall not be adjudged against the Commissioner."

11 **SECTION 24.2.** G.S. 58-30-10(12) reads as rewritten:

12 "(12) 'General assets' means all real, personal, or other property that is not
13 specifically mortgaged, pledged, hypothecated, deposited, or otherwise
14 encumbered for the security or benefit of specified persons or classes
15 of persons. As to specifically encumbered property, 'general assets'
16 includes all such property or its proceeds in excess of the amount
17 necessary to discharge the sum or sums secured thereby. Assets that
18 are held in trust and on deposit for the security or benefit of all
19 policyholders in more than one state or all policyholders and creditors
20 in more than one state shall be treated as 'general assets'. No person
21 shall have a claim against general assets unless that claim is in an
22 amount in excess of fifty dollars (\$50.00)."

23 **SECTION 24.3.** G.S. 58-30-10(19) reads as rewritten:

24 "(19) 'Special deposit claim' means any claim in excess of fifty dollars
25 (\$50.00) secured by a deposit made pursuant to statute for the security
26 or benefit of a limited class or classes of persons, but does not include
27 any claim secured by general assets."

28 **SECTION 24.4.** G.S. 58-48-95(c) reads as rewritten:

29 "(c) The Association shall account to the Commissioner and the insolvent insurer for
30 all deposits received from the Commissioner under this ~~section, and shall repay to the~~
31 ~~Commissioner a portion of the deposits received, which shall be equal to the total~~
32 ~~amount of the claims against the insolvent insurer that are not covered claims under this~~
33 ~~Article solely by reason that the amount of the claim is fifty dollars (\$50.00) or less.~~
34 ~~This repayment does not prejudice the rights of the Association with regard to the~~
35 ~~portion of the deposit repaid to the Commissioner.~~ section. After the deposits of the
36 insolvent insurer received by the Association under this section have been expended by
37 the Association for the purposes set out in this section, the member insurers shall be
38 assessed as provided by this Article to pay any remaining liabilities of the Association
39 arising under this Article."

40 **SECTION 24.5.** This section applies to estates that are pending.
41

PART XXV. DOMESTIC COMPANY PROTECTED CELLS.

SECTION 25. Article 10 of Chapter 58 of the General Statutes is amended by adding the following new Part:

"Part 4. Protected Cell Companies.

"§ 58-10-75. Purpose and legislative intent.

This Part provides a basis for the creation of protected cells by a domestic insurer as one means of accessing alternative sources of capital and achieving the benefits of insurance securitization. Investors in fully funded insurance securitization transactions provide funds that are available to pay the insurer's insurance obligations or to repay the investors or both. The creation of protected cells is intended to be a means to achieve more efficiencies in conducting insurance securitizations.

"§ 58-10-80. Definitions.

As used in this Part, unless the context requires otherwise, the following terms have the following meanings:

- (1) 'Domestic insurer' means an insurer domiciled in the State of North Carolina.
- (2) 'Fully funded' means that, with respect to any exposure attributed to a protected cell, the market value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to the exposures.
- (3) 'General account' means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.
- (4) 'Indemnity trigger' means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.
- (5) 'Fair value' means the amount at which that asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a forced or liquidation sale. Quoted marked prices in active markets are the best evidence of fair value and shall be used as the basis for the measurement, if available. If a quoted market price is available, the fair value is the product of the number of trading units times market price. If quoted market prices are not available, the estimate of fair value shall be based on the best information available. The estimate of fair value shall consider prices for similar assets and liabilities and the results of valuation techniques to the extent available in the circumstances. Examples of valuation techniques include the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis. Valuation techniques for measuring financial assets and liabilities and

1 servicing assets and liabilities shall be consistent with the objective of
2 measuring fair value. Those techniques shall incorporate assumptions
3 that market participants would use in their estimates of values, future
4 revenues, and future expenses, including assumptions about interest
5 rates, default, prepayment, and volatility. In measuring financial
6 liabilities and servicing liabilities at fair value by discounting
7 estimated future cash flows, an objective is to use discount rates at
8 which those liabilities could be settled in an arm's-length transaction.
9 Estimates of expected future cash flows, if used to estimate fair value,
10 shall be the best estimate based on reasonable and supportable
11 assumptions and projections. All available evidence shall be
12 considered in developing estimates of expected future cash flows. The
13 weight given to the evidence shall be commensurate with the extent to
14 which the evidence can be verified objectively. If a range is estimated
15 for either the amount or timing of possible cash flows, the likelihood
16 of possible outcomes shall be considered in determining the best
17 estimate of future cash flows.

18 (6) 'Nonindemnity trigger' means a transaction term by which relief of the
19 issuer's obligation to repay investors is triggered solely by some event
20 or condition other than the individual protected cell company incurring
21 a specified level of losses under its insurance or reinsurance contracts.

22 (7) 'Protected cell' means an identified pool of assets and liabilities of a
23 protected cell company segregated and insulated by means of this
24 Chapter from the remainder of the protected cell company's assets and
25 liabilities.

26 (8) 'Protected cell account' means a specifically identified bank or
27 custodial account established by a protected cell company for the
28 purpose of segregating the protected cell assets of one protected cell
29 from the protected cell assets of other protected cells and from the
30 assets of the protected cell company's general account.

31 (9) 'Protected cell assets' means all assets, contract rights, and general
32 intangibles, identified with and attributable to a specific protected cell
33 of a protected cell company.

34 (10) 'Protected cell company' means a domestic insurer that has one or
35 more protected cells.

36 (11) 'Protected cell company insurance securitization' means the issuance of
37 debt instruments, the proceeds from which support the exposures
38 attributed to the protected cell, by a protected cell company where
39 repayment of principal or interest, or both, to investors under the
40 transaction terms is contingent upon the occurrence or nonoccurrence
41 of an event with respect to which the protected cell company is
42 exposed to loss under insurance or reinsurance contracts it has issued.

1 (12) 'Protected cell liabilities' means all liabilities and other obligations
2 identified with and attributable to a specific protected cell of a
3 protected cell company.

4 **"§ 58-10-85. Establishment of protected cells.**

5 (a) A protected cell company may establish one or more protected cells with the
6 prior written approval of the Commissioner of a plan of operation or amendments
7 submitted by the protected cell company with respect to each protected cell in
8 connection with an insurance securitization. Upon the Commissioner's written approval
9 of the plan of operation, which plan shall include the specific business objectives and
10 investment guidelines of the protected cell, the protected cell company, in accordance
11 with the approved plan of operation, may attribute to the protected cell insurance
12 obligations with respect to its insurance business and obligations relating to the
13 insurance securitization and assets to fund the obligations. A protected cell shall have its
14 own distinct name or designation, which shall include the words 'protected cell.' The
15 protected cell company shall transfer all assets attributable to a protected cell to one or
16 more separately established and identified protected cell accounts bearing the name or
17 designation of that protected cell. Protected cell assets must be held in the protected cell
18 accounts for the purpose of satisfying the obligations of that protected cell.

19 (b) All attributions of assets and liabilities between a protected cell and the general
20 account must be in accordance with the plan of operation approved by the
21 Commissioner. A protected cell company may make no other attribution of assets or
22 liabilities between the protected cell company's general account and its protected cells.
23 Any attribution of assets and liabilities between the general account and a protected cell,
24 or from investors in the form of principal on a debt instrument issued by a protected cell
25 company in connection with a protected cell company securitization, must be in cash or
26 in readily marketable securities with established market values.

27 (c) The creation of a protected cell does not create, with respect to that protected
28 cell, a legal person separate from the protected cell company. Amounts attributed to a
29 protected cell under this Chapter, including assets transferred to a protected cell
30 account, are owned by the protected cell company, and the protected cell company may
31 not be, or may not hold itself out to be, a trustee with respect to those protected cell
32 assets of that protected cell account. Notwithstanding the provisions of this subsection,
33 the protected cell company may allow for a security interest to attach to protected cell
34 assets or a protected cell account when in favor of a creditor of the protected cell and
35 otherwise allowed under applicable law.

36 (d) This Part does not prohibit the protected cell company from contracting with or
37 arranging for an investment advisor, commodity trading advisor, or other third party to
38 manage the protected cell assets of a protected cell, if all remuneration, expenses, and
39 other compensation of the third-party advisor or manager are payable from the protected
40 cell assets of that protected cell and not from the protected cell assets of other protected
41 cells or the assets of the protected cell company's general account.

1 (e) A protected cell company shall establish administrative and accounting
2 procedures necessary to properly identify the one or more protected cells of the
3 protected cell company and the protected cell assets and protected cell liabilities
4 attributable to the protected cells. It shall be the duty of the directors of a protected cell
5 company to keep protected cell assets and protected cell liabilities:

6 (1) Separate and separately identifiable from the assets and liabilities of
7 the protected cell company's general account; and

8 (2) Attributable to one protected cell separate and separately identifiable
9 from protected cell assets and protected cell liabilities attributable to
10 other protected cells.

11 Notwithstanding the provisions of this subsection, if this subsection is violated, the
12 remedy of tracing is applicable to protected cell assets when commingled with protected
13 cell assets of other protected cells or the assets of the protected cell company's general
14 account. The remedy of tracing is not an exclusive remedy.

15 (f) When establishing a protected cell, the protected cell company shall attribute to
16 the protected cell assets a value at least equal to the reserves and other insurance
17 liabilities attributed to that protected cell.

18 **"§ 58-10-90. Use and operation of protected cells.**

19 (a) The protected cell assets of a protected cell may not be charged with liabilities
20 arising out of any other business the protected cell company may conduct. All contracts
21 or other documentation reflecting protected cell liabilities shall clearly indicate that only
22 the protected cell assets are available for the satisfaction of those protected cell
23 liabilities.

24 (b) The income, gains and losses, realized or unrealized, from protected cell assets
25 and protected cell liabilities must be credited to or charged against the protected cell
26 without regard to other income, gains or losses of the protected cell company, including
27 income, gains or losses of other protected cells. Amounts attributed to any protected cell
28 and accumulations on the attributed amounts may be invested and reinvested without
29 regard to any requirements or limitations of this Chapter and the investments in a
30 protected cell or cells may not be taken into account in applying the investment
31 limitations otherwise applicable to the investments of the protected cell company.

32 (c) Assets attributed to a protected cell must be valued at their fair value on the date
33 of valuation.

34 (d) A protected cell company, with respect to any of its protected cells, shall engage
35 in fully funded indemnity triggered insurance securitization to support in full the
36 protected cell exposures attributable to that protected cell. A protected cell company
37 insurance securitization that is nonindemnity triggered shall qualify as an insurance
38 securitization under the terms of this Chapter only after the Commissioner adopts rules
39 addressing the methods of funding of the portion of this risk that is not indemnity based
40 and addressing accounting, disclosure, risk-based capital treatment, and assessing risks
41 associated with the securitizations. A protected cell company insurance securitization
42 that is not fully funded, whether indemnity triggered or nonindemnity triggered, is

1 prohibited. Protected cell assets may be used to pay interest or other consideration on
2 any outstanding debt or other obligation attributable to that protected cell, and nothing
3 in this subsection may be construed or interpreted to prevent a protected cell company
4 from entering into a swap agreement or other transaction for the account of the
5 protected cell that has the effect of guaranteeing interest or other consideration.

6 (e) In all protected cell company insurance securitizations, the contracts or other
7 documentation effecting the transaction shall contain provisions identifying the
8 protected cell to which the transaction will be attributed. In addition, the contracts or
9 other documentation shall clearly disclose that the assets of that protected cell, and only
10 those assets, are available to pay the obligations of that protected cell. Notwithstanding
11 the provisions of this subsection and subject to the provisions of this Chapter and any
12 other applicable law or rule, the failure to include such language in the contracts or
13 other documentation may not be used as the sole basis by creditors, reinsurers, or other
14 claimants to circumvent the provisions of this Part.

15 (f) A protected cell company shall only be authorized to attribute to a protected cell
16 account the insurance obligations relating to the protected cell company's general
17 account. Under no circumstances may a protected cell be authorized to issue insurance
18 or reinsurance contracts directly to policyholders or reinsureds or have any obligation to
19 the policyholders or reinsureds of the protected cell company's general account.

20 (g) At the cessation of business of a protected cell in accordance with the plan
21 approved by the Commissioner, the protected cell company voluntarily shall close out
22 the protected cell account.

23 **"§ 58-10-95. Reach of creditors and other claimants.**

24 (a) Protected cell assets shall only be available to the creditors of the protected cell
25 company that are creditors with respect to that protected cell and, accordingly, are
26 entitled, in conformity with this Chapter, to have recourse to the protected cell assets
27 attributable to that protected cell and are absolutely protected from the creditors of the
28 protected cell company that are not creditors with respect to that protected cell and who,
29 accordingly, are not entitled to have recourse to the protected cell assets attributable to
30 that protected cell. Creditors with respect to a protected cell are not entitled to have
31 recourse against the protected cell assets of other protected cells or the assets or the
32 protected cell company's general account. Protected cell assets are only available to
33 creditors of a protected cell company after all protected cell liabilities have been
34 extinguished or otherwise provided for in accordance with the plan of operation relating
35 to that protected cell.

36 (b) When an obligation of a protected cell company to a person arises from a
37 transaction, or is otherwise imposed, with respect to a protected cell:

- 38 (1) That obligation of the protected cell company extends only to the
39 protected cell assets attributable to that protected cell, and the person,
40 with respect to that obligation, is entitled to have recourse only to the
41 protected cell assets attributable to that protected cell; and

1 (2) That obligation of the protected cell company does not extend to the
2 protected cell assets of any other protected cell or the assets of the
3 protected cell company's general account, and that person, with
4 respect to that obligation, is not entitled to have recourse to the
5 protected cell assets of any other protected cell or the assets of the
6 protected cell company's general account.

7 (c) When an obligation of a protected cell company relates solely to the general
8 account, the obligation of the protected cell company extends only to, and that creditor,
9 with respect to that obligation, is entitled to have recourse only to the assets of the
10 protected cell company's general account.

11 (d) The activities, assets, and obligations relating to a protected cell are not subject
12 to the provisions of Articles 48 and 62 of this Chapter, and neither a protected cell nor a
13 protected cell company may be assessed by, or otherwise be required to contribute to,
14 any guaranty fund or guaranty association in this State with respect to the activities,
15 assets, or obligations of a protected cell. Nothing in this subsection affects the activities
16 or obligations of an insurer's general account.

17 (e) The establishment of one or more protected cells alone does not constitute a
18 fraudulent conveyance, an intent by the protected cell company to defraud creditors, or
19 the carrying out of business by the protected cell company for any other fraudulent
20 purpose.

21 **"§ 58-10-100. Conservation, rehabilitation, or liquidation of protected cell**
22 **companies;**

23 (a) Notwithstanding any other provision of law or rule, upon an order of
24 conservation, rehabilitation, or liquidation of a protected cell company, the receiver
25 shall deal with the protected cell company's assets and liabilities, including protected
26 cell assets and protected cell liabilities, in accordance with the requirements set forth in
27 this Part.

28 (b) With respect to amounts recoverable under a protected cell company insurance
29 securitization, the amount recoverable by the receiver may not be reduced or diminished
30 as a result of the entry of an order of conservation, rehabilitation, or liquidation with
31 respect to the protected cell company, notwithstanding any provisions to the contrary in
32 the contracts or other documentation governing the protected cell company insurance
33 securitization.

34 **"§ 58-10-105. No transaction of an insurance business.**

35 A protected cell company insurance securitization may not be deemed to be an
36 insurance or reinsurance contract. An investor in a protected cell company insurance
37 securitization, by sole means of this investment, may not be deemed to be conducting an
38 insurance business in this State. The underwriters or selling agents and their partners,
39 directors, officers, members, managers, employees, agents, representatives, and advisors
40 involved in a protected cell company insurance securitization may not be deemed to be
41 conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or
42 consulting business by virtue of their activities in connection with that business.

1 **"§ 58-10-110. Authority to adopt rules.**

2 The Commissioner may adopt rules necessary to effectuate the purposes of this
3 Part."

4
5 **PART XXVI. EFFECT OF HEADINGS.**

6 **SECTION 26.** The headings to the parts of this act are a convenience to the
7 reader and for reference only. The headings do not expand, limit, or define the text of
8 this act.

9
10 **PART XXVII. SEVERABILITY.**

11 **SECTION 27.** If any section or provision of this act is declared
12 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
13 validity of the act as a whole or any part other than the part so declared to be
14 unconstitutional, preempted, or otherwise invalid.

15
16 **PART XXVIII. EFFECTIVE DATES.**

17 **SECTION 28.** Except as otherwise provided in this act, this act is effective
18 when it becomes law.