

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 163

Short Title: Captive Insurance Amendments. (Public)

Sponsors: Representatives L. Johnson, Collins, and Tine (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Insurance.

March 9, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CLARIFYING AND TECHNICAL CHANGES TO THE
3 NORTH CAROLINA CAPTIVE INSURANCE ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Part 9 of Article 10 of Chapter 58 of the General Statutes reads as
6 rewritten:

7 "Part 9. Captive Insurance Companies.

8 "Subpart 1. General Provisions.

9 ...

10 "§ 58-10-340. Definitions.

11 The following definitions apply in this Part:

12 (1) ~~Affiliated~~ Affiliate or affiliated company. – Any ~~company~~ person in the
13 same corporate system as a parent, an industrial insured, ~~or~~ a member
14 ~~organization~~ organization, or a participant by virtue of common ownership,
15 control, operation, or management.

16 ...

17 (9) Captive insurance company. – Any pure captive insurance company,
18 association captive insurance company, industrial insured captive insurance
19 company, risk retention group, protected cell captive insurance company,
20 ~~incorporated cell captive insurance company~~, special purpose captive
21 insurance company, or special purpose financial captive insurance company
22 formed or licensed under this Part.

23 ...

24 (12) Controlled unaffiliated business. – A person meeting all of the following:
25 a. The person is ~~not in the corporate system of a parent and its affiliated~~
26 ~~companies in the case of a pure captive insurance company or is not~~
27 ~~in the corporate system of an industrial insured and its affiliated~~
28 ~~companies in the case of an industrial insured captive insurance~~
29 ~~company.~~ not an affiliate.
30 b. The person has an existing contractual relationship with ~~a parent or~~
31 ~~one of its affiliated companies in the case of a pure captive insurance~~
32 ~~company or with an industrial insured or one of its affiliated~~
33 ~~companies in the case of an industrial insured captive insurance~~
34 ~~company.~~ an affiliate.



- 1 c. The person's risks are managed by a ~~pure-captive insurance company~~
 2 ~~or an industrial insured captive insurance company, as~~
 3 ~~applicable, company, an affiliate of a captive insurance company, a~~
 4 ~~participant, or an affiliate of a participant~~ in accordance with
 5 G.S. 58-10-470.
- 6 (12a) Core. – A protected cell captive insurance company, excluding its protected
 7 cells.
- 8 ...
- 9 (17) Incorporated protected cell. – A protected cell ~~of an incorporated cell captive~~
 10 ~~insurance company~~ that is organized as a corporation or other legal entity
 11 separate from the ~~incorporated protected cell captive insurance company,~~
 12 company of which it is a part.
- 13 (18) ~~Incorporated cell captive insurance company.~~ – A protected cell captive
 14 ~~insurance company that is established as a corporation or other legal entity~~
 15 ~~separate from its incorporated cells that are also organized as separate legal~~
 16 ~~entities.~~
- 17 (17a) Impairment. – When the assets of a captive insurance company or protected
 18 cell are less than the sum of its liabilities and required minimum capital and
 19 surplus.
- 20 ...
- 21 (25) Mutual insurer. – A company owned by its policyholders where no stock is
 22 available for ~~purchase on the stock exchanges,~~ purchase.
- 23 (26) NAIC. – Defined in G.S. 58-1-5.
- 24 (27) Organizational documents. – The documents that must be submitted
 25 pursuant to North Carolina law in order to legally form a business in this
 26 State or to obtain a ~~certificate of authority~~ license to transact business in this
 27 State.
- 28 (28) Parent. – An individual, corporation, limited liability company, partnership,
 29 association, or other entity, or individual that directly or indirectly ~~owns,~~
 30 ~~controls, or holds with power to vote more than fifty percent (50%) of the~~
 31 ~~outstanding voting of any of the following interests:~~ controls a captive
 32 insurance company.
- 33 a. ~~Securities of a pure captive insurance company organized as a stock~~
 34 ~~corporation.~~
- 35 b. ~~Membership interests of a pure captive insurance company organized~~
 36 ~~as a nonprofit corporation.~~
- 37 c. ~~Membership interests of a pure captive insurance company organized~~
 38 ~~as a limited liability company.~~
- 39 d. ~~Securities of an SPFC.~~
- 40 (29) Participant. – ~~A~~ Any person or an entity authorized to be a participant by
 41 G.S. 58-10-515, and any affiliate or any controlled unaffiliated business of a
 42 participant, such person that is insured by a protected cell captive insurance
 43 company, ~~if~~ where the losses of the participant are limited through a
 44 participant contract.
- 45 ...
- 46 (32) Protected cell. – Either of the following:
- 47 a. A separate account established by a protected cell captive insurance
 48 company ~~formed or licensed~~ under this Part, in which ~~an identified~~
 49 ~~pool of assets and liabilities is~~ are segregated and insulated by means
 50 of this Part from the remainder of the protected cell captive insurance
 51 company's assets and liabilities, in accordance with the terms of one

- 1 or more participant contracts to fund the liability of the protected cell
 2 captive insurance company, with respect to the participants as set
 3 forth in the participant contracts.
 4 b. A separate account established and maintained by an SPFC for one
 5 SPFC contract and the accompanying insurance securitization with a
 6 counterparty.
 7 (33) Protected cell assets. – All assets, contract rights, and general intangibles
 8 identified with and attributable to a specific protected cell of a protected cell
 9 captive insurance company.
 10 (34) Protected cell captive insurance company. – Any captive insurance company
 11 meeting all of the following:
 12 a. The minimum capital and surplus required by this Part are provided
 13 by one or more sponsors.
 14 b. The company is ~~formed or~~ licensed under this Part.
 15 c. The company insures the risks of separate participants through
 16 participant contracts.
 17 d. The company funds its liability to each participant through one or
 18 more protected cells and segregates the assets of each protected cell
 19 from the assets of other protected cells and from the assets of the
 20 protected cell captive insurance company's general account.
 21 (35) Protected cell liabilities. – All liabilities and other obligations identified with
 22 and attributed to a specific protected cell of a protected cell captive
 23 insurance company.
 24 (36) Pure captive insurance company. – Any company that insures risks of its
 25 ~~parent and parent, affiliated companies or a companies,~~ controlled
 26 unaffiliated business or businesses, businesses, or any combination of these
 27 entities.
 28 ...
 29 (39) SPFC or Special Purpose Financial Captive. – A captive insurance company
 30 that has received a certificate of authority license from the Commissioner for
 31 the limited purposes provided for in this Part.
 32 ...
 33 (42) Sponsor. – Any person ~~or entity~~ that is approved by the Commissioner to
 34 provide all or part of the capital and surplus required by this Part and to
 35 organize and operate a protected cell captive insurance company.
 36 ...

37 **"§ 58-10-345. Licensing; authority; confidentiality.**

- 38 (a) Any business entity, when permitted by its organizational documents, may apply to
 39 the Commissioner for a license to do any insurance comprised in G.S. 58-7-15; provided,
 40 however, that:
 41 ...
 42 (5) No captive insurance company shall provide personal motor vehicle or
 43 homeowner's insurance coverage or any component ~~thereof of those~~
 44 coverages on a direct basis.
 45 (6) No captive insurance company shall accept or cede reinsurance except as
 46 provided in G.S. 58-10-445 and G.S. 58-10-605.
 47 (7) No captive insurance company shall provide accident and health insurance
 48 on a direct basis.
 49 (8) No captive insurance company shall provide workers' compensation and
 50 employer's liability insurance on a direct basis.

1 (9) No captive insurance company shall provide life insurance or annuities on a
2 direct basis.

3 (10) A special purpose captive insurance company may provide insurance or
4 reinsurance or both for risks as approved by the Commissioner.

5 ...
6 (h) If the Commissioner is satisfied that the documents and statements filed by an
7 applicant ~~captive insurance company business entity~~ comply with this section, then the
8 Commissioner shall grant a license authorizing it to do insurance business in this State.

9 ...
10 **"§ 58-10-355. Organizational examination.**

11 In addition to the processing of the application, an organizational investigation or
12 examination may be performed before an ~~applicant~~ applicant business entity is licensed. Such
13 investigation or examination shall consist of a general survey of the ~~applicant's~~ applicant
14 business entity's corporate records, including charters, bylaws, and minute books; verification
15 of capital and surplus; verification of principal place of business; determination of assets and
16 liabilities; and a review of such other factors as the Commissioner deems necessary.

17 **"§ 58-10-360. Designation of captive manager.**

18 Before licensing, the applicant business entity shall report in writing to the Commissioner
19 the name and address of ~~the any captive~~ manager designated to manage the captive insurance
20 company. The Commissioner shall approve the captive manager and may require the
21 submission of additional information regarding the proposed captive manager in a form and
22 manner as the Commissioner may designate.

23 ...
24 **"§ 58-10-370. Capital and surplus requirements.**

25 (a) No applicant business entity shall be issued a license unless it possesses and
26 maintains unimpaired paid-in capital and surplus of:

27 ...
28 (6) In the case of a special purpose captive insurance company, not less than two
29 hundred fifty thousand dollars ~~(\$250,000)~~ (\$250,000) or such other amount
30 determined by the Commissioner.

31 ...
32 **"§ 58-10-380. Formation of captive insurance companies.**

33 ...
34 (b1) A special purpose captive insurance company may be organized and operated in any
35 form of business organization authorized by the Commissioner.

36 ~~(c) A captive insurance company incorporated or organized in this State shall have not~~
37 ~~less than three incorporators or three organizers of whom not less than one shall be a resident of~~
38 ~~this State.~~

39 ...
40 (m) With the Commissioner's prior written approval, a captive insurance company may
41 establish one or more separate accounts and may allocate to them amounts to provide for the
42 insurance of risks of certain of its parents, affiliates, controlled unaffiliated businesses, or
43 members, as the case may be, subject to the following:

44 (1) The income, gains, and losses, realized or unrealized, from assets allocated
45 to a separate account shall be credited to or charged against the account,
46 without regard to other income, gains, or losses of the captive insurance
47 company.

48 (2) Amounts allocated to a separate account in the exercise of the power granted
49 by this subsection are owned by the captive insurance company, and the
50 captive insurance company may not be nor hold itself out to be a trustee with
51 respect to such amounts.

- 1 (3) Unless otherwise approved by the Commissioner, assets allocated to a
2 separate account shall be valued in accordance with the laws or rules
3 otherwise applicable to the captive insurance company's assets.
- 4 (4) If and to the extent so provided under the applicable contracts, that portion
5 of the assets of any such separate account equal to the reserves and other
6 contract liabilities with respect to such account shall not be chargeable with
7 liabilities arising out of any other business the captive insurance company
8 may conduct.
- 9 (5) No sale, exchange, or other transfer of assets may be made by a captive
10 insurance company between any of its separate accounts or between any
11 other investment account and one or more of its separate accounts unless (i)
12 in the case of a transfer into a separate account, the transfer is made solely to
13 establish the account or to support the operation of the contracts with respect
14 to the separate account to which the transfer is made; and (ii) such transfer,
15 whether into or from a separate account, is made by a transfer of cash or by a
16 transfer of securities having a readily determinable market value, provided
17 that such transfer of securities is approved by the Commissioner. The
18 Commissioner may approve other transfers among such accounts, if, in the
19 Commissioner's opinion, such transfers would be equitable.
- 20 (6) To the extent deemed necessary by a captive insurance company in order to
21 comply with any applicable federal or state laws, the captive insurance
22 company, with respect to any separate account, including any separate
23 account which is a management investment company or a unit investment
24 trust, may provide for persons having an interest in the separate account
25 appropriate voting and other rights and special procedures for the conduct of
26 the business of such account, including special rights and procedures relating
27 to investment policy, investment advisory services, selection of independent
28 public accountants, and the selection of a committee, the members of which
29 need not be otherwise affiliated with such company, to manage the business
30 of such account.

31 **"§ 58-10-385. Directors.**

32 ...

33 (b) No director, officer, or employee of a captive insurance company shall, except on
34 behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage,
35 gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment,
36 or exchange made by or for the captive insurance ~~company, company~~ unless otherwise
37 approved in advance by the Commissioner, but such person may receive reasonable
38 compensation for necessary services rendered to the captive insurance company in his or her
39 usual private, professional, or business capacity.

40 ...

41 **"§ 58-10-390. Conflict of interest.**

42 ...

43 (b) Each officer, director, and key employee shall file such disclosure with the ~~Board of~~
44 ~~Directors~~ yearly ~~board of directors or other governing body of the captive insurance company~~
45 annually.

46 ...

47 **"§ 58-10-405. Annual reports.**

48 ...

49 (b) Prior to ~~March 1 of each year, and prior to March 15 of each year in the case of pure~~
50 ~~captive insurance companies or industrial insured captive insurance companies, year,~~ each
51 captive insurance company shall submit to the Commissioner a report of its financial

1 ~~condition,~~ condition on the preceding December 31, verified by oath of two of its executive
2 officers. Each captive insurance company shall report using generally accepted accounting
3 principles, unless the Commissioner requires, approves, or accepts the use of statutory
4 accounting principles or other comprehensive basis of accounting. The Commissioner may
5 require, approve, or accept any appropriate or necessary modifications of the statutory
6 accounting principles or other comprehensive basis of accounting for the type of insurance and
7 kinds of insurers to be reported upon. The Commissioner may require additional information to
8 supplement such report. Except as otherwise provided, each risk retention group and
9 association captive insurance company shall file its report in the form required by
10 G.S. 58-2-165, and each risk retention group shall comply with the requirements set forth in
11 G.S. 58-4-5. All other captive insurance companies shall report on forms adopted by the
12 Commissioner. G.S. 58-10-345(f) shall apply to each report filed pursuant to this section.
13 Branch captive insurance companies shall file the report required by this section unless
14 otherwise required by G.S. 58-10-545. Special Purpose Financial Captive insurance companies
15 shall report in accordance with G.S. 58-10-625.

16 ...

17 (d) The Commissioner may require any captive insurance company to file a report on
18 its financial condition semiannually, quarterly, monthly, or any other frequency determined by
19 the Commissioner.

20 (e) The Commissioner may waive the filing of the annual report required by this section
21 subject to the filing of the annual audit required by G.S. 58-10-415. A captive insurance
22 company must make a written request for exemption from the annual report at least 30 days
23 prior to the annual report due date. The Commissioner may not simultaneously exempt a
24 captive insurance company from both the annual report and the annual audit requirements.

25 **"§ 58-10-415. Annual audit and statement of actuarial certification-opinion.**

26 ...

27 (d) The annual audit shall consist of the following:

28 (1) Annual audited financial report. –The annual audited financial report shall
29 include the following:

- 30 a. Financial statements. – Financial statements shall be prepared in
31 accordance with generally accepted accounting principles, unless the
32 Commissioner requires, approves, or accepts the use of statutory
33 accounting principles or other comprehensive basis of accounting,
34 with useful or necessary modifications or adaptations required,
35 ~~approved~~ approved, or accepted by the Commissioner, and shall be
36 audited by an independent certified public accountant in accordance
37 with generally accepted auditing standards as determined by the
38 American Institute of Certified Public Accountants. The
39 Commissioner may require that the financial ~~statement~~ statements be
40 supplemented by additional information.
- 41 b. Notes to financial statements. – The notes to financial statements
42 shall be those required by generally accepted accounting principles,
43 or as otherwise approved by the Commissioner, and shall also
44 include a reconciliation of differences, if any, between the audited
45 financial report and the report of the captive insurance company's
46 financial condition filed with the Commissioner in accordance with
47 G.S. 58-10-405(b).
- 48 c. Related required auditor communications. – Copies of related
49 required auditor communications in accordance with generally
50 accepted auditing standards.

1 (2) Certified public accountant's affirmation. – The certified public accountant
2 shall furnish a written statement in the engagement letter or other document
3 submitted to the captive insurance company that the certified public
4 accountant is aware ~~of of~~, and will comply ~~with~~ with, the responsibilities
5 imposed by G.S. 58-10-420(b) and G.S. 58-10-420(c).

6 (5) ~~Certification of loss reserves and loss expense reserves. – The annual audited
7 financial report shall be filed with a Statement of Actuarial Opinion
8 evaluating the captive insurance company's loss reserves and loss expense
9 reserves. The individual who prepares the Statement of Actuarial Opinion
10 shall be a Fellow of the Casualty Actuarial Society, a member in good
11 standing of the American Academy of Actuaries, or an individual who has
12 demonstrated competence in loss reserve evaluation to the Commissioner.
13 Certification shall be in such form as the Commissioner deems appropriate.~~

14 (e) Every captive insurance company, unless otherwise exempted by the Commissioner,
15 shall annually submit with the annual audited financial report the opinion of an appointed
16 actuary entitled, "Statement of Actuarial Opinion," evaluating the captive insurance company's
17 loss reserves and loss expense reserves. The individual who prepares the Statement of Actuarial
18 Opinion shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the
19 American Academy of Actuaries, or an individual who has demonstrated to the Commissioner
20 competence in loss reserve evaluation.

21 **"§ 58-10-420. Independent certified public accountants.**

22 (a) A captive insurance company, after becoming subject to this Part, shall within 60
23 ~~days~~ days, if not already disclosed at the time of application, report to the Commissioner in
24 writing, the name and address of the independent certified public accountant retained to
25 conduct the annual audit set forth in G.S. 58-10-415.

26 (b) A captive insurance company shall require its independent certified public
27 accountant to immediately notify in writing an officer and all members of the board of directors
28 or other governing body of the captive insurance company of any determination by the
29 independent certified public accountant that the captive insurance company has materially
30 misstated its financial condition in its report to the Commissioner as required in
31 G.S. 58-10-405. A captive insurance company receiving a notification pursuant to this
32 subsection shall forward a copy of the notification to the Commissioner within five business
33 days after receipt of the notification and shall provide the independent certified public
34 accountant with proof that the notification was forwarded to the Commissioner. If the
35 independent certified public accountant fails to receive the proof within the five-day period
36 required by this subsection, the independent certified public accountant shall within the next
37 five business days submit a copy of the notification to the Commissioner.

38 ...

39 (d) The lead audit partner may not act in that capacity for more than five consecutive
40 years. For purposes of this subsection, lead audit partner means the partner having primary
41 responsibility for the audit. The person shall be disqualified from acting in that or similar
42 capacity for the captive insurance company for a period of five consecutive years. A captive
43 insurance company may make application to the Commissioner for relief from the above
44 rotation requirement on the basis of unusual circumstances. This application should be made at
45 least 30 days before the end of the ~~calendar~~ fiscal year. The Commissioner may consider the
46 following factors in determining if the relief should be granted:

- 47 (1) Number of partners, expertise of the partners, or the number of insurance
48 clients in the firm;
- 49 (2) Premium volume of the captive insurance company; or
- 50 (3) Number of jurisdictions in which the insurer transacts business.

1 (e) Risk retention groups shall comply with Part 7 of Article 10 of this Chapter instead
2 of this section.

3 ...
4 **"§ 58-10-430. Examinations.**

5 (a) Whenever the Commissioner determines it to be prudent, the Commissioner shall
6 ~~visit a captive insurance company and inspect and examine its a captive insurance company's~~
7 affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has
8 complied with this Part. The expenses and charges of the examination shall be paid by the
9 captive insurance company.

10 ...
11 **"§ 58-10-440. Investment requirements.**

12 ...
13 (b) No pure captive insurance company, industrial insured captive insurance company,
14 protected cell captive insurance company, ~~incorporated cell captive insurance company,~~ special
15 purpose captive insurance company, or special purpose financial captive insurance company
16 shall be subject to any restrictions on allowable investments, provided that the Commissioner
17 may prohibit or limit any investment that threatens the solvency or liquidity of any such
18 company.

19 (c) No ~~pure~~ captive insurance company or protected cell shall make a loan to or an
20 investment in its parent ~~company or affiliates~~ company, an affiliated company, a controlled
21 unaffiliated business, or a participant without prior written approval of the Commissioner, and
22 any such loan or investment shall be evidenced by documentation approved by the
23 Commissioner. Loans of minimum capital and surplus funds required by G.S. 58-10-370 are
24 prohibited.

25 ...
26 **"§ 58-10-465. Applicable provisions.**

27 ...
28 (b) The Commissioner may ~~exempt, by rule, regulation, or order,~~ exempt special
29 purpose captive insurance companies, on a ~~case-by-case~~ case-by-case basis, from provisions of
30 this Chapter and any rules established under this Chapter that the Commissioner determines to
31 be inappropriate given the nature of the risks to be insured.

32 **"§ 58-10-470. Establishment of standards regarding risk management.**

33 The Commissioner may adopt rules establishing standards ~~to ensure so~~ that a ~~parent or~~
34 ~~its~~ captive insurance company, a participant, or an affiliated company, or an industrial insured
35 ~~or its affiliated company,~~ company is able to exercise control of the risk management function
36 of any controlled unaffiliated business to be insured by a ~~pure~~ captive insurance ~~company or an~~
37 ~~industrial insured captive insurance company, respectively;~~ company; provided, however, that
38 until such time as rules under this section are adopted, the Commissioner may approve the
39 coverage of such risks by a ~~pure~~ captive insurance ~~company or an industrial insured captive~~
40 ~~insurance company,~~ company on a case-by-case basis.

41 **"§ 58-10-475. Supervision; rehabilitation; liquidation.**

42 Except as otherwise provided in this Part, the terms and conditions set forth in Article 30 of
43 this Chapter shall apply in full to captive insurance companies ~~formed or~~ licensed under this
44 Part.

45 ...
46 **"§ 58-10-485. Violations and penalties.**

47 (a) If, after providing the opportunity for a contested case hearing held in accordance
48 with the provisions of Article 3A of Chapter 150B of the General Statutes, the Commissioner
49 finds that any insurer, person, or entity required to be ~~licensed, permitted,~~ licensed or authorized
50 to transact the business of insurance under this Part has violated any provision of this Part or
51 any rule or regulation authorized by this Part, the Commissioner may order:

- 1 (1) The insurer, person, or entity to cease and desist from engaging in the act or
 2 practice giving rise to the violation.
 3 (2) Payment of a monetary penalty pursuant to G.S. 58-2-70.
 4 (3) The suspension or revocation of the insurer's, person's, or entity's license.
 5 ...

6 **"§ 58-10-490. Inactive captive insurance companies.**

7 (a) As used in this section, unless the context requires otherwise, "inactive captive
 8 insurance company" means a captive insurance company which meets both of the following
 9 criteria:

- 10 (1) The company has ceased transacting the business of insurance.
 11 (2) There are no remaining liabilities associated with policies written or
 12 assumed by the company.

13 (b) The Commissioner may declare a captive insurance company, other than a risk
 14 retention group, an inactive captive insurance company, if such captive insurance company
 15 meets the criteria of subsection (a) of this section.

16 (c) An inactive captive insurance company shall possess and maintain unimpaired
 17 capital and surplus in an amount determined by the Commissioner.

18 (d) An inactive captive insurance company shall not be subject to or liable for the
 19 payment of any tax under Article 8B of Chapter 105 of the General Statutes.

20 (e) The Commissioner may exempt an inactive captive insurance company from any of
 21 the filing and reporting requirements of this Part.

22 ...

23 "Subpart 2. Protected Cell Captive Insurance Companies.

24 ...

25 **"§ 58-10-505. Additional filing requirements for applicant protected cell captive**
 26 **insurance companies.**

27 In addition to the information required by G.S. 58-10-345(c), each applicant protected cell
 28 captive insurance company shall file with the Commissioner all of the following:

29 ...

- 30 (3) All contracts or sample contracts between the applicant and any participants.
 31 (4) ~~Evidence that~~ A statement describing how expenses shall be allocated to each
 32 protected cell in a fair and equitable manner.

33 **"§ 58-10-510. Establishment of protected cells.**

34 (a) A protected cell captive insurance company ~~formed or~~ licensed under this Part may
 35 establish and maintain one or more incorporated or unincorporated protected cells, to insure
 36 risks of one or more participants, subject to the following conditions:

37 ...

- 38 (5) ~~An incorporated protected cell may be organized and operated in any form~~
 39 ~~of business organization authorized by the Commissioner. Each incorporated~~
 40 ~~protected cell of a protected cell captive insurer shall be treated as a captive~~
 41 ~~insurer for purposes of this Part. Unless otherwise permitted by the~~
 42 ~~organizational documents of a protected cell captive insurer, each~~
 43 ~~incorporated protected cell of the protected cell captive insurer must have~~
 44 ~~the same directors, secretary, and registered office as the protected cell~~
 45 ~~captive insurer.~~

- 46 (6) All attributions of assets and liabilities between a protected cell and the
 47 general account shall be in accordance with the ~~plan~~ plans of operation and
 48 participant contracts approved by the Commissioner. ~~No other attribution of~~
 49 ~~assets or liabilities shall be made by a protected cell captive insurance~~
 50 ~~company between the protected cell captive insurance company's general~~
 51 ~~account and its protected cells. Any attribution of assets and liabilities~~

1 between the general account and a protected cell shall be in cash or in
2 readily marketable securities with established market values.

3 ...
4 (j) ~~All attributions of assets and liabilities to the protected cells and the general account
5 shall be in accordance with the plan of operation approved by the Commissioner. No other
6 attribution of assets or liabilities shall be made by a protected cell captive insurance company
7 between its general account and any protected cell, or between any protected cells. The
8 protected cell captive insurance company shall attribute all insurance obligations, assets, and
9 liabilities relating to a reinsurance contract entered into with respect to a protected cell to such
10 protected cell. The performance under such reinsurance contract and any tax benefits, losses,
11 refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell
12 captive insurance company is a party, including any payments made by or due to be made to
13 the protected cell captive insurance company pursuant to the terms of such agreement, shall
14 reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that
15 are attributed to such protected cell.~~

16 (k) In connection with the ~~conservation, rehabilitation, rehabilitation~~ or liquidation of a
17 protected cell or a protected cell captive insurance company, the assets and liabilities of a
18 protected cell shall, to the extent the Commissioner determines they are separable, at all times
19 be kept separate from and shall not be commingled with those of other protected cells and the
20 protected cell captive insurance ~~company~~company's general account.

21 (l) Each protected cell captive insurance company shall annually file with the
22 Commissioner such financial reports as required by the Commissioner. Any such financial
23 report shall include without limitation ~~accounting statements~~a consolidating schedule detailing
24 the financial experience of each protected cell.

25 (m) Each protected cell captive insurance company shall notify the Commissioner in
26 writing within 10 business days of any protected cell that is impaired, insolvent~~insolvent~~, or
27 otherwise unable to meet its claim or expense obligations.

28 (n) No participant contract shall take effect without the Commissioner's prior written
29 approval. The addition of each new protected cell, the withdrawal of any participant, or the
30 termination of any existing protected cell shall constitute a change in the plan of operation
31 requiring the Commissioner's prior written approval.

32 (o) ~~The~~If required by the Commissioner, the business written by a protected cell
33 captive insurance company, with respect to each protected ~~cell~~, ~~must be secured by one of the~~
34 ~~following methods:~~cell shall be:

- 35 (1) ~~Fronted by an insurance company licensed under the laws of any~~
36 ~~state, approved by the Commissioner.~~
- 37 (2) Reinsured by a reinsurer ~~authorized or approved by this State.~~the
38 Commissioner.
- 39 (3) Secured by a trust fund in the United States for the benefit of policyholders
40 and claimants, funded by an irrevocable letter of credit, or other arrangement
41 that is acceptable to the Commissioner. ~~The amount of security provided~~
42 ~~shall be no less than the reserves associated with those liabilities which are~~
43 ~~neither fronted nor reinsured, including reserves for losses, allocated loss~~
44 ~~adjustment expenses, incurred but not reported losses, and unearned~~
45 ~~premiums for business written through the participant's protected cell.~~ The
46 Commissioner may require the protected cell captive insurance company to
47 increase the funding of any security arrangement established under this
48 subdivision. If the form of security is a letter of credit, the letter of credit
49 shall be issued by a bank approved by the Commissioner. A trust maintained
50 pursuant to this subdivision shall be established in a form and upon such
51 terms approved by the Commissioner.

1 (p) Notwithstanding this Chapter or other laws of this State, and in addition to
2 G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company
3 where the Commissioner determines that one or more protected cells remain solvent, the
4 Commissioner may separate such cells from the protected cell captive insurance company and
5 may allow, on application of the protected cell captive insurance ~~company, company or a~~
6 protected cell's participant, for the conversion or transfer of such protected cells into one or
7 more new or existing protected cell captive insurance companies, or one or more other captive
8 insurance companies, pursuant to such plan or plans of operation as the Commissioner deems
9 acceptable.

10 (q) A protected cell of a protected cell captive insurance company may be transferred to
11 another protected cell captive insurance company or may be converted into another captive
12 insurance company upon the approval of a transfer agreement or conversion plan by the
13 Commissioner. All assets and liabilities of the protected cell immediately before the transfer or
14 conversion shall remain the assets and liabilities after the transfer or conversion. All actions
15 and other legal proceedings which were pending by or against the protected cell immediately
16 prior to the transfer or conversion may be continued by or against the protected cell or the
17 captive into which the protected cell converts.

18 (r) A protected cell of a protected cell captive insurance company may enter into a
19 contract with its protected cell captive insurance company or with another protected cell of the
20 protected cell captive insurance company that shall be enforceable as if each protected cell of
21 the protected cell captive insurance company were a separate legal entity, even if the protected
22 cell is not organized as an incorporated protected cell.

23 **"§ 58-10-512. Incorporated protected cells.**

24 (a) A protected cell of a protected cell captive insurance company may be formed as an
25 incorporated protected cell.

26 (b) The articles of incorporation or articles of organization of an incorporated protected
27 cell shall refer to the protected cell captive insurance company for which it is a protected cell
28 and shall state that the protected cell is incorporated or organized for the limited purposes
29 authorized by the protected cell captive insurance company's license.

30 (c) An incorporated protected cell may be organized and operated in any form of
31 business organization authorized by the Commissioner. Unless otherwise permitted by the
32 organizational documents of a protected cell captive insurance company, each incorporated
33 protected cell of the protected cell captive insurance company must have the same directors,
34 secretary, and registered office as the protected cell captive insurance company.

35 (d) In addition to the information required to be filed pursuant to G.S. 58-10-510(a)(1),
36 a protected cell captive insurance company shall meet the requirements of G.S. 58-10-345(c)(1)
37 for each incorporated protected cell. Other documents related to the incorporated protected cell
38 shall be filed with the Commissioner as required before issuing policies of insurance.

39 (e) It is the intent of the General Assembly under this section to provide protected cell
40 captive insurance companies with the option to establish one or more protected cells as a
41 separate corporation or other legal entity. This section shall not be construed to limit any rights
42 or protections applicable to protected cells that are not incorporated protected cells.

43 (f) Subject to the prior written approval of the protected cell captive insurance company
44 and of the Commissioner, an incorporated protected cell shall be entitled to enter into contracts
45 and undertake obligations in its own name and for its own account. In the case of a contract or
46 obligation to which the protected cell captive insurance company is not a party, either in its
47 own name and for its own account or on behalf of a protected cell, the counterparty to the
48 contract or obligation shall have no right or recourse against the protected cell captive
49 insurance company and its assets other than against assets properly attributable to the
50 incorporated protected cell that is a party to the contract or obligation.

51 **"§ 58-10-513. Cell shares and cell dividends.**

1 (a) A protected cell captive insurance company may create and issue shares from any of
2 its protected cells, the proceeds of which shall be included in the assets attributable to the cell
3 from which the cell shares were issued.

4 (b) The proceeds of the issue of shares other than cell shares created and issued by a
5 protected cell captive insurance company shall be included in the protected cell captive
6 insurance company's general account.

7 (c) A protected cell captive insurance company may pay dividends to cell shareholders
8 from assets attributable to such cell in accordance with the provisions of G.S. 58-10-375.

9 **"§ 58-10-515. Participation-Participants in a protected cell captive insurance company.**

10 (a) ~~Associations, corporations, limited liability companies, partnerships, trusts, and~~
11 ~~other business entities~~Any person may be participants-a participant in any-a protected cell
12 captive insurance company formed or licensed under this Part.

13 ...
14 (d) ~~A~~Except as otherwise approved by the Commissioner, a participant shall insure
15 only its own risks and the risks of its affiliates and controlled unaffiliated businesses through a
16 protected cell captive insurance company.

17 **"§ 58-10-517. Company to inform persons they are dealing with protected cell captive**
18 **insurance company.**

19 A protected cell captive insurance company shall inform any person with whom it transacts
20 business that it is a protected cell captive insurance company, and for the purposes of that
21 transaction, identify or specify the protected cell with which that person is transacting, unless
22 that transaction is not a transaction with a particular protected cell, in which case it shall
23 specify that the transaction is with the protected cell captive insurance company's core.

24 ...
25 **"§ 58-10-525. Application of supervision, rehabilitation, and liquidation provisions to**
26 **protected cell captive insurance companies.**

27 (a) Except as otherwise provided in this Part, Article 30 of this Chapter shall apply to a
28 protected cell captive insurance ~~company~~company and to each protected cell of a protected cell
29 captive insurance company.

30 (b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell or a
31 protected cell captive insurance company, the Commissioner or receiver shall manage the
32 assets and liabilities of the protected cell captive insurance ~~company~~company, including assets
33 and liabilities attributed to protected cells, pursuant to this Part.

34 ...
35 "Subpart 3. Branch Captive Insurance Companies.

36 ...
37 **"§ 58-10-535. Security for payment of branch captive insurance company liabilities.**

38 ...
39 (b) Subject to the prior approval of the Commissioner, the amounts required in
40 subsection (a) of this section may be held in the form of:

41 (1) A trust formed under a trust agreement and funded by assets acceptable to
42 the Commissioner.

43 (2) An irrevocable letter of credit issued ~~or confirmed~~ by a bank approved by
44 the Commissioner.

45 ...
46 **"§ 58-10-540. Petition for certificate of authority.**

47 ~~In the case of an alien captive insurance company seeking to become licensed as a branch~~
48 ~~captive insurance company, the alien captive insurance company shall petition the~~
49 ~~Commissioner to issue a certificate setting forth the Commissioner's finding that, after~~
50 ~~considering the character, reputation, financial responsibility, insurance experience, and~~
51 ~~business qualifications of the officers and directors of the alien captive insurance company, the~~

1 ~~licensing and maintenance of the branch operations will promote the general good of the State.~~
2 ~~After the Commissioner issues a certificate of authorization, the alien captive insurance~~
3 ~~company shall comply with all other applicable State statutes or common law.~~

4 ...

5 "Subpart 4. Special Purpose Financial Captives.

6 ...

7 **"§ 58-10-560. Controlling provisions when conflict exists; exemptions.**

8 ...

9 (b) ~~The Commissioner, by rule, regulation, or order,~~ Commissioner may exempt an
10 SPFC or its protected cells, on a case-by-case basis, from this Part if the Commissioner
11 determines regulation under this Part to be inappropriate given the nature of the risks to be
12 insured.

13 **"§ 58-10-565. Application requirements.**

14 ...

15 (l) ~~To ensure minimize the likelihood that~~ the proposed plan of operation is ~~not~~
16 hazardous to any counterparty, the Commissioner may require reasonable safeguards in the
17 SPFC's plan of operation where applicable and appropriate in the circumstance, including,
18 without limitation, that certain assets of the SPFC be held in a trust to secure the obligations of
19 the SPFC to a counterparty under an SPFC contract.

20 ...

21 **"§ 58-10-600. Asset management agreements.**

22 An SPFC may enter into swap agreements, or other forms of asset management agreements,
23 including guaranteed investment contracts, or other transactions that have the objective of
24 leveling timing differences in funding of up-front or ongoing transaction expenses, or
25 managing asset, credit, or interest rate risk of the investments to ~~ensure minimize the likelihood~~
26 that the investments are not sufficient to assure payment or repayment of the securities, and
27 related interest or principal payments, issued pursuant to an SPFC insurance securitization
28 transaction, or the obligations of the SPFC under the SPFC contract.

29 ...

30 **"§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.**

31 ...

32 (e) Notwithstanding another provision in this Chapter, rules adopted under this Chapter,
33 or another applicable law or regulation, upon any order of rehabilitation or liquidation of a
34 SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and
35 liabilities of the SPFC pursuant to the provisions of this Part. The receiver shall ~~ensure~~
36 ascertain that the assets linked to one protected cell are not applied to the liabilities linked to
37 another protected cell or to the SPFC generally, unless an asset or liability is linked to more
38 than one protected cell, in which case the receiver shall deal with the asset or liability in
39 accordance with the terms of any relevant governing instrument or contract.

40"

41 **SECTION 2.** This act is effective when it becomes law.