

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 647
PROPOSED COMMITTEE SUBSTITUTE S647-PCS35268-MH-12

Short Title: Mutual Insurance Holding Companies.

(Public)

Sponsors:

Referred to:

April 19, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE CREATION OF MUTUAL INSURANCE HOLDING
3 COMPANIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 10 of Chapter 58 of the General Statutes is amended by
6 adding a new Part to read:

7 "Part 8. Mutual Insurance Holding Companies.

8 **"§ 58-10-275. Definitions.**

9 The following definitions apply in this Part:

- 10 (1) Affiliated. – Defined in G.S. 58-19-5.
11 (2) Control. – Defined in G.S. 58-19-5.
12 (3) Domestic mutual insurance company. – An insurance company organized on
13 a mutual plan and incorporated under the laws of North Carolina.
14 (4) Interested person. – With respect to another person, includes any of the
15 following:
16 a. Any affiliated person.
17 b. Any member of the immediate family of any natural person who is
18 an affiliated person of such company.
19 c. Any person or partner or employee of any person who at any time
20 since the beginning of the last two completed fiscal years of such
21 company has acted as legal counsel for such company.
22 d. Any natural person whom the Commissioner by order shall have
23 determined to be an interested person by reason of having had, at any
24 time since the beginning of the last two completed fiscal years of
25 such company, a material business or professional relationship with
26 such company or with the principal executive officer of such
27 company.
28 (5) Intermediate holding company. – A holding company that is a subsidiary of
29 a mutual insurance holding company or part of a holding company system
30 controlled by a mutual insurance holding company subject to the terms and
31 conditions of Article 19 of this Chapter and that either directly or through a
32 subsidiary intermediate holding company has one or more subsidiary
33 reorganized insurance companies of which a majority of the voting shares of



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1 the capital stock would otherwise have been required by this section to be at
2 all times owned by the mutual insurance holding company.

3 (6) Limited application. – An application by a domestic mutual insurance
4 company for reorganization to a mutual insurance holding company which
5 will hold, at all times, one hundred percent (100%) of the stock of its
6 insurance subsidiaries.

7 (7) Majority of the voting shares of the capital stock of the reorganized
8 insurance company. – Shares of the capital stock of a reorganized insurance
9 company which carry the right to cast a majority of the votes entitled to be
10 cast by all of the outstanding shares of the capital stock of the reorganized
11 insurance company for the election of directors and on all other matters
12 submitted to a vote of the shareholders of the reorganized insurance
13 company.

14 (8) Member of the immediate family. – Any parent, spouse of a parent, child,
15 spouse of a child, spouse, brother, or sister, including step and adoptive
16 relationships.

17 (9) Mutual insurance holding company. – A holding company organized on a
18 mutual plan and incorporated under the laws of North Carolina, resulting
19 from the reorganization of a domestic mutual insurance company pursuant to
20 this Part, with one or more stock insurance holding company subsidiaries or
21 stock insurance company subsidiaries.

22 (10) Plan of reorganization. – A plan to reorganize a domestic mutual insurance
23 company by forming a mutual insurance holding company.

24 (11) Standard application. – An application by a domestic mutual insurance
25 company for reorganization to a mutual insurance holding company which
26 may sell interests in its subsidiaries to third parties.

27 (12) Stock. – Any security evidencing an equity interest in the issuing entity.

28 (13) Stock offering. – Any proposed sale, exchange, transfer, or other change of
29 ownership of stock or of securities convertible into or exchangeable or
30 exercisable for stock. For the purposes of this Article, "stock offering" shall
31 not include any of the following:

32 a. An offering of preferred stock which is not convertible or
33 exchangeable into common stock and which has no ordinary voting
34 rights.

35 b. A transfer of stock among any of the following:

36 1. A mutual insurance holding company.

37 2. An insurance company subsidiary of a mutual insurance
38 holding company.

39 3. An intermediate holding company subsidiary of a mutual
40 insurance holding company.

41 4. An insurance company subsidiary of an intermediate holding
42 company subsidiary to a mutual insurance holding company.

43 (14) Subsidiary. – Defined in G.S. 58-19-5.

44 **"§ 58-10-280. General provisions.**

45 (a) A domestic mutual insurance company, upon approval of the Commissioner, may
46 reorganize by forming an insurance holding company based upon a mutual plan and by
47 continuing the corporate existence of the reorganizing insurance company as a stock insurance
48 company. If the Commissioner, after a public comment period as provided in G.S. 58-10-285,
49 or, if applicable, a public hearing, is satisfied that the interests of the policyholders are properly
50 protected and that the plan of reorganization is fair and equitable to the policyholders, the
51 Commissioner may approve the proposed plan of reorganization and may require as a condition

1 of approval such modifications of the proposed plan of reorganization as the Commissioner
2 finds necessary for the protection of the policyholders' interests. The Commissioner may retain
3 consultants as provided in G.S. 58-10-285 to assist in the review of the proposed plan. The
4 Commissioner shall retain jurisdiction over a mutual insurance holding company organized
5 under this Part to assure that policyholder interests are protected. All of the initial shares of the
6 capital stock of the reorganized insurance company shall be issued to the mutual insurance
7 holding company. The membership interests of the policyholders of the reorganized insurance
8 company shall become membership interests in the mutual insurance holding company,
9 pursuant to the terms and conditions of the plan of reorganization approved by the
10 Commissioner. Policyholders of the reorganized insurance company shall be members of the
11 mutual insurance holding company in accordance with the articles of incorporation and bylaws
12 of the mutual insurance holding company. The mutual insurance holding company shall at all
13 times own a majority of the voting shares of the capital stock of the reorganized insurance
14 company.

15 (b) A domestic mutual insurance company, after approval by the Commissioner, may
16 reorganize by merging its policyholders' membership interests into a mutual insurance holding
17 company formed under subsection (a) of this section and continuing the corporate existence of
18 the reorganizing insurance company as a stock insurance company subsidiary of the mutual
19 insurance holding company. If the Commissioner is satisfied that the interests of the
20 policyholders are properly protected and that the merger of interests is fair and equitable to the
21 policyholders, the Commissioner may approve the proposed merger of interests and may
22 require as a condition of approval such modifications of the proposed merger of interests as the
23 Commissioner finds necessary for the protection of the policyholders' interests. The
24 Commissioner may retain consultants as provided in G.S. 58-10-285. The Commissioner has
25 jurisdiction over the mutual insurance holding company organized under this Part to assure that
26 policyholder interests are protected. All of the initial shares of the capital stock of the
27 reorganized insurance company shall be issued to the mutual insurance holding company. The
28 membership interests of the policyholders of the reorganized insurance company shall, pursuant
29 to the terms and conditions of the plan of reorganization approved by the Commissioner,
30 become membership interests in the mutual insurance holding company. Policyholders of the
31 reorganized insurance company shall be members of the mutual insurance holding company in
32 accordance with subsection (a) of this section and the articles of incorporation and bylaws of
33 the mutual insurance holding company. The mutual insurance holding company shall at all
34 times own a majority of the voting shares of the capital stock of the reorganized insurance
35 company.

36 (c) A mutual insurance holding company resulting from the reorganization of a
37 domestic mutual insurance company that was organized under Articles 7 and 8 and other
38 applicable provisions of this Chapter shall be incorporated under this Chapter. The articles of
39 incorporation and any amendments to such articles of the mutual insurance holding company
40 shall be subject to approval of the Commissioner in the same manner as those of a mutual
41 insurance company.

42 (d) A mutual insurance holding company is an insurer subject to Article 30 of this
43 Chapter and shall automatically be a party to any proceeding under Article 30 of this Chapter
44 involving an insurance company which, as a result of a reorganization under subsection (a) or
45 (b) of this section, is a subsidiary of the mutual insurance holding company. In any proceeding
46 under Article 30 of this Chapter involving the reorganized insurance company, the assets of the
47 mutual insurance holding company are deemed to be assets of the estate of the reorganized
48 insurance company for purposes of satisfying the claims of the reorganized insurance
49 company's policyholders. A mutual insurance holding company shall not dissolve or liquidate
50 without the approval of the Commissioner or as ordered by the court pursuant to Article 30 of
51 this Chapter.

1 (e) G.S. 58-10-10 and G.S. 58-10-12 are not applicable to a reorganization or merger of
2 interests under this Part. G.S. 58-10-10 and G.S. 58-10-12 are applicable to demutualization of
3 a mutual insurance holding company that resulted from the reorganization of a domestic mutual
4 insurance company organized under this Chapter as if the mutual insurance holding company
5 was a mutual insurance company.

6 (f) A membership interest in a domestic mutual insurance holding company shall not
7 constitute a security as defined in Chapter 78A of the General Statutes.

8 (g) The majority of the voting shares of the capital stock of the reorganized insurance
9 company, which is required by this section to be at all times owned by a mutual insurance
10 holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security
11 interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance
12 holding company or intermediate holding company. Any conveyance, transfer, assignment,
13 pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in, or on the
14 majority of the voting shares of the reorganized insurance company is a violation of this section
15 and shall be void in inverse chronological order of the date of such conveyance, transfer,
16 assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to
17 the shares necessary to constitute a majority of such voting shares. The majority of the voting
18 shares of the capital stock of the reorganized insurance company shall not be subject to
19 execution and levy as provided in Chapter 1 of the General Statutes. The shares of the capital
20 stock of the surviving or new company resulting from a merger or consolidation of two or more
21 reorganized insurance companies or two or more intermediate holding companies that were
22 subsidiaries of the same mutual insurance holding company are subject to the same
23 requirements, restrictions, and limitations to which the shares of the merging or consolidating
24 reorganized insurance companies or intermediate holding companies were subject by this
25 section prior to the merger or consolidation. The ownership of a majority of the voting shares
26 of the capital stock of the reorganized insurance company that are required by this section to be
27 at all times owned by a parent mutual insurance holding company includes indirect ownership
28 through one or more intermediate holding companies in a corporate structure approved by the
29 Commissioner. However, indirect ownership through one or more intermediate holding
30 companies shall not result in the mutual insurance holding company owning less than the
31 equivalent of a majority of the voting shares of the capital stock of the reorganized insurance
32 company. The Commissioner shall have jurisdiction over an intermediate holding company as
33 if it were a mutual insurance holding company.

34 (h) The applicant's articles of incorporation or bylaws, as appropriate, shall require a
35 policyholder vote of approval of the reorganization by a two-thirds majority of the domestic
36 mutual insurance company's policyholders voting on it in person, by proxy, or by mail at a
37 meeting called for the purpose of voting on the reorganization.

38 **"§ 58-10-285. Application; contents; process.**

39 (a) An application shall be designated as either a limited application or a standard
40 application. The filing of a limited application shall not preclude the subsequent filing of an
41 application for approval of an initial sale of stock as provided in G.S. 58-10-315.

42 (b) The application shall be filed in triplicate with the Commissioner and shall include
43 the following items:

44 (1) Designation as a limited or standard application.

45 (2) A plan of reorganization as set forth in G.S. 58-10-290.

46 (3) A plan to obtain the approval of the policyholders in accordance with this
47 Part and the applicant's articles of incorporation and bylaws.

48 (4) A copy of the mutual insurance holding company's proposed articles of
49 incorporation and bylaws specifying all membership rights.

- 1 (5) The names, addresses, and occupational information of all corporate officers
2 and members of the initial mutual insurance holding company board of
3 directors.
- 4 (6) Information sufficient to demonstrate that the financial condition of the
5 applicant will not be diminished upon reorganization.
- 6 (7) A copy of the proposed articles of incorporation and bylaws for any
7 insurance company subsidiary or intermediate holding company subsidiary.
- 8 (8) A "Form A" filing as described in Chapter 11 of Title 11 of the North
9 Carolina Administrative Code.
- 10 (9) A statement that the application is in compliance with all pertinent North
11 Carolina General Statutes and Administrative Rules and that the
12 requirements for a plan of reorganization have been fulfilled.
- 13 (10) An index demonstrating wherein the application information supplied in
14 compliance with this subsection is found.
- 15 (11) The applicable fee required by subsection (f) of this section.
- 16 (12) Any other information requested by the Commissioner at any time during
17 the course of proceedings.

18 (c) Upon receipt and review by the Commissioner of all information provided pursuant
19 to subsection (b) of this section, the Commissioner may establish a period during which the
20 Department will receive and consider public comments on the proposed reorganization. The
21 Commissioner may inform the public of the limited or standard application in a manner deemed
22 appropriate by the Commissioner and may hold a public hearing concerning the application.

23 (d) The Commissioner may contract, at the expense of the person filing the application,
24 with any attorneys, actuaries, economists, accountants, consultants, or other professional
25 advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in
26 reviewing the application. These contracts are personal professional service contracts exempt
27 from Articles 3 and 3C of Chapter 143 of the General Statutes.

28 (e) The expenses of mailing any notices and other materials required by this section
29 shall be borne by the person filing the application.

30 (f) An applicant filing a limited application under this section shall submit with the
31 application under subsection (b) of this section an application fee of two hundred fifty dollars
32 (\$250.00). An applicant filing a standard application under this section shall submit with the
33 application under subsection (b) of this section an application fee of five hundred dollars
34 (\$500.00).

35 **§ 58-10-290. Plan of reorganization.**

36 (a) A limited application plan of reorganization shall include the following provisions:

- 37 (1) Establishing a mutual insurance holding company with at least one stock
38 insurance company subsidiary or one intermediary stock holding company
39 with a stock insurance company subsidiary, the shares of which shall be held
40 exclusively by the mutual insurance holding company.
- 41 (2) Protecting the interests of existing policyholders.
- 42 (3) Ensuring immediate membership in the mutual insurance holding company
43 of all existing policyholders of the reorganizing domestic mutual insurance
44 company.
- 45 (4) Describing a plan providing for membership interests of future
46 policyholders.
- 47 (5) Describing the number of members of the board of directors of the mutual
48 insurance holding company required to be policyholders.
- 49 (6) Demonstrating that, in the event of proceedings under Article 30 of this
50 Chapter involving a stock insurance company subsidiary of the mutual
51 insurance holding company which resulted from the reorganization of a

- 1 domestic mutual insurance company, the assets of the mutual insurance
2 holding company will be available to satisfy the policyholder obligations of
3 the stock insurance company.
- 4 (7) Describing how any accumulation or prospective accumulation of earnings
5 by the mutual insurance holding company in excess of that determined by
6 the board of directors of the mutual insurance holding company to be
7 necessary shall inure to the exclusive benefit of the policyholders of its
8 insurance company subsidiaries who are members.
- 9 (8) Describing the nature and content of the annual report and financial
10 statement to be sent to each member.
- 11 (9) Describing any other relevant matters the applicant deems appropriate.
- 12 (b) A standard application plan of reorganization shall include the following provisions:
- 13 (1) Establishing a mutual insurance holding company with at least one stock
14 insurance company subsidiary or one wholly owned intermediate stock
15 holding company with a stock insurance company subsidiary, the shares of
16 which shall be held exclusively by the wholly owned intermediate holding
17 company.
- 18 (2) Protecting the interests of existing policyholders.
- 19 (3) Ensuring immediate membership in the mutual insurance holding company
20 of all existing policyholders of the reorganizing domestic mutual insurance
21 company.
- 22 (4) Providing for membership interests of future policyholders.
- 23 (5) Describing the number of members of the board of directors of the mutual
24 insurance holding company required to be policyholders.
- 25 (6) Demonstrating that, in the event of proceedings under Article 30 of this
26 Chapter involving a stock insurance company subsidiary of the mutual
27 insurance holding company which resulted from the reorganization of a
28 domestic mutual insurance company, the assets of the mutual insurance
29 holding company will be available to satisfy the policyholder obligations of
30 the stock insurance company.
- 31 (7) Describing how any accumulation or prospective accumulation of earnings
32 by the mutual insurance holding company in excess of that determined by
33 the board of directors of the mutual insurance holding company to be
34 necessary shall inure to the exclusive benefit of the policyholders of its
35 insurance company subsidiaries who are members.
- 36 (8) Describing the nature and content of the annual report and financial
37 statement to be sent to each member.
- 38 (9) Describing the applicant's plan for a stock offering in accordance with the
39 provisions of G.S. 58-10-315.
- 40 (10) Describing any other relevant matters the applicant deems appropriate.
- 41 (c) With regard to either a limited or standard application, the plan of reorganization
42 submitted to the Commissioner shall demonstrate the following:
- 43 (1) Policyholder interests are properly preserved and protected.
- 44 (2) The plan is fair and equitable to policyholders.
- 45 (3) The financial condition of the applicant will not be diminished.
- 46 **§ 58-10-295. Powers of the Commissioner.**
- 47 (a) The Commissioner shall at all times retain jurisdiction over the mutual insurance
48 holding company, its intermediate holding company subsidiaries with stock insurance company
49 subsidiaries, and its stock insurance company subsidiaries.
- 50 (b) Following any public comment period or hearing pursuant to G.S. 58-10-285, the
51 Commissioner by order shall approve, conditionally approve, or deny an application. The

1 Commissioner may require, as a condition of approval of the proposed reorganization,
2 modifications of the proposed plan of reorganization that the Commissioner finds necessary.
3 The applicant shall accept the required modifications by filing appropriate amendments to the
4 proposed plan of reorganization with the Commissioner within 30 days of the date of the
5 Commissioner's order requiring the modifications. If the applicant does not accept the required
6 modifications by failing to file the required amendments to the proposed plan of reorganization
7 within 30 days, the proposed reorganization shall be deemed denied.

8 (c) An approval or conditional approval of a plan of reorganization shall expire if the
9 reorganization is not completed within 210 days after the approval or conditional approval
10 unless the time period is extended by the Commissioner upon a showing of good cause.

11 (d) The Commissioner may revoke approval or conditional approval of an applicant's
12 plan of reorganization in the event the Commissioner finds the applicant has failed to comply
13 with the plan of reorganization. The Commissioner may compel completion of a plan of
14 reorganization unless the plan is abandoned in its entirety, in accordance with the applicant's
15 provisions for governance.

16 (e) Upon completion of all elements of a plan of reorganization, the applicant shall
17 provide a notice of completion to the Commissioner.

18 **"§ 58-10-300. Special financial requirements.**

19 (a) Mutual insurance holding companies and their insurance company subsidiaries and
20 affiliates shall comply with the provisions of Article 19 of this Chapter except as expressly
21 provided in this Part. Mutual insurance holding companies' investments in subsidiaries,
22 including intermediate holding companies, shall not be subject to any of the restrictions on
23 investment activities set forth in G.S. 58-19-10.

24 (b) When a mutual insurance holding company acquires or plans to acquire more than
25 fifty percent (50%) of a stock insurance company, the mutual insurance holding company shall
26 submit to the Commissioner a plan describing any membership interests of policyholders.

27 (c) Each mutual insurance holding company shall supply to the Commissioner, by April
28 1 of each year, an annual statement consisting of the following:

29 (1) An income statement.

30 (2) A balance sheet.

31 (3) A cash flow statement.

32 (4) Complete information on the status of any closed block formed as a part of a
33 plan of reorganization.

34 (5) An investment plan covering all assets.

35 (6) A statement disclosing any intention to pledge, borrow against, alienate,
36 hypothecate, or in any way encumber the assets of the mutual insurance
37 holding company.

38 (d) At least fifty percent (50%) of the net worth of the mutual insurance holding
39 company, based upon generally accepted accounting practices, shall be invested in insurance
40 company subsidiaries. The Commissioner may waive the fifty percent (50%) limitation upon a
41 showing of good cause.

42 (e) No policyholder who is a member of a mutual insurance holding company shall
43 receive on account of such membership interest any payment of a policy credit, dividend, or
44 other distribution unless the payment has been approved by the Commissioner. The
45 Commissioner, if satisfied the proposed payment is fair and equitable to policyholders who are
46 members, may approve the proposed payment and may require as a condition of the approval
47 modification of the proposed payment that the Commissioner finds necessary for the protection
48 of the policyholders.

49 (f) Mutual insurance holding companies shall comply with Part 3 of this Article and
50 shall be considered a domestic insurer for the purposes of compliance with Part 3.

1 "§ 58-10-305. Reorganization of domestic mutual insurer with mutual insurance holding
2 company.

3 A domestic mutual insurance company may apply to reorganize by merging its
4 policyholders' membership interests into a mutual insurance holding company by filing with the
5 Commissioner a joint application with the mutual insurance holding company complying with
6 the provisions of G.S. 58-10-285.

7 "§ 58-10-310. Mergers of mutual insurance holding companies.

8 A mutual insurance holding company may apply to merge with another mutual insurance
9 holding company by filing with the Commissioner a plan of merger and complying with the
10 provisions of Article 19 of this Chapter.

11 "§ 58-10-315. Stock offerings.

12 (a) No stock offering by a mutual insurance holding company, an insurance company
13 subsidiary of a mutual insurance holding company, an intermediate holding company
14 subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an
15 intermediate holding company subsidiary to a mutual insurance holding company shall occur
16 without the prior approval of the Commissioner.

17 (b) Every application for approval of a stock offering shall contain the following
18 information:

- 19 (1) A description of the stock intended to be offered by the applicant, including
20 a description of all shareholder rights.
- 21 (2) The total number of shares authorized to be issued, the estimated number the
22 applicant requests permission to offer, and the intended date or range of
23 dates for the offer.
- 24 (3) A justification for a uniform planned offering price or a justification of the
25 method by which the offering price will be determined.
- 26 (4) The name or names of any underwriter, syndicate member, or placement
27 agent involved and, if known, the name or names of each entity, person, or
28 group of persons to whom the stock offering is to be made who will control
29 five percent (5%) of the total outstanding class of shares, and the manner in
30 which the offer is to be tendered. If any such entity or person is a corporation
31 or business organization, the name of each member of its board of directors
32 or equivalent management team shall be provided along with the name of
33 each member of the board of directors of the offeror. Copies of any filings
34 with the United States Securities and Exchange Commission disclosing
35 intended acquisitions of the stock shall be included in the application.
- 36 (5) A description of stock subscription rights to be afforded members of the
37 mutual insurance holding company in conjunction with the stock offering.
- 38 (6) A detailed description of all expenses to be incurred in conjunction with the
39 stock offering.
- 40 (7) An explanation of how funds raised by the stock offering are to be used.
- 41 (8) Any other information requested by the Commissioner.

42 (c) No application regarding a planned stock offering shall be approved unless the plan
43 contains the following provisions:

- 44 (1) Prohibiting officers, directors, and insiders of the mutual insurance holding
45 company and its subsidiaries and affiliates from purchase or ownership of
46 shares of the stock offering, or issuance of stock options to or for the benefit
47 of such officers, directors, and insiders, in excess of five percent (5%) of the
48 stock offering. The Commissioner may waive this requirement upon a
49 showing of good cause. This subdivision does not limit the rights of officers,
50 directors, and insiders from exercising subscription rights that are generally
51 accorded members of the mutual insurance holding company. However,

1 pursuant to those subscription rights, the officers, directors, and insiders of
2 the mutual insurance holding company and its subsidiaries and affiliates may
3 not purchase or own, in the aggregate, more than five percent (5%) of the
4 stock offering.

5 (2) Requiring that, after the initial stock offering, a majority of the board of
6 directors of the mutual insurance holding company be persons who are not
7 interested persons of the mutual insurance holding company or of an
8 affiliated person of the company. For purposes of this subdivision, a member
9 of the mutual insurance holding company or a policyholder of any of its
10 insurance company subsidiaries shall not be considered an "interested
11 person" or an "affiliated person." The Commissioner may waive this
12 requirement upon a showing of good cause.

13 (3) For the mutual insurance holding company to adopt articles of incorporation
14 prohibiting any waiver of dividends from stock subsidiaries except under
15 conditions specified in its articles of incorporation and after approval of the
16 waiver by the board of directors of the mutual insurance holding company
17 and the Commissioner.

18 (4) Requiring that, after the initial stock offering by an insurance company
19 subsidiary of a mutual insurance holding company, an intermediate holding
20 company subsidiary of a mutual insurance holding company, or an insurance
21 company subsidiary of an intermediate holding company subsidiary of a
22 mutual insurance holding company, the boards of directors of each insurance
23 company or intermediate holding company include at least three directors
24 who are not interested persons of the mutual insurance holding company.
25 The Commissioner may waive this requirement upon a showing of good
26 cause.

27 (5) Establishing, within the board of directors of the corporation offering stock,
28 a pricing committee consisting exclusively of directors who are not members
29 of management of the insurance company subsidiary whose responsibility is
30 to evaluate and approve the price of any stock offering.

31 (d) An insurance company subsidiary of a mutual insurance holding company, an
32 intermediate holding company subsidiary of a mutual insurance holding company, or an
33 insurance company subsidiary of an intermediate holding company subsidiary to a mutual
34 insurance holding company may issue more than one class of stock, provided, however, that the
35 issuer complies with all of the following requirements:

36 (1) At all times a majority of the voting stock is held by the mutual insurance
37 holding company or its subsidiary.

38 (2) No class of common stock may possess greater dividend or other rights than
39 the class held by the mutual insurance holding company or its subsidiary.

40 (e) The Commissioner may retain, at the expense of the person filing the application,
41 any attorneys, actuaries, economists, accountants, consultants, or other professional advisors
42 not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the
43 application. These contracts are personal professional service contracts exempt from Articles 3
44 and 3C of Chapter 143 of the General Statutes.

45 (f) The expenses of mailing any notices and other materials required by this section
46 shall be borne by the person filing the application.

47 (g) Upon receipt and review by the Commissioner of all information provided under
48 this section, the Commissioner may establish a period during which the Department will
49 receive and consider public comments about the proposed offering. The Commissioner shall
50 inform the public of the offering by posting information about the application in a manner
51 deemed appropriate by the Commissioner. The Commissioner may hold a public hearing

1 concerning the application or the proposed offering. Following any public comment period or
2 hearing, if applicable, the Commissioner may approve, conditionally approve, or deny the
3 application. The Commissioner may approve the application if the following apply:

- 4 (1) The offering complies with this Part and other provisions of law.
- 5 (2) The method for establishing the price of a stock offering is consistent with
6 generally accepted market or industry practices for establishing stock
7 offering prices in similar transactions.
- 8 (3) The plan and offering will not unfairly impact the interests of members of
9 the mutual insurance holding company.

10 Nothing in this subsection shall be deemed to prohibit the filing of a registration statement
11 with the United States Securities and Exchange Commission before or concurrently with the
12 giving of notice to members.

13 (h) Notwithstanding the provisions of subsections (a) through (g) of this section, stock
14 offerings which are not an initial stock offering, and which are proposed by entities with a class
15 of securities regularly traded on the New York Stock Exchange, the American Stock Exchange,
16 or another exchange approved by the Commissioner, or designated on the National Association
17 of Securities Dealers Automated Quotations national market system (NASDAQ), may be sold
18 in accordance with the following procedure: if a mutual insurance holding company, an
19 insurance company subsidiary of a mutual insurance holding company, an intermediate holding
20 company, or an insurance company subsidiary of an intermediate holding company intends to
21 make a stock offering which would be governed by the provisions of this subsection, that entity
22 shall deliver to the Commissioner, not less than 60 days prior to the offering, a notice of the
23 planned stock offering and all of the following information:

- 24 (1) The total number of shares intended to be offered.
- 25 (2) The intended date of sale.
- 26 (3) Evidence the stock is regularly traded on one of the public exchanges
27 specified in this subsection.
- 28 (4) A record of the trading price and trading volume of the stock during the prior
29 52 weeks.

30 The Commissioner shall be deemed to have approved the sale unless, within 60 days
31 following receipt of such notice, the Commissioner issues an objection to the sale. If the
32 Commissioner issues an objection to the sale, the application process set forth in subsections
33 (a) through (g) of this section shall be followed to determine whether the Commissioner
34 approves of the proposed sale.

35 (i) Approval of a stock offering obtained under either subsection (g) or (h) of this
36 section shall expire 120 days following the date of the approval or deemed approval, except as
37 otherwise provided by order of the Commissioner.

38 (j) No prospectus, information, sales material, or sales presentation by the applicant, or
39 by any representative, agent, or affiliate of the applicant, shall contain a representation that the
40 Commissioner has endorsed the price, price range, or any other information relating to the
41 stock.

42 (k) No company making a stock offering under this section shall engage in any of the
43 following practices:

- 44 (1) Borrow funds from the mutual insurance holding company, or its
45 subsidiaries and affiliates, to finance the purchase of any portion of a stock
46 offering.
- 47 (2) Pay any commissions, "special fees," or any other special payments or
48 extraordinary compensation to officers, directors, interested persons, and
49 affiliates for arranging, promoting, aiding, or assisting in reorganization to a
50 mutual insurance holding company or for arranging, promoting, aiding,

1 assisting, or participating in the structuring and placement of a stock
2 offering.

3 (3) Enter into an understanding or agreement transferring legal or beneficial
4 ownership of stock to another person to avoid the requirements of this Part.

5 **"§ 58-10-320. Regulation of holding company system.**

6 (a) All material transactions, as that term is defined under Part 3 of this Article,
7 between or among subsidiaries and affiliates of the mutual insurance holding company, must,
8 after review and exercise of director duties by the directors of the mutual insurance holding
9 company, be approved by a majority of the directors of the mutual insurance holding company
10 as being fair and reasonable.

11 (b) If the Commissioner determines that activities within a mutual insurance holding
12 company system have violated provisions of the General Statutes of North Carolina or the
13 North Carolina Administrative Code or acted to circumvent requirements or prohibitions
14 contained in the General Statutes or Administrative Code, the Commissioner may prohibit or
15 order rescission of any transaction relating to those activities.

16 **"§ 58-10-325. Reporting of stock ownership and transactions.**

17 (a) Any director or officer of a mutual insurance holding company, its subsidiary, or
18 affiliate, who acquires directly or indirectly the beneficial ownership of any security issued by
19 any intermediate holding company or any insurance company subsidiary of an intermediate
20 holding company or mutual insurance holding company shall, within 15 days following the
21 transaction, file with the Commissioner a statement of the transaction on the form prescribed by
22 the Commissioner.

23 (b) A mutual insurance holding company, and its subsidiaries and affiliates, shall file
24 with the Commissioner, within 15 days of receipt, copies of Form 3, Form 4, and Schedule
25 13D, or any equivalent filings, such filings made under the federal Securities Exchange Act of
26 1934, as amended."

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