

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH10158-MH-63* (02/28)

Short Title: NC Captive Insurance Act.

(Public)

Sponsors: Representatives Dockham, Howard, Johnson, and Tine (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO ENACT THE NORTH CAROLINA CAPTIVE INSURANCE ACT.

The General Assembly of North Carolina enacts:

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

"Part 9. Captive Insurance Companies.

"Subpart 1. General Provisions.

"§ 58-10-335. Purpose.

(a) This Part shall be known and may be cited as the "North Carolina Captive Insurance Act."

(b) The purpose of this Part is to establish the procedures for the organization and regulation of the operations of captive insurance companies within this State and thereby promote the general welfare of the people of this State.

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

(1) Affiliated company. – Any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) Alien. – An alien company as defined in G.S. 58-1-5.

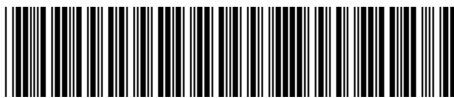
(3) Alien captive insurance company. – Any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in such jurisdiction.

(4) Association. – Any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that meets the criteria set forth in either sub-subdivision a. or b. of this subdivision:

a. The member organizations of the association or the association itself, either alone or in conjunction with some or all of the member organizations, are described by any of the following:

1. Owning, controlling, or holding with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer.

2. Having complete voting control over an association captive insurance company incorporated as a mutual insurer.



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- 1 3. Constituting all of the subscribers of an association captive
2 insurance company formed as a reciprocal insurer.
3 4. Having complete voting control over an association captive
4 insurance company formed as a limited liability company.
5 b. Each member organization of the association is one of the following:
6 1. A not-for-profit corporation, nonprofit association, or similar
7 nonprofit organization.
8 2. An entity or organization exempt from taxation under Section
9 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).
10 3. A municipality, metropolitan government, county, authority,
11 utility district, or other public body generally classified as a
12 governmental body or governmental entity, whether
13 organized by local act or public act of the General Assembly,
14 or any agency, board, or commission of any municipality,
15 metropolitan government, county, authority, utility district or
16 other public body generally classified as a governmental body
17 or governmental entity. This sub-sub-subdivision shall be
18 liberally construed.
19 (5) Association captive insurance company. – Any company that insures risks of
20 the member organizations of an association, and that also may insure the
21 risks of affiliated companies of the member organizations and the risks of
22 the association itself.
23 (6) Branch business. – Any insurance business transacted by a branch captive
24 insurance company in this State.
25 (7) Branch captive insurance company. – Any alien captive insurance company
26 licensed by the Commissioner to transact the business of insurance in this
27 State through a business unit with a principal place of business in this State.
28 A branch captive insurance company is a pure captive insurance company
29 with respect to operations in this State, unless otherwise permitted by the
30 Commissioner.
31 (8) Branch operations. – Any business operations of a branch captive insurance
32 company in this State.
33 (9) Captive insurance company. – Any pure captive insurance company,
34 association captive insurance company, industrial insured captive insurance
35 company, risk retention group, protected cell captive insurance company,
36 incorporated cell captive insurance company, or special purpose financial
37 captive insurance company formed or licensed under this Part.
38 (10) Commissioner. – Defined in G.S. 58-1-5.
39 (11) Control, controlling, controlled by, or under common control with. – The
40 possession, direct or indirect, of the power to direct or cause the direction of
41 the management and policies of a person, whether through the ownership of
42 voting securities, by contract other than a commercial contract for goods or
43 nonmanagement services, or otherwise; provided that such power is not the
44 result of an official position or corporate office held by the person. Control
45 shall be presumed to exist if a person, directly or indirectly, owns, controls,
46 holds with the power to vote, or holds proxies representing ten percent
47 (10%) or more of the voting securities of another person. This presumption
48 may be rebutted by a showing that control does not exist. Notwithstanding
49 this definition, for purposes of this Part, the fact that an SPFC exclusively
50 provides reinsurance to a ceding insurer under an SPFC contract is not by

- 1 itself sufficient grounds for a finding that the SPFC and ceding insurer are
2 under common control.
- 3 (12) Controlled unaffiliated business. – A person meeting all of the following:
4 a. The person is not in the corporate system of a parent and its affiliated
5 companies in the case of a pure captive insurance company, or is not
6 in the corporate system of an industrial insured and its affiliated
7 companies in the case of an industrial insured captive insurance
8 company.
9 b. The person has an existing contractual relationship with a parent or
10 one of its affiliated companies in the case of a pure captive insurance
11 company, or with an industrial insured or one of its affiliated
12 companies in the case of an industrial insured captive insurance
13 company.
14 c. The person's risks are managed by a pure captive insurance company
15 or an industrial insured captive insurance company, as applicable, in
16 accordance with G.S. 58-10-470.
- 17 (13) Counterparty. – An SPFC's parent or affiliated company or a ceding insurer
18 to the SPFC contract. A nonaffiliated company may be designated a
19 counterparty, but that designation is subject to the prior approval of the
20 Commissioner.
- 21 (14) Court. – Defined in G.S. 58-30-10.
- 22 (15) Department. – Defined in G.S. 58-1-5.
- 23 (16) General account. – All assets and liabilities of a protected cell captive
24 insurance company not attributable to a protected cell.
- 25 (17) Incorporated cell. – A protected cell of an incorporated cell captive
26 insurance company that is organized as a corporation or other legal entity
27 separate from the incorporated cell captive insurance company.
- 28 (18) Incorporated cell captive insurance company. – A protected cell captive
29 insurance company that is established as a corporation or other legal entity
30 separate from its incorporated cells that are also organized as separate legal
31 entities.
- 32 (19) Industrial insured. – An insured that meets all of the following:
33 a. It procures the insurance of any risk or risks by use of the services of
34 a full-time employee acting as an insurance manager or buyer.
35 b. Its aggregate annual premiums for insurance on all risks total at least
36 twenty-five thousand dollars (\$25,000).
37 c. It has at least 25 full-time employees.
- 38 (20) Industrial insured captive insurance company. – Any company that insures
39 risks of the industrial insureds that comprise the industrial insured group,
40 and that may insure the risks of the affiliated companies of the industrial
41 insureds and the risks of the controlled unaffiliated business of an industrial
42 insured or its affiliated companies.
- 43 (21) Industrial insured group. – Any group of industrial insureds that collectively
44 are described by any of the following:
45 a. Own, control, or hold with power to vote all of the outstanding
46 voting securities of an industrial insured captive insurance company
47 incorporated as a stock insurer.
48 b. Have complete voting control over an industrial insured captive
49 insurance company incorporated as a mutual insurer.
50 c. Constitute all of the subscribers of an industrial insured captive
51 insurance company formed as a reciprocal insurer.

- 1 d. Have complete voting control over an industrial insured captive
2 insurance company formed as a limited liability company.
- 3 (22) Insurance securitization or securitization. – A transaction or a group of
4 related transactions which meet the requirements of sub-subdivisions a. and
5 b. of this subdivision:
- 6 a. The transactions include capital market offerings that are effected
7 through related risk transfer instruments and facilitating
8 administrative agreements where all or part of the result of such
9 transactions is used to fund the SPFC's obligations under a
10 reinsurance contract with a ceding insurer and by which one of the
11 following occur:
- 12 1. Proceeds are obtained by a SPFC, directly or indirectly,
13 through the issuance of securities by the SPFC or any other
14 person.
- 15 2. All of the following occur: (i) a person provides one or more
16 letters of credit or other assets for the benefit of the SPFC; (ii)
17 the Commissioner authorizes the SPFC to treat such letters of
18 credit or other assets as admitted assets for purposes of the
19 SPFC's annual report; and (iii) all or any part of such
20 proceeds, letters of credit, or assets, as applicable, are used to
21 fund the SPFC's obligations under a reinsurance contract with
22 a ceding insurer.
- 23 b. The transactions do not include the issuance of a letter of credit for
24 the benefit of the Commissioner to satisfy all or part of the SPFC's
25 capital and surplus requirements under G.S. 58-10-575.
- 26 (23) Member organization. – Any individual, corporation, limited liability
27 company, partnership, association, or other entity that belongs to an
28 association.
- 29 (24) Mutual corporation. – A corporation organized without stockholders and
30 includes a nonprofit corporation with members.
- 31 (25) Mutual insurer. – A company owned by its policyholders where no stock is
32 available for purchase on the stock exchanges.
- 33 (26) NAIC. – Defined in G.S. 58-1-5.
- 34 (27) Organizational documents. – The documents that must be submitted
35 pursuant to North Carolina law in order to legally form a business in this
36 State or to obtain a certificate of authority to transact business in this State.
- 37 (28) Parent. – An individual, corporation, limited liability company, partnership,
38 association, or other entity, or individual that directly or indirectly owns,
39 controls, or holds with power to vote more than fifty percent (50%) of the
40 outstanding voting of any of the following interests:
- 41 a. Securities of a pure captive insurance company organized as a stock
42 corporation.
- 43 b. Membership interests of a pure captive insurance company organized
44 as a nonprofit corporation.
- 45 c. Membership interests of a pure captive insurance company organized
46 as a limited liability company.
- 47 d. Securities of an SPFC.
- 48 (29) Participant. – A person or an entity authorized to be a participant by
49 G.S. 58-10-515, and any affiliate of a participant, that is insured by a
50 protected cell captive insurance company, if the losses of the participant are
51 limited through a participant contract.

- 1 (30) Participant contract. – A contract by which a protected cell captive insurance
2 company insures the risks of a participant and limits the losses of each such
3 participant to its pro rata share of the assets of one or more protected cells
4 identified in such participant contract.
- 5 (31) Person. – Defined in G.S. 58-1-5.
- 6 (32) Protected cell. – Either of the following:
- 7 a. A separate account established by a protected cell captive insurance
8 company formed or licensed under this Part, in which an identified
9 pool of assets and liabilities are segregated and insulated by means of
10 this Part from the remainder of the protected cell captive insurance
11 company's assets and liabilities, in accordance with the terms of one
12 or more participant contracts to fund the liability of the protected cell
13 captive insurance company, with respect to the participants as set
14 forth in the participant contracts.
- 15 b. A separate account established and maintained by an SPFC for one
16 SPFC contract and the accompanying insurance securitization with a
17 counterparty.
- 18 (33) Protected cell assets. – All assets, contract rights, and general intangibles
19 identified with and attributable to a specific protected cell of a protected cell
20 captive insurance company.
- 21 (34) Protected cell captive insurance company. – Any captive insurance company
22 meeting all of the following:
- 23 a. The minimum capital and surplus required by this Part are provided
24 by one or more sponsors.
- 25 b. The company is formed or licensed under this Part.
- 26 c. The company insures the risks of separate participants through
27 participant contracts.
- 28 d. The company funds its liability to each participant through one or
29 more protected cells and segregates the assets of each protected cell
30 from the assets of other protected cells and from the assets of the
31 protected cell captive insurance company's general account.
- 32 (35) Protected cell liabilities. – All liabilities and other obligations identified with
33 and attributed to a specific protected cell of a protected cell captive
34 insurance company.
- 35 (36) Pure captive insurance company. – Any company that insures risks of its
36 parent and affiliated companies or a controlled unaffiliated business or
37 businesses.
- 38 (37) Risk retention group. – A captive insurance company organized under the
39 laws of this State pursuant to the Liability Risk Retention Act of 1986, 15
40 U.S.C. § 3901 et seq., as amended, as a stock or mutual corporation or as a
41 reciprocal or other limited liability entity. Risk retention groups formed
42 under this Part are subject to all applicable insurance laws including, but not
43 limited to, any applicable provisions in Articles 1, 2, 3, 7, 19, 22, 33, and 34
44 of this Chapter.
- 45 (38) Securities. – Those different types of debt obligations, equity, surplus
46 certificates, surplus notes, funding agreements, derivatives, and other legal
47 forms of financial instruments.
- 48 (39) SPFC or Special Purpose Financial Captive. – A captive insurance company
49 that has received a certificate of authority from the Commissioner for the
50 limited purposes provided for in this Part.

- 1 (40) SPFC contract. – A contract between the SPFC and the counterparty
 2 pursuant to which the SPFC agrees to provide insurance or reinsurance
 3 protection to the counterparty for risks associated with the counterparty's
 4 insurance or reinsurance business.
 5 (41) SPFC securities. – The securities issued by an SPFC.
 6 (42) Sponsor. – Any person or entity that is approved by the Commissioner to
 7 provide all or part of the capital and surplus required by this Part and to
 8 organize and operate a protected cell captive insurance company.
 9 (43) Surplus note. – An unsecured subordinated debt obligation deemed to be a
 10 surplus certificate under this Part and otherwise possessing characteristics
 11 consistent with paragraph 3 of the NAIC's Statement of Statutory
 12 Accounting Principles No. 41, as amended.

13 **"§ 58-10-345. Licensing; authority; confidentiality.**

14 (a) Any captive insurance company, when permitted by its organizational documents,
 15 may apply to the Commissioner for a license to do any and all insurance comprised in
 16 subdivisions (1) through (16) and (19) through (22) of G.S. 58-7-15; provided, however, that:

- 17 (1) No pure captive insurance company shall insure any risks other than those of
 18 its parent and affiliated companies or a controlled unaffiliated business or
 19 businesses.
 20 (2) No association captive insurance company shall insure any risks other than
 21 those of its association, those of the member organizations of its association,
 22 and those of a member organization's affiliated companies.
 23 (3) No industrial insured captive insurance company shall insure any risks other
 24 than those of the industrial insureds that comprise the industrial insured
 25 group, those of their affiliated companies, and those of the controlled
 26 unaffiliated business of an industrial insured or its affiliated companies.
 27 (4) No risk retention group shall insure any risks other than those of its members
 28 and owners.
 29 (5) No captive insurance company shall provide personal motor vehicle or
 30 homeowner's insurance coverage or any component thereof.
 31 (6) No captive insurance company shall accept or cede reinsurance except as
 32 provided in G.S. 58-10-445 and G.S. 58-10-605.
 33 (7) No captive insurance company shall provide accident and health insurance
 34 on a direct basis.
 35 (8) No captive insurance company shall provide workers' compensation and
 36 employer's liability insurance on a direct basis.
 37 (9) No captive insurance company shall provide life insurance or annuities on a
 38 direct basis.

39 (b) No captive insurance company shall transact any insurance business in this State
 40 unless:

- 41 (1) It obtains a license from the Commissioner pursuant to subsection (c) of this
 42 section authorizing it to do insurance business in this State.
 43 (2) Its board of directors or committee of managers or, in the case of a
 44 reciprocal insurer, its subscribers' advisory committee holds at least one
 45 meeting each year in this State.
 46 (3) It maintains its principal place of business in this State.
 47 (4) It appoints a registered agent to accept service of process and to otherwise
 48 act on its behalf in this State, provided that whenever such registered agent
 49 cannot with reasonable diligence be found at the registered office of the
 50 captive insurance company, the Commissioner shall be an agent of such

- 1 captive insurance company upon whom any process, notice, or demand may
2 be served and such service shall be done in accordance with G.S. 58-16-30.
- 3 (c) In order to receive a license to issue policies of insurance as a captive insurance
4 company in this State, an applicant business entity shall meet all of the following requirements:
- 5 (1) The applicant business entity shall submit its organizational documents to
6 the Commissioner. If the Commissioner approves the organizational
7 documents, then the Commissioner shall issue a letter to the applicant
8 certifying the Commissioner's approval. The applicant business entity shall
9 submit the organizational documents, along with a copy of the approval
10 letter issued by the Commissioner, and the required filing fees for
11 organizational documents prescribed by North Carolina law to the Secretary
12 of State for filing. Upon filing the organizational documents, the Secretary
13 of State shall issue an acknowledgment letter to the applicant. The applicant
14 business entity shall submit a copy of the acknowledgment letter relative to
15 the applicant's organizational documents issued by the Secretary of State to
16 the Commissioner.
- 17 (2) The applicant business entity shall file a statement under oath of its president
18 and secretary showing its financial condition.
- 19 (3) The applicant business entity shall file its plan of operation.
- 20 (4) The applicant business entity shall file other documents as required by the
21 Commissioner.
- 22 (5) The applicant business entity shall also file with the Commissioner evidence
23 of all of the following:
- 24 a. The amount and liquidity of its assets relative to the risks to be
25 assumed.
- 26 b. The adequacy of the expertise, experience, and character of the
27 person or persons who will manage it.
- 28 c. The overall soundness of its plan of operation.
- 29 d. The adequacy of the loss prevention programs of its insureds.
- 30 e. Such other factors deemed relevant by the Commissioner in
31 ascertaining whether the applicant business entity will be able to
32 meet its policy obligations.
- 33 (6) No less than the amount required by G.S. 58-10-370 shall be paid in by the
34 applicant business entity and deposited with the Commissioner. In the
35 alternative, an irrevocable letter of credit in that amount and acceptable to
36 the Commissioner shall be filed with the Commissioner.
- 37 (7) The applicant business entity shall submit to the Commissioner for approval
38 a description of the coverages, deductibles, coverage limits, and rates,
39 together with such additional information as the Commissioner may require.
- 40 (d) Whenever a captive insurance company desires to amend the organizational
41 documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit
42 the amended organizational documents to the Commissioner. If the Commissioner approves the
43 amendment, then the Commissioner shall issue a letter to the applicant certifying the
44 Commissioner's approval. The applicant business entity shall submit the organizational
45 documents, along with a copy of the approval letter issued by the Commissioner, and the
46 required filing fees for organizational documents prescribed in North Carolina law to the
47 Secretary of State for filing. Upon filing the organizational documents, the Secretary of State
48 shall issue an acknowledgment letter to the applicant. The applicant shall submit a copy of the
49 acknowledgment letter relative to the applicant's organizational documents issued by the
50 Secretary of State to the Commissioner.

1 (e) If a captive insurance company makes any subsequent material change to any item
2 in the description submitted pursuant to subdivision (c)(7) of this section, then the captive
3 insurance company shall submit an appropriate revision to the Commissioner for approval and
4 shall not offer any additional kinds of insurance until a revision of such description is approved
5 by the Commissioner. The captive insurance company shall inform the Commissioner of any
6 material change in rates within 30 days of the adoption of such change.

7 (f) Information submitted pursuant to this subsection is confidential, and may be made
8 public by the Commissioner or the Commissioner's designee only upon an order of a court of
9 competent jurisdiction, except:

10 (1) This subdivision shall not apply to any risk retention group.

11 (2) The Commissioner shall have the discretion to disclose such information to a
12 public official having jurisdiction over the regulation of insurance in another
13 state, provided that:

14 a. The public official agrees in writing to maintain the confidentiality of
15 such information; and

16 b. The laws of the state in which the public official serves require the
17 information to be and to remain confidential.

18 (g) The Commissioner is authorized to retain legal, financial, and examination services
19 from outside the Department, the costs of which shall be reimbursed by the applicant.
20 G.S. 58-2-160 shall apply to examinations, investigations, and processing conducted under the
21 authority of this section.

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

25 **"§ 58-10-350. Commissioner use of consultants and other professionals.**

26 The Commissioner may contract with consultants and other professionals to expedite and
27 complete the application process, examinations, and other regulatory activities required
28 pursuant to this Part. Such contracts for financial, legal, examination, and other services shall
29 not be subject to any of the following:

30 (1) G.S. 114-2.3.

31 (2) G.S. 147-17.

32 (3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with
33 rules and procedures adopted under those Articles concerning procurement,
34 contracting, and contract review.

35 **"§ 58-10-355. Organizational examination.**

36 In addition to the processing of the application, an organizational investigation or
37 examination may be performed before an applicant is licensed. Such investigation or
38 examination shall consist of a general survey of the applicant's corporate records, including
39 charters, bylaws, and minute books; verification of capital and surplus; verification of principal
40 place of business; determination of assets and liabilities; and a review of such other factors as
41 the Commissioner deems necessary.

42 **"§ 58-10-360. Designation of captive manager.**

43 Before licensing, captive insurance companies shall report in writing to the Commissioner
44 the name and address of the manager designated to manage the captive insurance company.
45 The Commissioner shall approve the captive manager and may require the submission of
46 additional information regarding the proposed captive manager in a form and manner as the
47 Commissioner may designate.

48 **"§ 58-10-365. Names of companies.**

49 No captive insurance company shall adopt a name that is the same, deceptively similar, or
50 likely to be confused with or mistaken for any other existing business name registered in this

1 State, nor any name likely to mislead the public. Any name adopted by a captive insurance
2 company shall comply with the requirements of State law.

3 **"§ 58-10-370. Capital and surplus requirements.**

4 (a) No captive insurance company shall be issued a license unless it possesses and
5 maintains unimpaired paid-in capital and surplus of:

6 (1) In the case of a pure captive insurance company, not less than two hundred
7 fifty thousand dollars (\$250,000) or such other amount determined by the
8 Commissioner.

9 (2) In the case of an association captive insurance company, not less than five
10 hundred thousand dollars (\$500,000).

11 (3) In the case of an industrial insured captive insurance company, not less than
12 five hundred thousand dollars (\$500,000).

13 (4) In the case of a risk retention group, not less than one million dollars
14 (\$1,000,000).

15 (5) In the case of a protected cell captive insurance company, not less than two
16 hundred fifty thousand dollars (\$250,000).

17 (b) The Commissioner may prescribe additional capital and surplus based upon the
18 type, volume, and nature of insurance business to be transacted.

19 (c) Capital and surplus shall be in the form of cash or an irrevocable letter of credit
20 issued by a bank approved by the Commissioner.

21 **"§ 58-10-375. Dividends and distributions.**

22 No captive insurance company shall pay a dividend or other distribution from capital or
23 surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the
24 payment of dividends or other distributions shall be conditioned upon the retention, at the time
25 of each payment, of capital or surplus in excess of amounts specified by or determined in
26 accordance with formulas approved by the Commissioner. A captive insurance company may
27 otherwise make such distributions as are in conformity with its purposes and approved by the
28 Commissioner.

29 **"§ 58-10-380. Formation of captive insurance companies.**

30 (a) A pure captive insurance company may be incorporated as a stock insurer with its
31 capital divided into shares and held by the stockholders, as a nonprofit corporation with one or
32 more members, or as a manager-managed limited liability company.

33 (b) An association captive insurance company, an industrial insured captive insurance
34 company, or a risk retention group may be any of the following:

35 (1) Incorporated as a stock insurer with its capital divided into shares and held
36 by the stockholders.

37 (2) Incorporated as a mutual corporation.

38 (3) Organized as a reciprocal insurer in accordance with Article 15 of this
39 Chapter.

40 (4) Organized as a manager-managed limited liability company.

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

44 (d) The capital stock of a captive insurance company incorporated as a stock insurer
45 may be authorized with no par value.

46 (e) In the case of a captive insurance company formed as a corporation, at least one of
47 the members of the board of directors shall be a resident of this State. In the case of a captive
48 insurance company formed as a reciprocal insurer, at least one of the members of the
49 subscribers' advisory committee shall be a resident of this State. In the case of a captive
50 insurance company formed as a limited liability company, at least one of the managers shall be
51 a resident of this State.

1 (f) Captive insurance companies formed as corporations, limited liability companies,
2 partnerships, or as nonprofit corporations under this Part shall have the privileges provided in
3 and be subject to all State statutes and laws, as applicable, provided that this Part shall control
4 in the event of a conflict.

5 (g) Mergers, consolidations, conversions, mutualizations, acquisitions,
6 redomestications, or other similar transactions of captive insurance companies shall be subject
7 to the same provisions of this Chapter applicable to traditional insurance companies, except:

8 (1) The Commissioner may, upon request of an insurer party to a merger
9 authorized under this subsection, waive such applicable requirements.

10 (2) The Commissioner may waive or modify the requirements for public notice
11 and hearing.

12 (3) An alien insurer may be a party to a merger authorized under this subsection,
13 provided that the requirements for a merger between a captive insurance
14 company and a foreign insurer under this Chapter shall apply to a merger
15 between a captive insurance company and an alien insurer under this
16 subsection. For the purposes of this subdivision, an alien insurer shall be
17 treated as a foreign insurer under this Chapter and the domicile of the alien
18 shall be the equivalent to that of another state.

19 (h) Captive insurance companies formed as reciprocal insurers under this Part shall
20 have the privileges provided in and be subject to Article 15 of this Chapter in addition to this
21 Part, provided that this Part shall control in the event of a conflict. To the extent a reciprocal
22 insurer is made subject to other provisions of this Chapter pursuant to Article 15 of this
23 Chapter, such provisions shall not be applicable to a reciprocal insurer formed under this Part
24 unless such provisions are expressly made applicable to captive insurance companies under this
25 Part.

26 (i) The articles of incorporation or bylaws of a captive insurance company formed as a
27 corporation may authorize a quorum of its board of directors to consist of no fewer than
28 one-third of the fixed or prescribed number of directors.

29 (j) The subscribers' agreement or other organizing document of a captive insurance
30 company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory
31 committee to consist of no fewer than one-third of the number of its members.

32 (k) With the Commissioner's approval, a captive insurance company organized as a
33 stock insurer may convert to a nonprofit corporation with one or more members by filing with
34 the Secretary of State an election for such conversion, provided that:

35 (1) The election shall certify that, at the time of the company's original
36 organization and at all times thereafter, the company has conducted its
37 business in a manner not inconsistent with a nonprofit purpose.

38 (2) At the time of the filing of its election, the company shall file with both the
39 Commissioner and the Secretary of State amended and restated articles of
40 incorporation consistent with this Part and with all other applicable State
41 statutes and laws.

42 (l) In the case of a captive insurance company formed as a limited liability company, a
43 reciprocal insurance company, or mutual insurance company, any proxy executed by the
44 members, subscribers, and policyholders of each shall be valid if executed and transmitted in
45 compliance with all applicable State statutes and laws.

46 **"§ 58-10-385. Directors.**

47 (a) Every captive insurance company shall report to the Commissioner within 30 days
48 after any change in its executive officers or directors, including in its report a biographical
49 affidavit for each new officer or director.

50 (b) No director, officer, or employee of a captive insurance company shall, except on
51 behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage,

1 gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment,
2 or exchange made by or for the captive insurance company, but such person may receive
3 reasonable compensation for necessary services rendered to the captive insurance company in
4 his or her usual private, professional, or business capacity.

5 (c) Any profit or gain received by or on behalf of any person in violation of this section
6 shall inure to and be recoverable by the captive insurance company.

7 **"§ 58-10-390. Conflict of interest.**

8 (a) Each captive insurance company chartered in this State is required to adopt a
9 conflict of interest statement for officers, directors, and key employees. Such statement shall
10 disclose that the individual has no outside commitments, personal or otherwise, that would
11 divert him or her from his or her duty to further the interests of the captive insurance company
12 he or she represents, but this shall not preclude such person from being a director or officer in
13 more than one insurance company.

14 (b) Each officer, director, and key employee shall file such disclosure with the Board of
15 Directors yearly.

16 **"§ 58-10-395. Change of business.**

17 (a) Any material change in a captive insurance company's business plan that was filed
18 with the Commissioner at the time of initial application and any subsequent amendment of the
19 plan requires prior approval from the Commissioner.

20 (b) Any change in any other information filed with the application must be filed with
21 the Commissioner within 60 days but does not require prior approval.

22 **"§ 58-10-400. Insurance manager and intermediaries.**

23 No person shall act in or from this State as a managing general agent, producer, or
24 reinsurance intermediary for captive business without the authorization of the Commissioner.
25 Application for such authorization must be on a form prescribed by the Commissioner.

26 **"§ 58-10-405. Annual reports.**

27 (a) No captive insurance companies shall be required to make any annual report to the
28 Commissioner except as provided in this Part.

29 (b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure
30 captive insurance companies or industrial insured captive insurance companies, each captive
31 insurance company shall submit to the Commissioner a report of its financial condition,
32 verified by oath of two of its executive officers. Each captive insurance company shall report
33 using generally accepted accounting principles, unless the Commissioner requires, approves, or
34 accepts the use of statutory accounting principles or other comprehensive basis of accounting.
35 The Commissioner may require, approve, or accept any appropriate or necessary modifications
36 of the statutory accounting principles or other comprehensive basis of accounting for the type
37 of insurance and kinds of insurers to be reported upon. The Commissioner may require
38 additional information to supplement such report. Except as otherwise provided, each risk
39 retention group and association captive insurance company shall file its report in the form
40 required by G.S. 58-2-165, and each risk retention group and association captive insurance
41 company shall comply with the requirements set forth in G.S. 58-4-5. All other captive
42 insurance companies shall report on forms adopted by the Commissioner. G.S. 58-10-345(f)
43 shall apply to each report filed pursuant to this section. Branch captive insurance companies
44 shall file the report required by this section unless otherwise required by G.S. 58-10-545.
45 Special Purpose Financial Captive insurance companies shall report in accordance with
46 G.S. 58-10-625.

47 (c) A pure captive insurance company or an industrial insured captive insurance
48 company may make written application to the Commissioner for filing the required report on an
49 alternative reporting date based on the company's fiscal year-end. If an alternative reporting
50 date is granted by the Commissioner, then:

51 (1) The annual report is due 75 days after the fiscal year-end.

1 (2) In order to provide sufficient detail to support the premium tax return, the
2 pure captive insurance company or industrial insured captive insurance
3 company shall file, prior to March 15 of each year for each calendar
4 year-end, pages 1, 2, 3, and 5 of the "Captive Annual Statement; Pure or
5 Industrial Insured," verified by oath of two of its executive officers.

6 **"§ 58-10-420. Annual audit and actuarial certification.**

7 (a) All captive insurance companies shall have an annual audit by an independent
8 certified public accountant and shall file such audited financial report with the Commissioner
9 on or before June 30 for the prior calendar year.

10 (b) Captive insurance companies that have received approval to report on other than a
11 calendar year basis pursuant to G.S. 58-10-405 shall file such statements within 180 days after
12 the end of their fiscal year.

13 (c) Captive insurance companies with less than one million two hundred thousand
14 dollars (\$1,200,000) in written premium may make a written request for exemption from the
15 annual audit requirement. Such request must be made at least 90 days prior to the captive
16 insurance company's fiscal year-end or as otherwise required by the Commissioner. Requests
17 will be considered on a case-by-case basis and may be subject to the Commissioner receiving
18 an annual audit of the captive insurance company's parent company in lieu of the annual audit
19 of the captive insurance company.

20 (d) The annual audit report shall be considered part of the captive insurance company's
21 annual report of financial condition except with respect to the date by which it must be filed
22 with the Commissioner. The annual audit shall consist of the following:

23 (1) Opinion of independent certified public accountant. – Financial statements
24 furnished pursuant to this section shall be audited by independent certified
25 public accountants in accordance with generally accepted auditing standards
26 as determined by the American Institute of Certified Public Accountants or
27 statutory accounting principles in accordance with the NAIC Accounting
28 Practices and Procedures Manual in effect for the period covered by the
29 report. The opinion of the independent certified public accountant shall
30 cover all years presented. The opinion shall be addressed to the captive
31 insurance company on stationery of the accountant showing the address of
32 issuance and shall be signed and dated.

33 (2) Report of evaluation of internal controls. – This report shall include an
34 evaluation of the internal controls of the captive insurance company relating
35 to the methods and procedures used in the securing of assets and the
36 reliability of the financial records, including, but not limited to, such controls
37 as the system of authorization and approval and the separation of duties. The
38 review shall be conducted in accordance with generally accepted auditing
39 standards or statutory accounting principles and the report filed with the
40 Commissioner. An exemption from this evaluation may be granted on a
41 case-by-case basis upon written request to the Commissioner.

42 (3) Accountant's letter of qualifications. – The accountant shall furnish the
43 captive insurance company, for inclusion in the filing of the audited annual
44 report, a letter stating:

45 a. That the accountant is independent with respect to the captive
46 insurance company and conforms to the standards of the profession
47 as contained in the Code of Professional Ethics, pronouncements of
48 the American Institute of Certified Public Accountants, and
49 pronouncements of the Financial Accounting Standards Board.

- 1 b. The general background and experience of the staff engaged in the
2 audit, including the experience in auditing captives or other insurance
3 companies.
- 4 c. That the accountant understands that the audited annual report and
5 the accountant's opinions thereon will be filed in compliance with
6 this section with the Commissioner.
- 7 d. That the accountant consents to the requirements of
8 G.S. 58-10-422(b) and (c) and that the accountant consents and
9 agrees to make available for review by the Commissioner, the
10 Commissioner's appointed agent, or other designee the work papers
11 as defined in G.S. 58-10-422(c).
- 12 e. That the accountant is properly licensed by an appropriate state
13 licensing authority and that he or she is a member in good standing
14 of the American Institute of Certified Public Accountants.
- 15 (4) Financial statements. – Statements required shall be as follows:
- 16 a. Balance sheets reporting assets, liabilities, capital, and surplus.
- 17 b. Statements of operations.
- 18 c. Statements of cash flow.
- 19 d. Statements of changes in capital and surplus.
- 20 e. Notes to financial statements. The notes to financial statements shall
21 be those required by generally accepted accounting principles, or as
22 required by any other comprehensive basis of accounting in use by
23 the captive insurance company and approved by the Commissioner,
24 and shall include:
- 25 1. A reconciliation of differences, if any, between the audited
26 financial report and the report of its financial condition filed
27 with the Commissioner in accordance with
28 G.S. 58-10-405(b).
- 29 2. A summary of ownership and relationship of the captive
30 insurance company and all affiliated corporations or
31 companies insured by the captive insurance company.
- 32 3. A narrative explanation of all material transactions and
33 balances with the captive insurance company.
- 34 (5) Certification of loss reserves and loss expense reserves. – The annual audit
35 shall be filed with a Statement of Actuarial Opinion evaluating the captive
36 insurance company's loss reserves and loss expense reserves. The individual
37 who prepares the Statement of Actuarial Opinion shall be a Fellow of the
38 Casualty Actuarial Society, a member in good standing of the American
39 Academy of Actuaries, or an individual who has demonstrated competence
40 in loss reserve evaluation to the Commissioner. Certification shall be in such
41 form as the Commissioner deems appropriate.
- 42 **"§58-10-422. Independent certified public accountants.**
- 43 (a) A captive insurance company, after becoming subject to this Part, shall within 60
44 days report to the Commissioner in writing, the name and address of the independent certified
45 public accountant retained to conduct the annual audit set forth in G.S. 58-10-420.
- 46 (b) A captive insurance company shall require its independent certified public
47 accountant to immediately notify in writing an officer and all members of the board of directors
48 of the captive insurance company of any determination by the independent certified public
49 accountant that the captive insurance company has materially misstated its financial condition
50 in its report to the Commissioner as required in G.S. 58-10-405. The independent certified

1 public accountant shall furnish such notification to the Commissioner within five working days
2 of notifying the captive insurance company.

3 (c) A captive insurance company shall require its independent certified public
4 accountant to make available for review by the Commissioner or his or her appointed agent the
5 work papers prepared in the conduct of the audit of the captive insurance company. The captive
6 insurance company shall require that the independent certified public accountant retain the
7 audit work papers for a period of not less than five years after the period reported upon. The
8 mentioned review by the Commissioner shall be considered an examination and all
9 working papers obtained during the course of such examination shall be confidential. The
10 captive insurance company shall require that the independent certified public accountant
11 provide copies, in such form as the Commissioner deems appropriate, of any of the working
12 papers which the Commissioner considers relevant. Such working papers may be retained by
13 the Commissioner. "Work papers" as referred to in this section include, but are not necessarily
14 limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts,
15 copies of captive insurance company records, or other documents prepared or obtained by the
16 independent certified public accountant and the independent certified public accountant's
17 employees in the conduct of their audit of the captive insurance company.

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

26 (1) Number of partners, expertise of the partners, or the number of insurance
27 clients in the firm;

28 (2) Premium volume of the captive insurance company; or

29 (3) Number of jurisdictions in which the insurer transacts business.

30 **"§ 58-10-425. Deposit requirement.**

31 (a) Whenever the Commissioner deems that the financial condition of a captive
32 insurance company warrants additional security beyond that required pursuant to
33 G.S. 58-10-345(c)(6), the Commissioner may require a captive insurance company to deposit
34 with the Commissioner additional cash or securities approved by the Commissioner or,
35 alternatively, to furnish the Commissioner a clean irrevocable letter of credit issued by a bank
36 chartered by the State or by a member bank of the Federal Reserve System and approved by the
37 Commissioner.

38 (b) A captive insurance company may receive interest or dividends from deposits held
39 by the Commissioner or exchange the deposits for others of equal value with the approval of
40 the Commissioner.

41 (c) If a captive insurance company discontinues business, the Commissioner shall
42 return deposits held by the Commissioner only after being satisfied that all obligations of the
43 captive insurance company have been discharged.

44 **"§ 58-10-430. Examinations.**

45 (a) Whenever the Commissioner determines it to be prudent, the Commissioner shall
46 visit a captive insurance company and inspect and examine its affairs to ascertain its financial
47 condition, its ability to fulfill its obligations, and whether it has complied with this Part. The
48 expenses and charges of the examination shall be paid by the captive insurance company.

49 (b) G.S. 58-2-160 shall apply to examinations conducted under this section.

50 (c) All examination reports, preliminary examination reports or results, working papers,
51 recorded information, documents, and copies thereof produced by, obtained by, or disclosed to

1 the Commissioner or any other person in the course of an examination made under this section
2 are confidential, are not subject to subpoena, and may not be made public by the Commissioner
3 or an employee or agent of the Commissioner. Nothing in this subsection shall prevent the
4 Commissioner from using such information in furtherance of the Commissioner's regulatory
5 authority under this Chapter. The Commissioner shall have the discretion to grant access to
6 such information to public officials having jurisdiction over the regulation of insurance in any
7 other state or country, or to law enforcement officers of this State, or any other state or agency
8 of the federal government at any time, only if the officials receiving the information agree in
9 writing to maintain the confidentiality of the information in a manner consistent with this
10 subsection.

11 **"§ 58-10-435. License suspension or revocation.**

12 (a) The license of a captive insurance company may be suspended or revoked if the
13 Commissioner finds, upon examination, hearing, or other evidence, that a captive insurance
14 company has committed the violations described in subdivisions (1) through (7) of this
15 subsection, or met the criteria in subdivisions (8) through (10) of this subsection, and that the
16 suspension or revocation is in the best interest of the public and the policyholders of such
17 captive insurance company, notwithstanding any other provision of this Chapter:

- 18 (1) Insolvency or impairment of capital or surplus.
- 19 (2) Failure to meet the requirements of G.S. 58-10-370.
- 20 (3) Refusal or failure to submit an annual report, as required by this Part, or any
21 other report or statement required by law or by lawful order of the
22 Commissioner.
- 23 (4) Failure to comply with its own charter, bylaws, or other organizational
24 document.
- 25 (5) Failure to submit to or pay the cost of an examination or any legal obligation
26 relative to an examination, as required by this Part.
- 27 (6) Use of methods that, although not otherwise specifically prohibited by law,
28 nevertheless render its operation detrimental or its condition unsound with
29 respect to the public or to its policyholders.
- 30 (7) Failure otherwise to comply with the laws of this State.
- 31 (8) Failure to commence business according to its plan of operation within two
32 years of being licensed.
- 33 (9) Failure to carry on insurance business in or from this State.
- 34 (10) By request of the captive insurance company.

35 (b) Before the Commissioner suspends or revokes the license of a captive insurance
36 company under subdivisions (a)(7) or (a)(8) of this section, the Commissioner shall give the
37 captive insurance company notice in writing of the grounds on which the Commissioner
38 proposes to suspend or revoke the license, and shall afford the captive insurance company an
39 opportunity to make objection in writing within the period of 30 days after receipt of notice.
40 The Commissioner shall take into consideration any objection received by the Commissioner
41 within that period and, if the Commissioner decides to suspend or revoke the license, cause the
42 order of suspension or revocation to be served on the captive insurance company.

43 **"§ 58-10-440. Investment requirements.**

44 (a) Except as may be otherwise authorized by the Commissioner, association captive
45 insurance companies and risk retention groups shall comply with the investment requirements
46 contained in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180,
47 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and
48 58-7-205, as applicable. Notwithstanding any other provision of this Chapter, the
49 Commissioner may approve the use of alternative reliable methods of valuation and rating.

50 (b) No pure captive insurance company, industrial insured captive insurance company,
51 protected cell captive insurance company, incorporated cell captive insurance company, or

1 special purpose financial captive insurance company shall be subject to any restrictions on
2 allowable investments, provided that the Commissioner may prohibit or limit any investment
3 that threatens the solvency or liquidity of any such company.

4 (c) No pure captive insurance company shall make a loan to or an investment in its
5 parent company or affiliates without prior written approval of the Commissioner, and any such
6 loan or investment shall be evidenced by documentation approved by the Commissioner. Loans
7 of minimum capital and surplus funds required by G.S. 58-10-370 are prohibited.

8 (d) Notwithstanding this section or G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173,
9 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193,
10 58-7-197, 58-7-200, and 58-7-205, an association captive insurance company of an association
11 described in G.S. 58-10-340(4)(b) may hold any interest in qualified headquarters property, and
12 the qualified headquarters property shall be admitted assets and authorized investments of the
13 association captive insurance company. The net book value of the qualified headquarters
14 property deemed admitted and authorized under this subsection may not exceed two million
15 five hundred thousand dollars (\$2,500,000), and an association captive insurance company
16 holding qualified headquarters property pursuant to this subsection shall at all times maintain
17 total surplus, without regard to the qualified headquarters property, of at least the sum of (i)
18 fifty percent (50%) of the net book value of the qualified headquarters property and (ii) the
19 minimum capital and surplus requirements. For purposes of this subsection, "qualified
20 headquarters property" includes the real property and the building in which the principal office
21 of the association captive insurance company is located and also includes any improved and
22 unimproved real property of the association captive insurance company that is located within
23 1,500 feet of the company's principal office.

24 **"§ 58-10-445. Reinsurance.**

25 (a) Any captive insurance company may provide reinsurance as authorized by this
26 Chapter on risks ceded by any other insurer.

27 (b) Any captive insurance company may take credit for the reinsurance of risks or
28 portions of risks ceded to reinsurers complying with this Chapter. If the reinsurer is licensed as
29 a risk retention group, then the ceding risk retention group or its members must qualify for
30 membership with the reinsurer. The Commissioner shall have the discretion to allow a captive
31 insurance company to take credit for the reinsurance of risks or portions of risks ceded to an
32 unauthorized reinsurer, after review, on a case-by-case basis. The Commissioner may require
33 any documents, financial information, or other evidence that such an unauthorized reinsurer
34 will be able to demonstrate adequate security for its financial obligations.

35 (c) In addition to reinsurers authorized by this Chapter, a captive insurance company
36 may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or
37 association to the extent authorized by the Commissioner. The Commissioner may require any
38 documents, financial information, or other evidence that such a pool, exchange, or association
39 will be able to provide adequate security for its financial obligations. The Commissioner may
40 deny authorization or impose any limitations on the activities of a reinsurance pool, exchange,
41 or association that in the Commissioner's judgment are necessary and proper to provide
42 adequate security for the ceding captive insurance company and for the protection and
43 consequent benefit of the public at large.

44 (d) Insurance by a captive insurance company of any workers' compensation or accident
45 and health-qualified self-insured plan shall only be in the form of reinsurance.

46 (e) No credit shall be allowed for reinsurance where the reinsurance contract does not
47 result in the complete transfer of the risk or liability to the reinsurer.

48 (f) No credit shall be allowed, as an asset or a deduction from liability, to any ceding
49 insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of
50 the liability of the ceding insurer under the contract reinsured without diminution because of
51 the insolvency of the ceding insurer.

1 (g) Reinsurance under this section shall be effected through a written agreement of
2 reinsurance setting forth the terms, provisions, and conditions governing such reinsurance. The
3 Commissioner may require that complete copies of all reinsurance treaties and contracts be
4 filed and approved by the Commissioner.

5 **"§ 58-10-450. Membership in rating organizations; exemption from compulsory**
6 **associations.**

7 (a) No captive insurance company shall be required to join a rating organization.

8 (b) No captive insurance company shall be permitted to join or contribute financially to
9 any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such
10 captive insurance company, or any insured or affiliate thereof, receive any benefit from any
11 such plan, pool, association, or guaranty or insolvency fund for claims arising out of the
12 operations of such captive insurance company.

13 **"§ 58-10-455. Taxation.**

14 (a) Each captive insurance company shall pay to the Department of Revenue, on or
15 prior to March 1 of each year, a tax at the rate of four-tenths of one percent (0.4%) on the first
16 twenty million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on each dollar
17 thereafter on the direct premiums collected or contracted for on policies or contracts of
18 insurance written by the captive insurance company during the year ending December 31 next
19 preceding, after deducting from the direct premiums subject to the tax the amounts paid to
20 policyholders as return premiums. Return premiums shall include dividends on unabsorbed
21 premiums or premium deposits returned or credited to policyholders.

22 (b) Each captive insurance company shall pay to the Department of Revenue, on or
23 prior to March 1 of each year, a tax at the rate of two hundred twenty-five thousandths of one
24 percent (0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance
25 premium, and one hundred fifty thousandths of one percent (0.150%) on the next twenty
26 million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next twenty
27 million dollars (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each
28 dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks
29 that are subject to taxation on a direct basis pursuant to subsection (a) of this section. No
30 reinsurance premium tax shall be payable in connection with the receipt of assets in exchange
31 for the assumption of loss reserves and other liabilities of another insurer under common
32 ownership and control, provided that the Commissioner verifies that such transaction is part of
33 a plan to discontinue the operations of such other insurer, and that the intent of the parties to
34 such transaction is to renew or maintain such business with the captive insurance company.

35 (c) Except with regard to a protected cell captive insurance company, as defined in
36 G.S. 58-10-340, with more than 10 cells, the annual minimum aggregate tax to be paid by a
37 captive insurance company calculated under subsections (a) and (b) of this section shall be five
38 thousand dollars (\$5,000), and the annual maximum aggregate tax shall be one hundred
39 thousand dollars (\$100,000). For a protected cell captive insurance company with more than 10
40 cells, the annual minimum aggregate tax to be paid under subsections (a) and (b) of this section
41 shall be ten thousand dollars (\$10,000), and the annual maximum aggregate tax shall be the
42 lesser of (i) one hundred thousand dollars (\$100,000) plus five thousand dollars (\$5,000)
43 multiplied by the number of cells over 10 and (ii) two hundred thousand dollars (\$200,000). If a
44 captive insurance company is a special purpose financial captive and if such captive insurance
45 company is subject to subsection (e) of this section as a captive insurance company under
46 common ownership and control with one or more other captive insurance companies
47 (collectively the "consolidated group"), the premium tax calculated with respect to the
48 consolidated group under subsections (a) and (b) of this section shall be allocated to each
49 member of the consolidated group in the same proportion that the premium allocable to such
50 member bears to the total premium of all members. The consolidated group shall pay an

1 aggregate premium tax equal to the greater of the sum of the premium tax allocated to the
2 members and five thousand dollars (\$5,000), provided that:

3 (1) If the total of premium tax allocated to all members of a consolidated group
4 that are special purpose financial captives exceeds one hundred thousand
5 dollars (\$100,000), then the total premium tax allocated to such members
6 shall be one hundred thousand dollars (\$100,000).

7 (2) If the total of premium tax allocated to all members of the consolidated
8 group that are not special purpose financial captive insurance companies
9 exceeds one hundred thousand dollars (\$100,000), then the total of premium
10 tax allocated to such members shall be one hundred thousand dollars
11 (\$100,000).

12 (d) The tax provided for in this section shall constitute all taxes collectible under the
13 laws of this State from any captive insurance company and from any insured on its payments to
14 a captive insurance company, and no other occupation tax or other taxes shall be levied or
15 collected from any captive insurance company by this State or any county, city, or municipality
16 within this State, except ad valorem taxes on real and personal property used in the production
17 of income.

18 (e) Subject to subsection (c) of this section, two or more captive insurance companies
19 under common ownership and control shall be taxed as though they were a single captive
20 insurance company.

21 (f) There shall be created a special fund known as the Captive Insurance Regulatory
22 Fund which shall receive appropriations to cover cost of staff and other expenses incurred by
23 the Commissioner in both regulating captive insurance companies and promoting North
24 Carolina's captive insurance industry. All premium taxes paid to the Department of Revenue
25 under this Part shall be deposited in the Captive Insurance Regulatory Fund. At the end of each
26 fiscal year, the balance in the Captive Insurance Regulatory Fund, in excess of such amount
27 reasonably necessary to fund the Commissioner's administration of this Part and the promotion
28 of North Carolina's captive insurance industry during the upcoming fiscal year, shall be
29 transferred to the General Fund. Within 30 days after the end of each fiscal year, the
30 Commissioner shall submit to the Joint Legislative Commission on Governmental Operations
31 and the Fiscal Research Division of the General Assembly a written report stating:

32 (1) The total amount of funds paid into the Captive Insurance Regulatory Fund,
33 including taxes paid, as reported to the Commissioner by the Department of
34 Revenue.

35 (2) The total amount of the Commissioner's costs to administer this Part and
36 promote North Carolina's captive insurance industry during such fiscal year.

37 (3) The Commissioner's estimate of the total amount of the Commissioner's
38 costs to administer this Part and promote North Carolina's captive insurance
39 industry during the current fiscal year.

40 (g) The tax provided for in this section shall be calculated on an annual basis,
41 notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a
42 multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for
43 purposes of determining the tax under this section.

44 (h) Nothing in this section shall be construed to provide an exemption from sales and
45 use tax.

46 (i) In the case of a branch captive insurance company, the tax provided for in this
47 section shall apply only to the branch business of such company.

48 **"§ 58-10-460. Adoption and amendment of rules by Commissioner.**

49 The Commissioner may adopt and, from time to time, amend such rules relating to captive
50 insurance companies as are necessary to enable the Commissioner to carry out the provisions of
51 this Part.

"§ 58-10-465. Applicable provisions.

No provisions of this Chapter, other than those contained in this Part or as expressly provided in this Part, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to Article 22 of this Chapter in addition to the applicable provisions of this Part.

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

The Commissioner may adopt rules establishing standards to ensure that a parent or its affiliated company, or an industrial insured or its affiliated company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company, respectively; provided, however, that until such time as rules under this section are adopted, the Commissioner may approve the coverage of such risks by a pure captive insurance company or an industrial insured captive insurance company.

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

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

"§ 58-10-480. Authority for expenditure of public funds.

Any municipality, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity whether chartered or organized by local act or public act of the General Assembly, or otherwise, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity may expend public funds for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company, provided that at the time of authorization of expenditure of public funds adequate insurance markets in the United States are not available to cover the risks, hazards, and liabilities of the public body or that the needed coverage is only available at excessive rates or with unreasonable deductibles.

"§ 58-10-485. Violations and penalties.

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

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

(b) Whenever the Commissioner has evidence that any person has violated or is violating any provisions of this Part, or has violated or is violating any order or requirement of the Commissioner issued by the Commissioner under this Part, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue an emergency cease and desist order that shall become effective on the date specified in the order. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner.

(c) Any monetary penalties collected pursuant to this section shall be deposited into the Captive Insurance Regulatory Fund created in G.S. 58-10-455(f).

"§ 58-10-495. Captive insurance companies reinsuring life insurance policies.

1 (a) A captive insurance company that reinsures life insurance policies, including term,
 2 universal, and variable life policies, and related guarantees and riders, shall maintain reserves
 3 that are actuarially sufficient to support the liabilities incurred by the captive insurance
 4 company in reinsuring life insurance policies.

5 (b) For purposes of the annual report required pursuant to G.S. 58-10-405, a captive
 6 insurance company described by subsection (a) of this section shall comply with the following
 7 requirements:

8 (1) If the company uses statutory accounting principles, it shall submit the
 9 annual report in the form of the annual statement approved by the NAIC for
 10 life insurers, as modified or supplemented by the Commissioner, unless the
 11 Commissioner requires or approves a different form of annual report.

12 (2) If the company uses generally accepted accounting principles, including any
 13 appropriate modifications or adaptations thereto approved by the
 14 Commissioner, it shall submit the annual report in a form approved by the
 15 Commissioner.

16 "Subpart 2. Protected Cell Captive Insurance Companies.

17 **"§ 58-10-500. Forming a protected cell captive insurance company.**

18 (a) One or more sponsors may form a protected cell captive insurance company under
 19 this Subpart.

20 (b) A protected cell captive insurance company shall be incorporated as a stock insurer
 21 with its capital divided into shares and held by the stockholders, as a mutual corporation, as a
 22 nonprofit corporation with one or more members, or as a manager-managed limited liability
 23 company.

24 **"§ 58-10-505. Additional filing requirements for applicant protected cell captive**
 25 **insurance companies.**

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

28 (1) Materials demonstrating how the applicant will account for the loss and
 29 expense experience of each protected cell at a level of detail found to be
 30 sufficient by the Commissioner, and how it will report such experience to
 31 the Commissioner.

32 (2) A statement acknowledging that all records of the applicant, including
 33 records pertaining to any protected cells, shall be made available for
 34 inspection or examination by the Commissioner or the Commissioner's
 35 designated agent.

36 (3) All contracts or sample contracts between the applicant and any participants.

37 (4) Evidence that expenses shall be allocated to each protected cell in a fair and
 38 equitable manner.

39 **"§ 58-10-510. Establishment of protected cells.**

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

43 (1) A protected cell captive insurance company may establish one or more
 44 protected cells if the Commissioner has approved in writing a plan of
 45 operation or amendments to a plan of operation submitted by the protected
 46 cell captive insurance company with respect to each protected cell. A plan of
 47 operation shall include, but is not limited to, the specific business objectives
 48 and investment guidelines of the protected cell, provided that the
 49 Commissioner may require additional information in the plan of operation.

50 (2) Upon the Commissioner's written approval of the plan of operation, the
 51 protected cell captive insurance company may attribute insurance obligations

- 1 with respect to its insurance business to the protected cell in accordance with
2 the approved plan of operation.
- 3 (3) A protected cell shall have its own distinct name or designation that shall
4 include the words "protected cell" or "incorporated cell."
- 5 (4) The protected cell captive insurance company shall transfer all assets
6 attributable to a protected cell to one or more separately established and
7 identified protected cell accounts bearing the name or designation of that
8 protected cell. Protected cell assets must be held in the protected cell
9 accounts for the purpose of satisfying the obligations of that protected cell.
- 10 (5) An incorporated protected cell may be organized and operated in any form
11 of business organization authorized by the Commissioner. Each incorporated
12 protected cell of a protected cell captive insurer shall be treated as a captive
13 insurer for purposes of this Part. Unless otherwise permitted by the
14 organizational documents of a protected cell captive insurer, each
15 incorporated protected cell of the protected cell captive insurer must have
16 the same directors, secretary, and registered office as the protected cell
17 captive insurer.
- 18 (6) All attributions of assets and liabilities between a protected cell and the
19 general account shall be in accordance with the plan of operation and
20 participant contracts approved by the Commissioner. No other attribution of
21 assets or liabilities shall be made by a protected cell captive insurance
22 company between the protected cell captive insurance company's general
23 account and its protected cells. Any attribution of assets and liabilities
24 between the general account and a protected cell shall be in cash or in
25 readily marketable securities with established market values.
- 26 (b) The creation of a protected cell does not create, with respect to that protected cell, a
27 legal person separate from the protected cell captive insurance company, unless the protected
28 cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including
29 assets transferred to a protected cell account, are owned by the protected cell. No protected cell
30 captive insurance company shall be, or hold itself out to be, a trustee with respect to those
31 protected cell assets of that protected cell account. Notwithstanding this subsection, the
32 protected cell captive insurance company may allow for a security interest to attach to protected
33 cell assets or a protected cell account when the security interest is in favor of a creditor of the
34 protected cell and otherwise allowed under applicable law.
- 35 (c) This Part shall not be construed to prohibit the protected cell captive insurance
36 company from contracting with or arranging for an investment advisor, commodity trading
37 advisor, or other third party to manage the protected cell assets of a protected cell, if all
38 remuneration, expenses, and other compensation of the third-party advisor or manager are
39 payable from the protected cell assets of that protected cell and not from the protected cell
40 assets of other protected cells or the assets of the protected cell captive insurance company's
41 general account.
- 42 (d) A protected cell captive insurance company shall establish administrative and
43 accounting procedures necessary to properly identify (i) the one or more protected cells of the
44 protected cell captive insurance company and (ii) the assets and liabilities attributable to each
45 protected cell. The directors of a protected cell captive insurance company shall keep protected
46 cell assets and liabilities:
- 47 (1) Separate and separately identifiable from the assets and liabilities of the
48 protected cell captive insurance company's general account.
- 49 (2) Attributable to one protected cell separate and separately identifiable from
50 protected cell assets and protected cell liabilities attributable to other
51 protected cells.

1 If this subsection is violated, then the remedy of tracing is applicable to protected cell assets
2 when commingled with protected cell assets of other protected cells or the assets of the
3 protected cell captive insurance company's general account. The remedy of tracing shall not be
4 construed as an exclusive remedy.

5 (e) When establishing a protected cell, the protected cell captive insurance company
6 shall attribute to the protected cell assets a value at least equal to the reserves and other
7 insurance liabilities attributed to that protected cell.

8 (f) Each protected cell shall be accounted for separately on the books and records of the
9 protected cell captive insurance company to reflect (i) the financial condition and results of
10 operations of such protected cell, (ii) net income or loss, (iii) dividends or other distributions to
11 participants, and (iv) such other factors as may be provided in the participant contract or
12 required by the Commissioner.

13 (g) No asset of a protected cell shall be chargeable with liabilities arising out of any
14 other insurance business the protected cell captive insurance company may conduct.

15 (h) No sale, exchange, or other transfer of assets shall be made by such protected cell
16 captive insurance company between or among any of its protected cells without the consent of
17 such protected cells.

18 (i) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a
19 protected cell to a protected cell captive insurance company or participant without the
20 Commissioner's approval. In no event shall the Commissioner's approval be given if the sale,
21 exchange, transfer, dividend, or distribution would result in the insolvency or impairment of a
22 protected cell.

23 (j) All attributions of assets and liabilities to the protected cells and the general account
24 shall be in accordance with the plan of operation approved by the Commissioner. No other
25 attribution of assets or liabilities shall be made by a protected cell captive insurance company
26 between its general account and any protected cell, or between any protected cells. The
27 protected cell captive insurance company shall attribute all insurance obligations, assets, and
28 liabilities relating to a reinsurance contract entered into with respect to a protected cell to such
29 protected cell. The performance under such reinsurance contract and any tax benefits, losses,
30 refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell
31 captive insurance company is a party, including any payments made by or due to be made to
32 the protected cell captive insurance company pursuant to the terms of such agreement, shall
33 reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that
34 are attributed to such protected cell.

35 (k) In connection with the conservation, rehabilitation, or liquidation of a protected cell
36 captive insurance company, the assets and liabilities of a protected cell shall, to the extent the
37 Commissioner determines they are separable, at all times be kept separate from and shall not be
38 commingled with those of other protected cells and the protected cell captive insurance
39 company.

40 (l) Each protected cell captive insurance company shall annually file with the
41 Commissioner such financial reports as required by the Commissioner. Any such financial
42 report shall include without limitation accounting statements detailing the financial experience
43 of each protected cell.

44 (m) Each protected cell captive insurance company shall notify the Commissioner in
45 writing within 10 business days of any protected cell that is insolvent or otherwise unable to
46 meet its claim or expense obligations.

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

1 (o) The business written by a protected cell captive insurance company, with respect to
2 each protected cell, must be secured by one of the following methods:

3 (1) Fronted by an insurance company licensed under the laws of any state.

4 (2) Reinsured by a reinsurer authorized or approved by this State.

5 (3) Secured by a trust fund in the United States for the benefit of policyholders
6 and claimants, funded by an irrevocable letter of credit, or other arrangement
7 that is acceptable to the Commissioner. The amount of security provided
8 shall be no less than the reserves associated with those liabilities which are
9 neither fronted nor reinsured, including reserves for losses, allocated loss
10 adjustment expenses, incurred but not reported losses, and unearned
11 premiums for business written through the participant's protected cell. The
12 Commissioner may require the protected cell captive insurance company to
13 increase the funding of any security arrangement established under this
14 subdivision. If the form of security is a letter of credit, the letter of credit
15 shall be issued or confirmed by a bank approved by the Commissioner. A
16 trust maintained pursuant to this subdivision shall be established in a form
17 and upon such terms approved by the Commissioner.

18 (p) Notwithstanding this Chapter or other laws of this State, and in addition to
19 G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company
20 where the Commissioner determines that one or more protected cells remain solvent, the
21 Commissioner may separate such cells from the protected cell captive insurance company and
22 may allow, on application of the protected cell captive insurance company, for the conversion
23 of such protected cells into one or more new or existing protected cell captive insurance
24 companies, or one or more other captive insurance companies, pursuant to such plan of
25 operation as the Commissioner deems acceptable.

26 **"§ 58-10-515. Participation in a protected cell captive insurance company.**

27 (a) Associations, corporations, limited liability companies, partnerships, trusts, and
28 other business entities may be participants in any protected cell captive insurance company
29 formed or licensed under this Part.

30 (b) A sponsor may be a participant in a protected cell captive insurance company.

31 (c) A participant need not be a shareholder of the protected cell captive insurance
32 company or any affiliate thereof.

33 (d) A participant shall insure only its own risks through a protected cell captive
34 insurance company.

35 **"§ 58-10-520. Combining assets of protected cells.**

36 Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be
37 combined for purposes of investment and such combination shall not be construed as defeating
38 the segregation of such assets for accounting or other purposes. Protected cell captive insurance
39 companies shall comply with the investment requirements contained in G.S. 58-7-167,
40 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187,
41 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable; provided that
42 compliance with such investment requirements shall be waived for protected cell captive
43 insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed
44 pursuant to G.S. 58-10-445 or to the extent otherwise deemed reasonable and appropriate by
45 the Commissioner. Notwithstanding any other provision of this Chapter, the Commissioner
46 may approve the use of alternative reliable methods of valuation and rating.

47 **"§ 58-10-525. Application of supervision, rehabilitation, and liquidation provisions to**
48 **protected cell captive insurance companies.**

49 (a) Except as otherwise provided in this Part, Article 30 of this Chapter shall apply to a
50 protected cell captive insurance company.

1 (b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell
2 captive insurance company, the Commissioner or receiver shall manage the assets and
3 liabilities of the protected cell captive insurance company pursuant to this Part.

4 (c) Notwithstanding Article 30 of this Chapter:

5 (1) No assets of a protected cell shall be used to pay any expenses or claims
6 other than those attributable to such protected cell.

7 (2) A protected cell captive insurance company's capital and surplus shall at all
8 times be available to pay any expenses of, or claims against, the protected
9 cell captive insurance company.

10 "Subpart 3. Branch Captive Insurance Companies.

11 **"§ 58-10-530. Establishment of branch captive insurance companies.**

12 (a) A branch captive insurance company may be established in this State, in accordance
13 with this Subpart, to write in this State any insurance or reinsurance of the employee benefit
14 business of its parent and affiliated companies that is subject to the Employee Retirement
15 Income Security Act of 1974, as amended, or any insurance or reinsurance permitted to be
16 written by captive insurance companies pursuant to this Part.

17 (b) No branch captive insurance company shall do any insurance business in this State
18 unless it maintains the principal place of business for its branch operations in this State.

19 **"§ 58-10-535. Security for payment of branch captive insurance company liabilities.**

20 (a) No branch captive insurance company shall be issued a license by the
21 Commissioner unless it possesses and maintains as security for the payment of liabilities
22 attributable to the branch operations:

23 (1) An amount equal to the amount set forth in G.S. 58-10-370 as the minimum
24 capital requirement for a pure captive insurance company.

25 (2) Reserves on such insurance policies or such reinsurance contracts as may be
26 issued or assumed by the branch captive insurance company through its
27 branch operations, including reserves for losses, allocated loss adjustment
28 expenses, incurred but not reported losses, and unearned premiums with
29 regard to business written through the branch operations; provided, however,
30 that the Commissioner may permit a branch captive insurance company to
31 credit against any such reserve requirement any security for loss reserves
32 that the branch captive insurance company may post with a ceding insurer or
33 that may be posted by a reinsurer with the branch captive insurance
34 company, and in either case if such security remains posted.

35 (b) Subject to the prior approval of the Commissioner, the amounts required in
36 subsection (a) of this section may be held in the form of:

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

39 (2) An irrevocable letter of credit issued or confirmed by a bank approved by
40 the Commissioner.

41 (3) With respect to the amounts required in subdivision (a)(1) of this section
42 only, cash on deposit with the Commissioner.

43 (4) Any combination of subdivisions (b)(1) through (3) of this section.

44 **"§ 58-10-540. Petition for certificate of authority.**

45 In the case of an alien captive insurance company seeking to become licensed as a branch
46 captive insurance company, the alien captive insurance company shall petition the
47 Commissioner to issue a certificate setting forth the Commissioner's finding that, after
48 considering the character, reputation, financial responsibility, insurance experience, and
49 business qualifications of the officers and directors of the alien captive insurance company, the
50 licensing and maintenance of the branch operations will promote the general good of the State.

1 After the Commissioner issues a certificate of authorization, the alien captive insurance
2 company shall comply with all other applicable State statutes or common law.

3 **"§ 58-10-545. Filing of reports and statements.**

4 Prior to March 1 of each year, or with the approval of the Commissioner within 60 days
5 after its fiscal year-end, a branch captive insurance company shall file with the Commissioner a
6 copy of all reports and statements required to be filed under the laws of the jurisdiction in
7 which the alien captive insurance company is formed, verified by oath of two of its executive
8 officers. If the Commissioner is satisfied that the annual report filed by the alien captive
9 insurance company in its domiciliary jurisdiction provides adequate information concerning the
10 financial condition of the alien captive insurance company, the Commissioner may waive the
11 requirement for completion of the captive annual statement for business written in the alien
12 jurisdiction.

13 **"§ 58-10-550. Examination of a branch captive insurance company.**

14 (a) Any examination of a branch captive insurance company pursuant to
15 G.S. 58-10-430 shall be of branch business and branch operations only so long as the branch
16 captive insurance company files annually with the Commissioner a certificate of compliance, or
17 its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the
18 branch captive insurance company is formed, and demonstrates to the Commissioner's
19 satisfaction that it is operating in sound financial condition in accordance with all applicable
20 laws and regulations of such jurisdiction.

21 (b) As a condition of licensure, an alien captive insurance company shall grant authority
22 to the Commissioner for examination of the affairs of the alien captive insurance company in
23 the jurisdiction in which the alien captive insurance company is formed.

24 "Subpart 4. Special Purpose Financial Captives.

25 **"§ 58-10-555. Creation of special purpose financial captives.**

26 Special purpose financial captives (SPFCs) are provided by this Subpart exclusively to
27 facilitate the securitization of one or more risks as a means of accessing alternative sources of
28 capital and achieving the benefits of securitization. SPFCs are created for the limited purpose
29 of entering into SPFC contracts and insurance securitization transactions and into related
30 agreements to facilitate the accomplishment and execution of those transactions. The creation
31 of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance
32 securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for
33 many insurers to insurance securitization and capital markets financing technology, and to
34 further the economic development and expand the interest of this State through its captive
35 insurance program.

36 **"§ 58-10-560. Controlling provisions when conflict exists; exemptions.**

37 (a) No provisions of this Chapter, other than those expressly provided in this Part, shall
38 apply to an SPFC. If any conflict occurs in this Part related to an SPFC, the provisions of this
39 Subpart shall control.

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

43 **"§ 58-10-565. Application requirements.**

44 (a) An SPFC, when permitted by its organizational documents, may apply to the
45 Commissioner for a certificate of authority to transact insurance or reinsurance business as
46 authorized by this Part. An SPFC shall only insure or reinsure the risks of its counterparty.
47 Notwithstanding any other provision of this Part, an SPFC may purchase reinsurance to cede
48 the risks assumed under the SPFC contract as approved by the Commissioner.

49 (b) To transact business in this State, an SPFC shall:

50 (1) Comply with the procedures established in G.S. 58-10-345(c).

- 1 (2) Obtain from the Commissioner a certificate of authority authorizing it to
2 conduct insurance or reinsurance business, or both, in this State.
- 3 (3) Hold at least one management meeting each year in this State. For the
4 purposes of this section, management is defined as the board of directors,
5 managing board, or other individual or individuals vested with overall
6 responsibility for the management of the affairs of the SPFC, including the
7 election and appointment of officers or other of those agents to act on behalf
8 of the SPFC.
- 9 (4) Maintain its principal place of business in this State.
- 10 (5) Appoint a resident registered agent to accept service of process and to
11 otherwise act on its behalf in this State. If the registered agent, with
12 reasonable diligence, is not found at the registered office of the SPFC, the
13 Commissioner shall be an agent of the SPFC upon whom any process,
14 notice, or demand may be served.
- 15 (6) Provide such documentation of the insurance securitization as requested by
16 the Commissioner immediately upon closing of the transaction, including:
- 17 a. An opinion of a duly licensed North Carolina legal counsel with
18 respect to compliance with this Part and any other applicable laws as
19 of the effective date of the transaction.
- 20 b. A statement under oath of its president and secretary demonstrating
21 its financial condition.
- 22 (7) Provide a complete set of the documentation of the insurance securitization
23 to the Commissioner immediately following closing of the transaction.
- 24 (c) A complete SPFC application shall include the following:
- 25 (1) A certified copy of the SPFC's organizational documents.
- 26 (2) Evidence of:
- 27 a. The amount and liquidity of its assets relative to the risks to be
28 assumed.
- 29 b. The adequacy of the expertise, experience, and character of the
30 person or persons who manage the SPFC.
- 31 c. The overall soundness of the SPFC's plan of operation.
- 32 d. Other factors considered relevant by the Commissioner in
33 ascertaining whether the proposed SPFC is able to meet its policy
34 obligations.
- 35 e. The applicant SPFC's financial condition, including the source and
36 form of the minimum capital to be contributed to the SPFC.
- 37 (3) A plan of operation consisting of a description of or statement of intent with
38 respect to the contemplated insurance securitization, the SPFC contract, and
39 related transactions, which shall include:
- 40 a. Draft documentation or, at the discretion of the Commissioner, a
41 written summary of all material agreements that are entered into to
42 effectuate the SPFC contract and, before the effectuation of the SPFC
43 contract, the insurance securitization, to include the names of the
44 counterparty, the nature of the risks being assumed, the proposed use
45 of protected cells, if any, and the maximum amounts, purpose, and
46 nature and the interrelationships of the various transactions required
47 to effectuate the insurance securitization.
- 48 b. The source and form of additional capital to be contributed to the
49 SPFC.
- 50 c. The proposed investment strategy of the SPFC.

- 1 d. A description of the underwriting, reporting, and claims payment
2 methods by which losses covered by the SPFC contract are reported,
3 accounted for, and settled.
- 4 e. A pro forma balance sheet and income statement illustrating various
5 stress case scenarios for the performance of the SPFC under the
6 SPFC contract.
- 7 (4) Biographical affidavits in NAIC format of all of the prospective SPFC's
8 officers and directors, providing the officers' and directors' legal names, any
9 names under which they have or are conducting their affairs, and any other
10 biographical information as the Commissioner may request.
- 11 (5) An affidavit from the applicant SPFC verifying:
- 12 a. The applicant SPFC complies with this Part.
13 b. The applicant SPFC operates only pursuant to this Part.
14 c. The applicant SPFC's investment strategy reflects and takes into
15 account the liquidity of assets and the reasonable preservation,
16 administration, and asset management of such assets relative to the
17 risks associated with the SPFC contract and the insurance
18 securitization transaction.
- 19 d. The securities proposed to be issued, if any, are valid legal
20 obligations that are either properly registered with the Commissioner
21 or constitute an exempt security or form part of an exempt
22 transaction.
- 23 (6) Any other statements or documents required by the Commissioner to
24 evaluate and complete the licensing of the SPFC.
- 25 (d) In addition to the information required by subsection (c) of this section and by
26 G.S. 58-10-585, when a protected cell is used, an applicant SPFC shall file with the
27 Commissioner:
- 28 (1) A business plan demonstrating how the applicant SPFC accounts for the loss
29 and expense experience of each protected cell at a level of detail found to be
30 sufficient by the Commissioner and how the applicant will report the
31 experience to the Commissioner.
- 32 (2) A statement acknowledging that all records of the SPFC, including records
33 pertaining to any protected cells, must be made available for inspection or
34 examination by the Commissioner.
- 35 (3) All contracts or sample contracts between the SPFC and any counterparty
36 related to each protected cell.
- 37 (4) A description of the expenses allocated to each protected cell.
- 38 (e) Information submitted pursuant to this section shall be and remain confidential, and
39 shall not be made public by the Commissioner or the Commissioner's designee unless
40 disclosure is ordered by a court of competent jurisdiction. In addition, the Commissioner shall
41 have the discretion to disclose such information to a public official having jurisdiction over the
42 regulation of insurance in another state, provided that:
- 43 (1) Such public official shall agree in writing to maintain the confidentiality of
44 such information.
- 45 (2) The laws of the state in which such public official serves require such
46 information to be and to remain confidential.
- 47 (f) G.S. 58-10-430 applies to SPFCs.
- 48 (g) SPFCs are subject to any rules or regulations promulgated pursuant to
49 G.S. 58-10-460.
- 50 (h) The Commissioner may retain legal, financial, and examination services from
51 outside the Department to examine and investigate the application, the cost of which may be

1 charged against the applicant. The Commissioner also may use internal resources to examine
2 and investigate the application based upon an hourly rate for the services performed or the
3 usual and customary fee charged by the financial services industry for similar work subject to a
4 minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is
5 payable upon filing of the application and the remainder upon licensure.

6 (i) An SPFC shall be subject to payment of premium taxes as required by
7 G.S. 58-10-455.

8 (j) The Commissioner shall grant a certificate of authority authorizing the SPFC to
9 transact insurance or reinsurance business as an SPFC in this State, upon a finding by the
10 Commissioner that:

11 (1) The SPFC's proposed plan of operation provides a reasonable and expected
12 successful operation.

13 (2) The terms of the SPFC contract and related transactions comply with this
14 Part.

15 (3) The proposed plan of operation is not hazardous to any counterparty.

16 (4) To the extent required by law or regulation, the Commissioner or an
17 equivalent regulatory authority of the state of domicile of each counterparty
18 has notified the Commissioner in writing or otherwise provided assurance
19 satisfactory to the Commissioner that it has approved or not disapproved the
20 transaction.

21 (5) The certificate of authority authorizing the SPFC to transact business is
22 limited only to the insurance or reinsurance activities that the SPFC is
23 authorized to conduct pursuant to this Part.

24 (k) In evaluating the expectation of a successful operation, factors the Commissioner
25 shall consider include whether the proposed SPFC and its management are of known good
26 character and reasonably believed not to be affiliated, directly or indirectly, through ownership,
27 control, management, reinsurance transactions, or other insurance or business relations, with a
28 person known to have been involved in the improper manipulation of assets, accounts, or
29 reinsurance.

30 (l) To ensure the proposed plan of operation is not hazardous to any counterparty, the
31 Commissioner may require reasonable safeguards in the SPFC's plan of operation where
32 applicable and appropriate in the circumstance, including, without limitation, that certain assets
33 of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an
34 SPFC contract.

35 (m) A foreign or alien corporation or limited liability company, upon approval of the
36 Commissioner, may become a domestic SPFC after complying with G.S. 58-10-345(c)(1).
37 After such documents are successfully filed, the foreign or alien corporation or limited liability
38 company is entitled to the necessary or appropriate certificates or licenses to transact business
39 as an SPFC in this State and is subject to the authority and jurisdiction of this State. In
40 connection with this redomestication, the Commissioner may waive any requirements for
41 public hearings. It is not necessary for a corporation or limited liability company
42 redomesticating into this State to merge, consolidate, transfer assets, or otherwise engage in
43 another reorganization, other than as specified in this section.

44 **"§ 58-10-570. Organization of an SPFC.**

45 (a) An SPFC may be established as a stock corporation, limited liability company,
46 mutual, partnership, or other form of organization approved by the Commissioner.

47 (b) The SPFC's organizational documents shall limit the SPFC's authority to transact the
48 business of insurance or reinsurance to those activities the SPFC conducts to accomplish its
49 purpose as expressed in this Part.

1 (c) The SPFC shall not adopt a name that is the same as, deceptively similar to, or
2 likely to be confused with or mistaken for another existing business name registered in this
3 State. Any name adopted by an SPFC shall comply with State law.

4 (d) An SPFC shall have at least three incorporators or organizers, of whom at least two
5 shall be residents of this State.

6 (e) At least one of the members of the management of the SPFC shall be a resident of
7 this State.

8 (f) An SPFC formed pursuant to this Part has the privileges of and is subject to all other
9 requirements of this State's law applicable to its formation, as well as the applicable provisions
10 contained in this Part, provided that this Part controls if a conflict exists in this State's law.

11 **"§ 58-10-575. Minimum capital.**

12 (a) An SPFC shall initially possess and maintain minimum capital of not less than two
13 hundred and fifty thousand dollars (\$250,000). All of the minimum initial capitalization shall
14 be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be
15 in the form of cash, cash equivalent, or securities invested as approved by the Commissioner.

16 (b) Additional capitalization for the SPFC shall be determined, if so required, by the
17 Commissioner after giving due consideration to the SPFC's plan of operation, feasibility study,
18 pro formas, and the nature of the risks being insured or reinsured, which may be prescribed in
19 formulas approved by the Commissioner.

20 **"§ 58-10-580. Authorized activities.**

21 (a) An SPFC shall only insure the risks of a counterparty.

22 (b) No SPFC shall issue a contract for assumption of risk or indemnification of loss
23 other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC
24 contract to third-party reinsurers through the purchase of reinsurance or retrocession protection
25 on terms approved by the Commissioner.

26 (c) An SPFC may enter into contracts and conduct other commercial activities related
27 or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance
28 securitization, and this Part. Those activities may include, but are not limited to:

29 (1) Entering into SPFC contracts.

30 (2) Issuing SPFC securities in accordance with applicable securities law.

31 (3) Complying with the terms of such contracts or securities.

32 (4) Entering into trust, guaranteed investment contract, letter of credit, swap,
33 tax, administration, reimbursement, or fiscal agent transactions.

34 (5) Complying with trust indenture, reinsurance, or retrocession, and agreements
35 necessary or incidental to effectuate an insurance securitization in
36 compliance with this Part or the plan of operation approved by the
37 Commissioner.

38 (d) An SPFC shall do all of the following:

39 (1) Discount its reserves at discount rates as approved by the Commissioner.

40 (2) Maintain reserves that are actuarially sufficient to support the liabilities
41 incurred by an SPFC in reinsuring life insurance policies.

42 (3) File annually with the Commissioner an actuarial opinion on reserves
43 provided by an approved independent actuary.

44 **"§ 58-10-585. Establishment of protected cell accounts.**

45 (a) This section and G.S. 58-10-590 provide a basis for the creation and use of
46 protected cells by an SPFC as a means of accessing alternative sources of capital, lowering
47 formation and administrative expenses, and generally making insurance securitizations more
48 efficient. If a conflict exists between other provisions of this Part and either this section or
49 G.S. 58-10-590, then this section or G.S. 58-10-515 shall control as applicable.

1 **(b)** An SPFC may establish and maintain one or more protected cells with prior written
2 approval of the Commissioner and subject to compliance with the applicable provisions of this
3 Part and all of the following conditions:

4 **(1)** A protected cell shall be established only for the purpose of insuring or
5 reinsuring risks of one or more SPFC contracts with a counterparty with the
6 intent of facilitating an insurance securitization.

7 **(2)** Each protected cell shall be accounted for separately on the books and
8 records of the SPFC to reflect the financial condition and results of
9 operations of the protected cell, net income or loss, dividends, or other
10 distributions to the counterparty for the SPFC contract with each cell, and
11 other factors as may be provided in the SPFC contract, insurance
12 securitization transaction documents, plan of operation, or business plan, or
13 as required by the Commissioner.

14 **(3)** Amounts attributed to a protected cell under this Part, including assets
15 transferred to a protected cell account, are owned by the SPFC, and no SPFC
16 shall be or hold itself out to be a trustee with respect to those protected cell
17 assets of that protected cell account.

18 **(4)** All attributions of assets and liabilities between a protected cell and the
19 general account shall be in accordance with the plan of operation approved
20 by the Commissioner, and no other attribution of assets or liabilities by an
21 SPFC between the SPFC's general account and its protected cell or cells is
22 permitted. The SPFC shall attribute all insurance obligations, assets, and
23 liabilities relating to an SPFC contract and the related insurance
24 securitization transaction, including any securities issued by the SPFC as
25 part of the insurance securitization, to a particular protected cell. The
26 insurance obligations, assets, and liabilities relating to the SPFC contract and
27 the insurance securitization transaction that are attributed to a particular
28 protected cell shall be consistent with:

29 **a.** The rights, benefits, obligations, and liabilities of any securities
30 attributable to that protected cell.

31 **b.** The performance under an SPFC contract and the related
32 securitization transaction and any tax benefits, losses, refunds, or
33 credits allocated, at any point in time pursuant to a tax allocation
34 agreement between the SPFC and the SPFC's counterparty, parent, or
35 company or group company, or any of them, in common control with
36 them, as the case may be, including any payments made by or due to
37 be made to the SPFC pursuant to the terms of the agreement.

38 **(5)** No assets of a protected cell shall be chargeable with liabilities arising out of
39 an SPFC contract related to or associated with another protected cell.
40 However, one or more SPFC contracts may be attributed to a protected cell
41 only if the SPFC contracts are intended to be and ultimately are part of a
42 single securitization transaction.

43 **(6)** No sale, exchange, or other transfer of assets shall be made by the SPFC
44 between or among any of the SPFC's protected cells without the consent of
45 the Commissioner, counterparty, and each protected cell.

46 **(7)** Except as otherwise contemplated in the SPFC contract or related insurance
47 securitization transaction documents, or both, no sale, exchange, transfer of
48 assets, dividend, or distribution shall be made from a protected cell to a
49 counterparty or parent without the Commissioner's approval and the sale,
50 exchange, transfer, dividend, or distribution shall not be approved if the sale,

- 1 exchange, transfer, dividend, or distribution would result in a protected cell's
2 insolvency or impairment.
- 3 (8) An SPFC may pay interest or repay principal, or both, and make
4 distributions or repayments with respect to any securities attributed to a
5 particular protected cell from assets or cash flows relating to or emerging
6 from the SPFC contract and the insurance securitization transactions that are
7 attributable to that particular protected cell in accordance with this Part, or as
8 otherwise approved by the Commissioner.
- 9 (c) No SPFC contract with or attributable to a protected cell shall take effect without
10 the Commissioner's prior written approval, and the addition of each new protected cell
11 constitutes a change in the business plan requiring the Commissioner's prior written approval.
12 The Commissioner may retain legal, financial, and examination services from outside the
13 Department to examine and investigate the application for a protected cell, the cost of which
14 may be charged against the applicant, or the Commissioner may use internal resources to
15 examine and investigate the application, the cost of which may be charged against the
16 applicant, or both.
- 17 (d) An SPFC utilizing protected cells shall possess and maintain minimum
18 capitalization separate and apart from the capitalization of its protected cell or cells in an
19 amount determined by the Commissioner after giving due consideration of the SPFC's business
20 plan, feasibility study, and pro formas, including the nature of the risks to be insured or
21 reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall
22 initially capitalize and maintain capitalization in each protected cell in the amount and manner
23 required for an SPFC in G.S. 58-10-575.
- 24 (e) The establishment of one or more protected cells alone shall not constitute and shall
25 not be deemed to be a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the
26 carrying out of business by the SPFC for any other fraudulent purpose.
- 27 **§ 58-10-590. Protected cell accounts.**
- 28 (a) All of the following shall apply to a protected cell:
- 29 (1) The creation of a protected cell shall not create, with respect to that protected
30 cell, a legal person separate from the SPFC.
- 31 (2) Notwithstanding subdivision (a)(1) of this subsection, a protected cell shall
32 have its own distinct name or designation that includes the words "protected
33 cell." The SPFC shall transfer all assets attributable to the protected cell to
34 one or more separately established and identified protected cell accounts
35 bearing the name or designation of that protected cell.
- 36 (3) Although a protected cell is not a separate legal person, the property of an
37 SPFC in a protected cell is subject to orders of the court by name as the
38 property would have been if the protected cell were a separate legal person.
- 39 (4) The property of an SPFC in a protected cell shall be served with process in
40 its own name in all civil actions or proceedings involving or relating to the
41 activities of that protected cell or a breach by the SPFC of a duty to the
42 protected cell or to a counterparty to a transaction linked or attributed to it by
43 serving the SPFC.
- 44 (5) A protected cell exists only at the pleasure of the SPFC. At the cessation of
45 business of a protected cell in accordance with the plan approved by the
46 Commissioner, the SPFC shall close out the protected cell account.
- 47 (b) Nothing in this section shall be construed to prohibit an SPFC from contracting with
48 or arranging for an investment advisor, commodity trading advisor, or other third party to
49 manage the assets of a protected cell, if all remuneration, expenses, and other compensation of
50 the third-party advisor or manager are payable from the assets of that protected cell and not

1 from the assets of other protected cells or the assets of the SPFC's general account, unless
2 approved by the Commissioner.

3 (c) Creditors with respect to a protected cell are not entitled to have recourse against the
4 protected cell assets of other protected cells or the assets of the SPFC's general account. If an
5 obligation of an SPFC relates only to the general account, the obligation of the SPFC extends
6 only to that creditor with respect to that obligation, and the creditor is entitled to have recourse
7 only to the assets of the SPFC's general account.

8 (d) The assets of the protected cell shall not be used to pay expenses or claims other
9 than those attributable to the protected cell. Protected cell assets are available only to the SPFC
10 contract counterparty and other creditors of the SPFC that are creditors only with respect to that
11 protected cell and, accordingly, are entitled in conformity with this Part, to have recourse to the
12 protected cell assets attributable to that protected cell. The assets of the protected cell are
13 protected from the creditors of the SPFC that are not creditors with respect to that protected cell
14 and who, accordingly, are not entitled to have recourse to the protected cell assets attributable
15 to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an
16 SPFC contract or related insurance securitization transaction, or is otherwise incurred with
17 respect to a protected cell, then the obligation shall:

18 (1) Extend only to the protected cell assets attributable to that protected cell, and
19 the person or counterparty, with respect to that obligation, is entitled to have
20 recourse only to the protected cell assets attributable to that protected cell.

21 (2) Not extend to the protected cell assets of another protected cell or the assets
22 of the SPFC's general account, and the person or counterparty, with respect
23 to that obligation, is not entitled to have recourse to the protected cell assets
24 of another protected cell or the assets of the SPFC's general account. The
25 SPFC's capitalization held separate and apart from the capitalization of its
26 protected cell or cells must be available at all times to pay expenses of or
27 claims against the SPFC and may not be used to pay expenses or claims
28 attributable to any protected cell.

29 (e) Notwithstanding any other provision of law, an SPFC may allow for a security
30 interest in accordance with applicable law to attach to protected cell assets or a protected cell
31 account when in favor of a creditor of the protected cell or to facilitate an insurance
32 securitization, including, without limitation, the issuance of the SPFC contract, to the extent
33 those protected cell assets are not required at all times to support the risk, but without otherwise
34 affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the
35 Commissioner.

36 (f) An SPFC shall establish administrative and accounting procedures necessary to
37 properly identify the one or more protected cells of the SPFC and the protected cell assets and
38 protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and
39 protected cell liabilities:

40 (1) Separate and separately identifiable from the assets and liabilities of the
41 SPFC's general account.

42 (2) Attributable to one protected cell separate and separately identifiable from
43 protected cell assets and protected cell liabilities attributable to other
44 protected cells.

45 (g) All contracts or other documentation reflecting protected cell liabilities shall clearly
46 indicate that only the protected cell assets are available for the satisfaction of those protected
47 cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or
48 other documentation effecting the transaction shall contain provisions identifying the protected
49 cell to which the transaction is attributed. In addition, the contracts or other documentation
50 shall clearly disclose that the assets of that protected cell, and only those assets, are available to
51 pay the obligations of that protected cell. Notwithstanding this subsection, and subject to this

1 Part and other applicable laws or regulations, the failure to include this language in the
2 contracts or other documentation shall not be used as the sole basis by creditors, insureds or
3 reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this
4 section.

5 (h) An SPFC with protected cells shall annually file with the Department accounting
6 statements and financial reports required by this Part, which shall:

7 (1) Detail the financial experience of each protected cell and the SPFC
8 separately.

9 (2) Provide the combined financial experience of the SPFC and all protected
10 cells.

11 (i) An SPFC with protected cells shall notify the Commissioner in writing within 10
12 business days of a protected cell becoming insolvent.

13 **"§ 58-10-595. Issuing securities.**

14 (a) An SPFC may issue securities, including surplus notes and other forms of financial
15 instruments, subject to and in accordance with applicable law, its approved plan of operation,
16 and its organizational documents.

17 (b) An SPFC, in connection with the issuance of securities, may enter into and perform
18 all of its obligations under any required contracts to facilitate the issuance of these securities.

19 (c) Subject to the approval of the Commissioner, an SPFC may lawfully:

20 (1) Account for the proceeds of surplus notes as surplus and not as debt for
21 purposes of statutory accounting.

22 (2) Submit for prior approval of the Commissioner periodic written requests for
23 payments of interest on and repayments of principal of surplus notes. In lieu
24 of approval of periodic written requests for authorization to make payments
25 of interest on and repayments of principal of surplus notes and other debt
26 obligations issued by the SPFC, the Commissioner may approve a formula
27 or plan, which shall be included in the SPFC's plan of operation as amended
28 from time to time, for payment of interest, principal, or both, with respect to
29 such surplus notes and debt obligations.

30 (d) The Commissioner, without otherwise prejudicing the Commissioner's authority,
31 may approve formulas for an ongoing plan of interest payments or principal repayments, or
32 both, to provide guidance in connection with the Commissioner's ongoing reviews of requests
33 to approve the payments on and principal repayments of the surplus notes.

34 (e) The obligation to repay principal or interest, or both, on the securities issued by the
35 SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty
36 under the SPFC contract.

37 **"§ 58-10-600. Asset management agreements.**

38 An SPFC may enter into swap agreements, or other forms of asset management agreements,
39 including guaranteed investment contracts, or other transactions that have the objective of
40 leveling timing differences in funding of up-front or ongoing transaction expenses, or
41 managing asset, credit, or interest rate risk of the investments to ensure that the investments are
42 sufficient to assure payment or repayment of the securities, and related interest or principal
43 payments, issued pursuant to an SPFC insurance securitization transaction, or the obligations of
44 the SPFC under the SPFC contract.

45 **"§ 58-10-605. Reinsurance.**

46 (a) An SPFC may reinsure only the risks of a ceding insurer pursuant to a reinsurance
47 contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk or
48 indemnification of loss other than such reinsurance contract.

49 (b) Unless otherwise approved in advance by the Commissioner, no SPFC shall assume
50 or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

- 1 (1) Proceeds from an insurance securitization, letters of credit, or other assets
2 described in G.S. 58-10-340(22).
- 3 (2) Premium and other amounts payable by the ceding insurer to the SPFC
4 pursuant to the reinsurance contract.
- 5 (3) Any return on investment of the items described in subdivisions (1) and (2)
6 of this subsection.
- 7 (c) The reinsurance contract shall contain all provisions required or approved by the
8 Commissioner, which requirements shall take into account the laws applicable to the ceding
9 insurer regarding the ceding insurer taking credit for the reinsurance provided under such
10 reinsurance contract.
- 11 (d) An SPFC may cede risks assumed through a reinsurance contract to one or more
12 reinsurers through the purchase of reinsurance, subject to the prior approval of the
13 Commissioner.
- 14 (e) An SPFC may enter into contracts and conduct other commercial activities related
15 or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance
16 securitization, and this Part, provided such contracts and activities are included in the SPFC's
17 plan of operation or are otherwise approved in advance by the Commissioner. Such contracts
18 and activities may include the following:
- 19 (1) Entering into SPFC contracts.
- 20 (2) Issuing SPFC securities in accordance with applicable securities law.
- 21 (3) Complying with the terms of such contracts or securities.
- 22 (4) Entering into trust, guaranteed investment contract, letter of credit, swap,
23 tax, administration, reimbursement, or fiscal agent transactions.
- 24 (5) Complying with trust indenture, reinsurance, or retrocession and other
25 agreements necessary or incidental to effectuate an insurance securitization
26 in compliance with this Part or the plan of operation approved by the
27 Commissioner.
- 28 (f) Unless otherwise approved in advance by the Commissioner, a reinsurance contract
29 shall not contain any provision for payment by the SPFC in discharge of its obligations under
30 the reinsurance contract to any person other than the ceding insurer or any receiver of the
31 ceding insurer.
- 32 (g) An SPFC shall notify the Commissioner immediately of any action by a ceding
33 insurer or any other person to foreclose on or otherwise take possession of collateral provided
34 by the SPFC to secure any obligation of the SPFC.
- 35 (h) In the SPFC insurance securitization, the contracts or other relating documentation
36 shall contain provisions identifying the SPFC.
- 37 (i) Unless otherwise approved by the Commissioner, no SPFC shall enter into an SPFC
38 contract with a person that is not licensed or otherwise authorized to transact the business of
39 insurance or reinsurance in at least its state or country of domicile.
- 40 (j) No SPFC shall:
- 41 (1) Have any direct obligation to the policyholders or reinsureds of the
42 counterparty.
- 43 (2) Perform any of the following activities with anyone convicted of a felony,
44 anyone who is untrustworthy or of known bad character, or anyone
45 convicted of a criminal offense involving the conversion or misappropriation
46 of fiduciary funds or insurance accounts, theft, deceit, fraud,
47 misrepresentation, or corruption:
- 48 a. Lend or otherwise invest assets.
- 49 b. Place any assets in custody, trust, or under management.
- 50 c. Borrow money or receive a loan or advance, other than by issuance
51 of the securities pursuant to an insurance securitization.

"§ 58-10-610. No securities considered to be insurance or reinsurance contracts.

No securities issued by an SPFC pursuant to an insurance securitization shall be considered to be insurance or reinsurance contracts. No investor in these securities or a holder of these securities, by sole means of this investment or holding, shall be considered to be transacting the business of insurance in this State. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this Part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with an insurance securitization.

"§ 58-10-615. Disposition of assets; investment limitations.

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the insurance securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the SPFC's obligations to the ceding insurer.

(c) No SPFC shall be subject to any restriction on investments other than the following:

(1) The Commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable and as amended from time to time.

(2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the Commissioner.

(3) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved by the Commissioner in writing.

"§ 58-10-620. Dividends.

(a) No SPFC shall declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent shall the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars (\$250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the Commissioner that the SPFC can meet its obligations. Approval by the Commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention at the time of each payment of capital or surplus equal to or in excess of amounts specified by or determined in accordance with formulas approved for the SPFC by the Commissioner.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate this Part or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this Part.

"§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation; examinations.

(a) Any material change of the SPFC's plan of operation, whether or not through an SPFC protected cell, shall require prior approval of the Commissioner. The following transactions do not constitute material change for purposes of this section:

(1) If initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after

1 expiration, redemption, or satisfaction of all of these, of part or all of the
2 securities issued pursuant to initial insurance securitization transactions.

3 (2) A change and substitution in a counterparty to a swap transaction for an
4 existing insurance securitization as allowed pursuant to this Part if the
5 replacement swap counterparty carries a similar or higher rating to its
6 predecessor with two or more nationally recognized rating agencies.

7 (b) No later than six months after the fiscal year-end of the SPFC, the SPFC shall file
8 with the Commissioner an audit by a certified public accounting firm of the financial
9 statements of the SPFC and the trust accounts.

10 (c) An SPFC shall report using statutory accounting principles, unless the
11 Commissioner requires, approves, or accepts the use of generally accepted accounting
12 principles or other comprehensive basis of accounting. In each case the Commissioner may
13 require, approve, or accept any appropriate or necessary modifications or adaptations to the
14 accounting basis, and may require the report to be supplemented by additional information.

15 (d) Each SPFC shall file by March 1 a statement of operations, using either generally
16 accepted accounting principles or, if approved, accepted, or required by the Commissioner,
17 statutory accounting principles with useful or necessary modifications or adaptations for the
18 type of insurance and kinds of insurers to be reported upon, and as supplemented by additional
19 information required by the Commissioner. The statement of operations shall include a
20 statement of income, a balance sheet, and may include a detailed listing of invested assets,
21 including identification of assets held in trust to secure the obligations of the SPFC under the
22 SPFC contract. The SPFC also may include with the filing risk-based capital calculations and
23 other adjusted capital calculations to assist the Commissioner with evaluating the levels of the
24 surplus of the SPFC for the year ending on December 31 of the previous year. The statements
25 shall be prepared on forms required by the Commissioner. In addition, the Commissioner may
26 require the filing of performance assessments of the SPFC contract.

27 (e) An SPFC shall maintain the SPFC's records in this State unless otherwise approved
28 by the Commissioner and shall make its records available for examination by the
29 Commissioner at any time. The SPFC shall keep its books and records in such manner that its
30 financial condition, affairs, and operations can be ascertained and so that the Commissioner
31 may readily verify its financial statements and determine its compliance with this Part.

32 (f) All original books, records, documents, accounts, and vouchers shall be preserved
33 and kept available in this State for the purpose of examination and until authority to destroy or
34 otherwise dispose of the records is secured from the Commissioner. The original records,
35 however, may be kept and maintained outside this State if, according to a plan adopted by the
36 management of the SPFC and approved by the Commissioner, the SPFC maintains suitable
37 copies instead of the originals. The books or records may be photographed, reproduced on film,
38 or stored and reproduced electronically.

39 **"§ 58-10-630. Cessation of business.**

40 At the cessation of business of an SPFC following termination or cancellation of an SPFC
41 contract and the redemption of any related securities issued in connection with the SPFC
42 contract, the authority granted by the Commissioner expires or, in the case of retiring and
43 surviving protected cells, is modified, the SPFC is no longer authorized to conduct activities
44 unless and until a new or modified certificate of authority is issued pursuant to a new filing
45 under this Part or as agreed by the Commissioner.

46 **"§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.**

47 (a) Except as otherwise provided in this section, the terms and conditions set forth in
48 Article 30 of this Chapter pertaining to supervision, rehabilitation, and liquidation of insurers
49 apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without
50 causing or otherwise effecting a supervision, rehabilitation, or liquidation of the SPFC or
51 another protected cell.

1 (b) Notwithstanding the provisions of Article 30 of this Chapter, and without causing or
2 otherwise effecting a rehabilitation or liquidation of an otherwise solvent protected cell of an
3 SPFC and subject to the provisions of subdivision (g)(5) of this section, the Commissioner may
4 apply by petition to the court for an order authorizing the Commissioner to rehabilitate or
5 liquidate an SPFC domiciled in this State on one or more of the following grounds:

6 (1) There has been embezzlement, wrongful sequestration, dissipation, or
7 diversion of the assets of the SPFC intended to be used to pay amounts owed
8 to the counterparty or the holders of SPFC securities.

9 (2) The SPFC is insolvent and the holders of a majority in outstanding principal
10 amount of each class of SPFC securities request or consent to rehabilitation
11 or liquidation pursuant to the provisions of this Part.

12 (c) Notwithstanding the provisions of Article 30 of this Chapter, the Commissioner may
13 apply by petition to the Court for an order authorizing the Commissioner to rehabilitate or
14 liquidate one or more of an SPFC's protected cells independently, without causing or otherwise
15 effecting a rehabilitation or liquidation of the SPFC generally or another of its protected cells
16 on one or more of the following grounds:

17 (1) There has been embezzlement, wrongful sequestration, dissipation, or
18 diversion of the assets of the SPFC attributable to the affected protected cell
19 or cells intended to be used to pay amounts owed to the counterparty or the
20 holders of SPFC securities of the affected protected cell or cells.

21 (2) The affected protected cell is insolvent and the holders of a majority in
22 outstanding principal amount of each class of SPFC securities attributable to
23 that particular protected cell request or consent to rehabilitation or
24 liquidation pursuant to the provisions of this Part.

25 (d) The Court may not grant relief provided by subdivision (b)(1) or (c)(1) of this
26 section, unless after notice and a hearing, the Commissioner, who shall have the burden of
27 proof, establishes by preponderance of the evidence that relief must be granted. The court's
28 order may be made with respect to one or more protected cells by name, rather than the SPFC
29 generally.

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

38 (f) With respect to amounts recoverable under an SPFC contract, the amount
39 recoverable by the receiver must not be reduced or diminished as a result of the entry of an
40 order of rehabilitation or liquidation with respect to the counterparty, notwithstanding another
41 provision in the contracts or other documentation governing the SPFC insurance securitization.

42 (g) Notwithstanding the provisions of Article 30 of this Chapter or other laws of this
43 State:

44 (1) An application or petition, or a temporary restraining order or injunction
45 issued pursuant to the provisions of Article 30 of this Chapter, with respect
46 to a counterparty does not prohibit the transaction of a business by an SPFC,
47 including any payment by an SPFC made pursuant to an SPFC security, or
48 any action or proceeding against an SPFC or its assets.

49 (2) The commencement of a summary proceeding or other interim proceeding
50 commenced before a delinquency proceeding with respect to an SPFC, and
51 any order issued by the court does not prohibit the payment by an SPFC

- 1 made pursuant to an SPFC security, SPFC contract, or the SPFC from taking
 2 any action required to make the payment.
 3 (3) A receiver of a counterparty may not void a nonfraudulent transfer by a
 4 counterparty to an SPFC of money or other property made pursuant to an
 5 SPFC contract.
 6 (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of
 7 money or other property made to a counterparty pursuant to an SPFC
 8 contract or made to or for the benefit of any holder of an SPFC security on
 9 account of the SPFC security.
 10 (5) The Commissioner may not seek to have an SPFC with protected cells
 11 declared insolvent as long as at least one of the SPFC's protected cells
 12 remains solvent, and in the case of such an insolvency, the receiver shall
 13 handle the SPFC's assets in compliance with subsection (e) of this section
 14 and other laws of this State.

15 (h) Subsection (g) of this section does not prohibit the Commissioner from taking any
 16 action permitted under Article 30 of this Chapter with respect only to the rehabilitation of an
 17 SPFC with protected cell or cells, provided the Commissioner would have had sufficient
 18 grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting the
 19 provisions of subdivision (5) of subsection (g) of this section. In this case, with respect to the
 20 solvent protected cell or cells, the Commissioner may not prohibit payments made by the SPFC
 21 pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance
 22 securitization transaction that are attributable to these protected cell or cells or prohibit the
 23 SPFC from taking any action required to make these payments.

24 (i) With the exception of the fulfillment of the obligations under an SPFC contract, and
 25 notwithstanding another provision of this Part or other laws of this State, the assets of an SPFC,
 26 including assets held in trust, must not be consolidated with or included in the estate of a
 27 counterparty in any delinquency proceeding against the counterparty, pursuant to the provisions
 28 of this Part for any purpose including, without limitation, distribution to creditors of the
 29 counterparty.

30 "Subpart 5. Other Provisions.

31 "**§ 58-10-570. Other laws applicable to captive insurance companies.**

32 In addition to the statutes and laws previously referred to in this Part, the following
 33 provisions of this Chapter are applicable to all captive insurance companies subject to this Part:

- 34 (1) G.S. 58-2-45. – Orders of Commissioner; when writing required.
 35 (2) G.S. 58-2-160. – Reporting and investigation of insurance and reinsurance
 36 fraud and the financial condition of licensees; immunity from liability.
 37 (3) G.S. 58-2-162. – Embezzlement by insurance agents, brokers, or
 38 administrators.
 39 (4) G.S. 58-2-185. – Record of business kept by companies and agents;
 40 Commissioner may inspect.
 41 (5) G.S. 58-2-190. – Commissioner may require special reports.
 42 (6) G.S. 58-2-195. – Commissioner may require records, reports, etc., for
 43 agencies, agents, and others.
 44 (7) G.S. 58-2-200. – Books and papers required to be exhibited.
 45 (8) G.S. 58-5-1. – Deposits; use of master trust.
 46 (9) G.S. 58-7-50. – Maintenance and removal of records and assets.
 47 (10) G.S. 58-7-55. – Exceptions to requirements of G.S. 58-7-50."

48 **SECTION 2.** G.S. 58-22-15 reads as rewritten:

49 "**§ 58-22-15. Risk retention groups chartered in this State.**

- 50 (a) A risk retention group ~~seeking to be chartered in this State must be chartered shall,~~
 51 pursuant to the provisions of Part 9 of Article 10 of this Chapter, be chartered and licensed as a

1 ~~to write only liability insurance company under Article 7 of this Chapter pursuant to this~~
 2 ~~Article and, except as provided elsewhere in this Article, must comply with all of the laws and~~
 3 ~~rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to~~
 4 ~~the extent such requirements are not a limitation on laws, administrative rules, or requirements~~
 5 ~~of this State. As a chartered and licensed liability insurance company, the group is subject to~~
 6 ~~the taxes imposed in Article 8B of Chapter 105 of the General Statutes.~~

7"

8 **SECTION 3.** G.S. 58-28-5 reads as rewritten:

9 **"§ 58-28-5. Transacting business without a license prohibited; exceptions.**

10 (a) Except as otherwise provided in this section, it is unlawful for any company to enter
 11 into a contract of insurance as an insurer or to transact insurance business in this State as set
 12 forth in G.S. 58-28-13 without a license issued by the Commissioner. This section does not
 13 apply to the following acts or transactions:

14 ...

15 (10) An activity in this State by or on the sole behalf of a captive insurer licensed
 16 and subject to regulation in another jurisdiction other than this State that
 17 insures solely the risks of the company's parent and affiliated
 18 ~~companies, companies, or the risks of controlled unaffiliated companies.~~

19"

20 **SECTION 4.** G.S. 58-47-95 reads as rewritten:

21 **"§ 58-47-95. Excess insurance and reinsurance.**

22 ...

23 (b) Any excess insurance policy or reinsurance contract under this section shall be
 24 issued by a licensed insurance company, a licensed captive insurance company, an approved
 25 surplus lines insurance company, or an accredited reinsurer, and shall:

- 26 (1) Provide for at least 30 days' written notice of cancellation by certified mail,
 27 return receipt requested, to the group and to the Commissioner.
 28 (2) Be renewable automatically at its expiration, except upon 30 days' written
 29 notice of nonrenewal by certified mail, return receipt requested, to the group
 30 and to the Commissioner.

31"

32 **SECTION 5.** G.S. 97-90 reads as rewritten:

33 **"§ 97-190. Excess insurance.**

34 ...

35 (b) An excess insurance policy required by this section shall be issued by either an
 36 insurance company licensed in this State ~~State~~, a captive insurance company licensed in this
 37 State, or an eligible surplus lines insurer as defined in G.S. 58-21-10 and shall:

- 38 (1) Provide for at least 30 days' written notice of cancellation by registered or
 39 certified mail, return receipt requested, to the self-insurer and to the
 40 Commissioner.
 41 (2) Be renewable automatically at its expiration, except upon 30 days' written
 42 notice of nonrenewal by certified mail, return receipt requested, to the
 43 self-insurer and to the Commissioner.

44"

45 **SECTION 6.** Nothing in this act shall be construed to obligate the General
 46 Assembly to appropriate funds to implement the provisions of this act. This act becomes
 47 effective July 1, 2013, if funds are appropriated for the 2013-2015 fiscal biennium to provide
 48 the Department with regulatory staff and resources to license and regulate captive insurance
 49 companies. If no funds are appropriated, then this act shall not become effective until July 1 of
 50 a year in which the General Assembly appropriates funds to implement it.