

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 473*

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PROPOSED SENATE COMMITTEE SUBSTITUTE H473-PCS10418-TPx-43

Short Title: NC Captive Insurance Act.

(Public)

Sponsors:

Referred to:

April 1, 2013

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

3 The General Assembly of North Carolina enacts:

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

6 "Part 9. Captive Insurance Companies.

7 "Subpart 1. General Provisions.

8 **"§ 58-10-335. Purpose.**

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

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

14 **"§ 58-10-340. Definitions.**

15 The following definitions apply in this Part:

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

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

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

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

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



* H 4 7 3 - P C S 1 0 4 1 8 - T P X - 4 3 *

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

1 (10%) or more of the voting securities of another person. This presumption
2 may be rebutted by a showing that control does not exist. Notwithstanding
3 this definition, for purposes of this Part, the fact that an SPFC exclusively
4 provides reinsurance to a ceding insurer under an SPFC contract is not by
5 itself sufficient grounds for a finding that the SPFC and ceding insurer are
6 under common control.

7 (12) Controlled unaffiliated business. – A person meeting all of the following:

8 a. The person is not in the corporate system of a parent and its affiliated
9 companies in the case of a pure captive insurance company or is not
10 in the corporate system of an industrial insured and its affiliated
11 companies in the case of an industrial insured captive insurance
12 company.

13 b. The person has an existing contractual relationship with a parent or
14 one of its affiliated companies in the case of a pure captive insurance
15 company or with an industrial insured or one of its affiliated
16 companies in the case of an industrial insured captive insurance
17 company.

18 c. The person's risks are managed by a pure captive insurance company
19 or an industrial insured captive insurance company, as applicable, in
20 accordance with G.S. 58-10-470.

21 (13) Counterparty. – An SPFC's parent or affiliated company or a ceding insurer
22 to the SPFC contract. A nonaffiliated company may be designated a
23 counterparty, but that designation is subject to the prior approval of the
24 Commissioner.

25 (14) Court. – Defined in G.S. 58-30-10.

26 (15) Department. – Defined in G.S. 58-1-5.

27 (16) General account. – All assets and liabilities of a protected cell captive
28 insurance company not attributable to a protected cell.

29 (17) Incorporated cell. – A protected cell of an incorporated cell captive
30 insurance company that is organized as a corporation or other legal entity
31 separate from the incorporated cell captive insurance company.

32 (18) Incorporated cell captive insurance company. – A protected cell captive
33 insurance company that is established as a corporation or other legal entity
34 separate from its incorporated cells that are also organized as separate legal
35 entities.

36 (19) Industrial insured. – An insured that meets all of the following:

37 a. It procures the insurance of any risk or risks by use of the services of
38 a full-time employee acting as an insurance manager or buyer.

39 b. Its aggregate annual premiums for insurance on all risks total at least
40 twenty-five thousand dollars (\$25,000).

41 c. It has at least 25 full-time employees.

42 (20) Industrial insured captive insurance company. – Any company that insures
43 risks of the industrial insureds that comprise the industrial insured group and
44 that may insure the risks of the affiliated companies of the industrial insureds
45 and the risks of the controlled unaffiliated business of an industrial insured
46 or its affiliated companies.

47 (21) Industrial insured group. – Any group of industrial insureds that collectively
48 are described by any of the following:

49 a. Own, control, or hold with power to vote all of the outstanding
50 voting securities of an industrial insured captive insurance company
51 incorporated as a stock insurer.

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

- 1 (29) Participant. – A person or an entity authorized to be a participant by
2 G.S. 58-10-515, and any affiliate of a participant, that is insured by a
3 protected cell captive insurance company, if the losses of the participant are
4 limited through a participant contract.
- 5 (30) Participant contract. – A contract by which a protected cell captive insurance
6 company insures the risks of a participant and limits the losses of each such
7 participant to its pro rata share of the assets of one or more protected cells
8 identified in such participant contract.
- 9 (31) Person. – Defined in G.S. 58-1-5.
- 10 (32) Protected cell. – Either of the following:
- 11 a. A separate account established by a protected cell captive insurance
12 company formed or licensed under this Part, in which an identified
13 pool of assets and liabilities is segregated and insulated by means of
14 this Part from the remainder of the protected cell captive insurance
15 company's assets and liabilities, in accordance with the terms of one
16 or more participant contracts to fund the liability of the protected cell
17 captive insurance company, with respect to the participants as set
18 forth in the participant contracts.
- 19 b. A separate account established and maintained by an SPFC for one
20 SPFC contract and the accompanying insurance securitization with a
21 counterparty.
- 22 (33) Protected cell assets. – All assets, contract rights, and general intangibles
23 identified with and attributable to a specific protected cell of a protected cell
24 captive insurance company.
- 25 (34) Protected cell captive insurance company. – Any captive insurance company
26 meeting all of the following:
- 27 a. The minimum capital and surplus required by this Part are provided
28 by one or more sponsors.
- 29 b. The company is formed or licensed under this Part.
- 30 c. The company insures the risks of separate participants through
31 participant contracts.
- 32 d. The company funds its liability to each participant through one or
33 more protected cells and segregates the assets of each protected cell
34 from the assets of other protected cells and from the assets of the
35 protected cell captive insurance company's general account.
- 36 (35) Protected cell liabilities. – All liabilities and other obligations identified with
37 and attributed to a specific protected cell of a protected cell captive
38 insurance company.
- 39 (36) Pure captive insurance company. – Any company that insures risks of its
40 parent and affiliated companies or a controlled unaffiliated business or
41 businesses.
- 42 (37) Risk retention group. – A captive insurance company organized under the
43 laws of this State pursuant to the Liability Risk Retention Act of 1986, 15
44 U.S.C. § 3901, et seq., as amended, as a stock or mutual corporation or as a
45 reciprocal or other limited liability entity. Risk retention groups formed
46 under this Part are subject to all applicable insurance laws including, but not
47 limited to, any applicable provisions in Articles 1, 2, 3, 7, 19, 22, 33, and 34
48 of this Chapter.
- 49 (38) Securities. – Those different types of debt obligations, equity, surplus
50 certificates, surplus notes, funding agreements, derivatives, and other legal
51 forms of financial instruments.

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

16 **"§ 58-10-345. Licensing; authority; confidentiality.**

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

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

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

- 44 (1) It obtains a license from the Commissioner pursuant to subsection (c) of this
45 section authorizing it to do insurance business in this State.
46 (2) Its board of directors or committee of managers or, in the case of a
47 reciprocal insurer, its subscribers' advisory committee holds at least one
48 meeting each year in this State.
49 (3) It maintains its principal place of business in this State.
50 (4) It appoints a registered agent to accept service of process and to otherwise
51 act on its behalf in this State, provided that whenever such registered agent

1 cannot with reasonable diligence be found at the registered office of the
2 captive insurance company, the Commissioner shall be an agent of such
3 captive insurance company upon whom any process, notice, or demand may
4 be served and such service shall be done in accordance with G.S. 58-16-30.

5 (c) In order to receive a license to issue policies of insurance as a captive insurance
6 company in this State, an applicant business entity shall meet all of the following requirements:

7 (1) The applicant business entity shall submit its organizational documents to
8 the Commissioner. If the Commissioner approves the organizational
9 documents, then the Commissioner shall issue a letter to the applicant
10 certifying the Commissioner's approval. The applicant business entity shall
11 submit the organizational documents, along with a copy of the approval
12 letter issued by the Commissioner, and the required filing fees for
13 organizational documents prescribed by North Carolina law to the Secretary
14 of State for filing. Upon filing the organizational documents, the Secretary
15 of State shall issue a certificate of filing to the applicant. The applicant
16 business entity shall submit a copy of the certificate of filing relative to the
17 applicant's organizational documents issued by the Secretary of State to the
18 Commissioner.

19 (2) The applicant business entity shall file a statement under oath of its president
20 and secretary showing its financial condition.

21 (3) The applicant business entity shall file its plan of operation.

22 (4) The applicant business entity shall file other documents as required by the
23 Commissioner.

24 (5) The applicant business entity shall also file with the Commissioner evidence
25 of all of the following:

26 a. The amount and liquidity of its assets relative to the risks to be
27 assumed.

28 b. The adequacy of the expertise, experience, and character of the
29 person or persons who will manage it.

30 c. The overall soundness of its plan of operation.

31 d. The adequacy of the loss prevention programs of its insureds.

32 e. Such other factors deemed relevant by the Commissioner in
33 ascertaining whether the applicant business entity will be able to
34 meet its policy obligations.

35 (6) No less than the amount required by G.S. 58-10-370 shall be paid in by the
36 applicant business entity and deposited with the Commissioner. In the
37 alternative, an irrevocable letter of credit in that amount and acceptable to
38 the Commissioner shall be filed with the Commissioner.

39 (7) The applicant business entity shall submit to the Commissioner for approval
40 a description of the coverages, deductibles, coverage limits, and rates,
41 together with such additional information as the Commissioner may require.

42 (d) Whenever a captive insurance company desires to amend the organizational
43 documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit
44 the amended organizational documents to the Commissioner. If the Commissioner approves the
45 amendment, then the Commissioner shall issue a letter to the applicant certifying the
46 Commissioner's approval. The applicant business entity shall submit the organizational
47 documents, along with a copy of the approval letter issued by the Commissioner, and the
48 required filing fees for organizational documents prescribed in North Carolina law to the
49 Secretary of State for filing. Upon filing the organizational documents, the Secretary of State
50 shall issue a certificate of filing to the applicant. The applicant shall submit a copy of the

1 certificate of filing relative to the applicant's organizational documents issued by the Secretary
2 of State to the Commissioner.

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

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

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

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

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

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

20 (3) Organizational documents filed with the Secretary of State shall continue to
21 be nonconfidential public records in the Secretary of State's office.

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

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

29 **"§ 58-10-350. Commissioner use of consultants and other professionals.**

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

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

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

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

39 **"§ 58-10-355. Organizational examination.**

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

46 **"§ 58-10-360. Designation of captive manager.**

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

"§ 58-10-365. Names of companies.

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this State nor any name likely to mislead the public. Any name adopted by a captive insurance company shall comply with the requirements of State law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Incorporated as a mutual corporation.

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

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

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

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

(e) In the case of a captive insurance company formed as a corporation, at least one of the members of the board of directors shall be a resident of this State. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the

1 subscribers' advisory committee shall be a resident of this State. In the case of a captive
2 insurance company formed as a limited liability company, at least one of the managers shall be
3 a resident of this State.

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

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

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

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

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

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

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

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

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

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

41 (2) At the time of the filing of its election, the company shall file with both the
42 Commissioner and the Secretary of State articles of conversion, including
43 articles of incorporation consistent with this Part and with all other
44 applicable State statutes and laws.

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

49 "§ 58-10-385. Directors.

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

4 (b) No director, officer, or employee of a captive insurance company shall, except on
5 behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage,
6 gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment,
7 or exchange made by or for the captive insurance company, but such person may receive
8 reasonable compensation for necessary services rendered to the captive insurance company in
9 his or her usual private, professional, or business capacity.

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

12 **"§ 58-10-390. Conflict of interest.**

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

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

21 **"§ 58-10-395. Change of business.**

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

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

27 **"§ 58-10-400. Insurance manager and intermediaries.**

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

31 **"§ 58-10-405. Annual reports.**

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

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

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

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

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

11 **"§ 58-10-420. Annual audit and actuarial certification.**

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

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

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

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

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

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

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

50 a. That the accountant is independent with respect to the captive
51 insurance company and conforms to the standards of the profession

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

1 accountant that the captive insurance company has materially misstated its financial condition
2 in its report to the Commissioner as required in G.S. 58-10-405. The independent certified
3 public accountant shall furnish such notification to the Commissioner within five working days
4 of notifying the captive insurance company.

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

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

- 28 (1) Number of partners, expertise of the partners, or the number of insurance
29 clients in the firm;
- 30 (2) Premium volume of the captive insurance company; or
- 31 (3) Number of jurisdictions in which the insurer transacts business.

32 **"§ 58-10-425. Deposit requirement.**

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

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

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

46 **"§ 58-10-430. Examinations.**

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

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

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

13 **"§ 58-10-435. License suspension or revocation.**

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

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

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

45 **"§ 58-10-440. Investment requirements.**

46 (a) Except as may be otherwise authorized by the Commissioner, association captive
47 insurance companies and risk retention groups shall comply with the investment requirements
48 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,
49 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
50 58-7-205, as applicable. Notwithstanding any other provision of this Chapter, the
51 Commissioner may approve the use of alternative reliable methods of valuation and rating.

1 **(b)** No pure captive insurance company, industrial insured captive insurance company,
2 protected cell captive insurance company, incorporated cell captive insurance company, or
3 special purpose financial captive insurance company shall be subject to any restrictions on
4 allowable investments, provided that the Commissioner may prohibit or limit any investment
5 that threatens the solvency or liquidity of any such company.

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

10 **(d)** Notwithstanding this section or G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173,
11 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,
12 58-7-197, 58-7-200, and 58-7-205, an association captive insurance company of an association
13 described in G.S. 58-10-340(4)(b) may hold any interest in qualified headquarters property, and
14 the qualified headquarters property shall be admitted assets and authorized investments of the
15 association captive insurance company. The net book value of the qualified headquarters
16 property deemed admitted and authorized under this subsection may not exceed two million
17 five hundred thousand dollars (\$2,500,000), and an association captive insurance company
18 holding qualified headquarters property pursuant to this subsection shall at all times maintain
19 total surplus, without regard to the qualified headquarters property, of at least the sum of (i)
20 fifty percent (50%) of the net book value of the qualified headquarters property and (ii) the
21 minimum capital and surplus requirements. For purposes of this subsection, "qualified
22 headquarters property" includes the real property and the building in which the principal office
23 of the association captive insurance company is located and also includes any improved and
24 unimproved real property of the association captive insurance company that is located within
25 1,500 feet of the company's principal office.

26 **§ 58-10-445. Reinsurance.**

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

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

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

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

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

50 **(f)** No credit shall be allowed, as an asset or a deduction from liability, to any ceding
51 insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of

1 the liability of the ceding insurer under the contract reinsured without diminution because of
2 the insolvency of the ceding insurer.

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

7 **§ 58-10-450. Membership in rating organizations; exemption from compulsory**
8 **associations.**

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

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

15 **§ 58-10-455. Taxation.**

16 A captive insurance company is taxed in accordance with Article 8B of Chapter 105 of the
17 General Statutes.

18 **§ 58-10-460. Adoption and amendment of rules by Commissioner.**

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

22 **§ 58-10-465. Applicable provisions.**

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

27 **§ 58-10-470. Establishment of standards regarding risk management.**

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

35 **§ 58-10-475. Supervision; rehabilitation; liquidation.**

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

39 **§ 58-10-480. Authority for expenditure of public funds.**

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

50 **§ 58-10-485. Violations and penalties.**

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

6 (1) The insurer, person, or entity to cease and desist from engaging in the act or
7 practice giving rise to the violation.

8 (2) Payment of a monetary penalty pursuant to G.S. 58-2-70.

9 (3) The suspension or revocation of the insurer's, person's, or entity's license.

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

20 **"§ 58-10-495. Captive insurance companies reinsuring life insurance policies.**

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

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

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

32 (2) If the company uses generally accepted accounting principles, including any
33 appropriate modifications or adaptations thereto approved by the
34 Commissioner, it shall submit the annual report in a form approved by the
35 Commissioner.

36 "Subpart 2. Protected Cell Captive Insurance Companies.

37 **"§ 58-10-500. Forming a protected cell captive insurance company.**

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

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

44 **"§ 58-10-505. Additional filing requirements for applicant protected cell captive**
45 **insurance companies.**

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

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

- 1 (2) A statement acknowledging that all records of the applicant, including
2 records pertaining to any protected cells, shall be made available for
3 inspection or examination by the Commissioner or the Commissioner's
4 designated agent.
- 5 (3) All contracts or sample contracts between the applicant and any participants.
6 (4) Evidence that expenses shall be allocated to each protected cell in a fair and
7 equitable manner.

8 **"§ 58-10-510. Establishment of protected cells.**

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

- 12 (1) A protected cell captive insurance company may establish one or more
13 protected cells if the Commissioner has approved in writing a plan of
14 operation or amendments to a plan of operation submitted by the protected
15 cell captive insurance company with respect to each protected cell. A plan of
16 operation shall include, but is not limited to, the specific business objectives
17 and investment guidelines of the protected cell, provided that the
18 Commissioner may require additional information in the plan of operation.
- 19 (2) Upon the Commissioner's written approval of the plan of operation, the
20 protected cell captive insurance company may attribute insurance obligations
21 with respect to its insurance business to the protected cell in accordance with
22 the approved plan of operation.
- 23 (3) A protected cell shall have its own distinct name or designation that shall
24 include the words "protected cell" or "incorporated cell."
- 25 (4) The protected cell captive insurance company shall transfer all assets
26 attributable to a protected cell to one or more separately established and
27 identified protected cell accounts bearing the name or designation of that
28 protected cell. Protected cell assets must be held in the protected cell
29 accounts for the purpose of satisfying the obligations of that protected cell.
- 30 (5) An incorporated protected cell may be organized and operated in any form
31 of business organization authorized by the Commissioner. Each incorporated
32 protected cell of a protected cell captive insurer shall be treated as a captive
33 insurer for purposes of this Part. Unless otherwise permitted by the
34 organizational documents of a protected cell captive insurer, each
35 incorporated protected cell of the protected cell captive insurer must have
36 the same directors, secretary, and registered office as the protected cell
37 captive insurer.
- 38 (6) All attributions of assets and liabilities between a protected cell and the
39 general account shall be in accordance with the plan of operation and
40 participant contracts approved by the Commissioner. No other attribution of
41 assets or liabilities shall be made by a protected cell captive insurance
42 company between the protected cell captive insurance company's general
43 account and its protected cells. Any attribution of assets and liabilities
44 between the general account and a protected cell shall be in cash or in
45 readily marketable securities with established market values.

46 (b) The creation of a protected cell does not create, with respect to that protected cell, a
47 legal person separate from the protected cell captive insurance company, unless the protected
48 cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including
49 assets transferred to a protected cell account, are owned by the protected cell. No protected cell
50 captive insurance company shall be, or hold itself out to be, a trustee with respect to those
51 protected cell assets of that protected cell account. Notwithstanding this subsection, the

1 protected cell captive insurance company may allow for a security interest to attach to protected
2 cell assets or a protected cell account when the security interest is in favor of a creditor of the
3 protected cell and otherwise allowed under applicable law.

4 (c) This Part shall not be construed to prohibit the protected cell captive insurance
5 company from contracting with or arranging for an investment advisor, commodity trading
6 advisor, or other third party to manage the protected cell assets of a protected cell, if all
7 remuneration, expenses, and other compensation of the third-party advisor or manager are
8 payable from the protected cell assets of that protected cell and not from the protected cell
9 assets of other protected cells or the assets of the protected cell captive insurance company's
10 general account.

11 (d) A protected cell captive insurance company shall establish administrative and
12 accounting procedures necessary to properly identify (i) the one or more protected cells of the
13 protected cell captive insurance company and (ii) the assets and liabilities attributable to each
14 protected cell. The directors of a protected cell captive insurance company shall keep protected
15 cell assets and liabilities:

16 (1) Separate and separately identifiable from the assets and liabilities of the
17 protected cell captive insurance company's general account.

18 (2) Attributable to one protected cell separate and separately identifiable from
19 protected cell assets and protected cell liabilities attributable to other
20 protected cells.

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

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

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

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

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

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

43 (j) All attributions of assets and liabilities to the protected cells and the general account
44 shall be in accordance with the plan of operation approved by the Commissioner. No other
45 attribution of assets or liabilities shall be made by a protected cell captive insurance company
46 between its general account and any protected cell, or between any protected cells. The
47 protected cell captive insurance company shall attribute all insurance obligations, assets, and
48 liabilities relating to a reinsurance contract entered into with respect to a protected cell to such
49 protected cell. The performance under such reinsurance contract and any tax benefits, losses,
50 refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell
51 captive insurance company is a party, including any payments made by or due to be made to

1 the protected cell captive insurance company pursuant to the terms of such agreement, shall
2 reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that
3 are attributed to such protected cell.

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

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

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

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

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

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

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

24 (3) Secured by a trust fund in the United States for the benefit of policyholders
25 and claimants, funded by an irrevocable letter of credit, or other arrangement
26 that is acceptable to the Commissioner. The amount of security provided
27 shall be no less than the reserves associated with those liabilities which are
28 neither fronted nor reinsured, including reserves for losses, allocated loss
29 adjustment expenses, incurred but not reported losses, and unearned
30 premiums for business written through the participant's protected cell. The
31 Commissioner may require the protected cell captive insurance company to
32 increase the funding of any security arrangement established under this
33 subdivision. If the form of security is a letter of credit, the letter of credit
34 shall be issued or confirmed by a bank approved by the Commissioner. A
35 trust maintained pursuant to this subdivision shall be established in a form
36 and upon such terms approved by the Commissioner.

37 (p) Notwithstanding this Chapter or other laws of this State, and in addition to
38 G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company
39 where the Commissioner determines that one or more protected cells remain solvent, the
40 Commissioner may separate such cells from the protected cell captive insurance company and
41 may allow, on application of the protected cell captive insurance company, for the conversion
42 of such protected cells into one or more new or existing protected cell captive insurance
43 companies, or one or more other captive insurance companies, pursuant to such plan of
44 operation as the Commissioner deems acceptable.

45 **"§ 58-10-515. Participation in a protected cell captive insurance company.**

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

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

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

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

3 **"§ 58-10-520. Combining assets of protected cells.**

4 Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be
5 combined for purposes of investment and such combination shall not be construed as defeating
6 the segregation of such assets for accounting or other purposes. Protected cell captive insurance
7 companies shall comply with the investment requirements contained in G.S. 58-7-167,
8 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,
9 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable; provided that
10 compliance with such investment requirements shall be waived for protected cell captive
11 insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed
12 pursuant to G.S. 58-10-445 or to the extent otherwise deemed reasonable and appropriate by
13 the Commissioner. Notwithstanding any other provision of this Chapter, the Commissioner
14 may approve the use of alternative reliable methods of valuation and rating.

15 **"§ 58-10-525. Application of supervision, rehabilitation, and liquidation provisions to**
16 **protected cell captive insurance companies.**

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

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

22 (c) Notwithstanding Article 30 of this Chapter:

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

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

28 "Subpart 3. Branch Captive Insurance Companies.

29 **"§ 58-10-530. Establishment of branch captive insurance companies.**

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

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

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

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

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

43 (2) Reserves on such insurance policies or such reinsurance contracts as may be
44 issued or assumed by the branch captive insurance company through its
45 branch operations, including reserves for losses, allocated loss adjustment
46 expenses, incurred but not reported losses, and unearned premiums with
47 regard to business written through the branch operations; provided, however,
48 that the Commissioner may permit a branch captive insurance company to
49 credit against any such reserve requirement any security for loss reserves
50 that the branch captive insurance company may post with a ceding insurer or

1 that may be posted by a reinsurer with the branch captive insurance
2 company, and in either case if such security remains posted.

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

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

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

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

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

12 **"§ 58-10-540. Petition for certificate of authority.**

13 In the case of an alien captive insurance company seeking to become licensed as a branch
14 captive insurance company, the alien captive insurance company shall petition the
15 Commissioner to issue a certificate setting forth the Commissioner's finding that, after
16 considering the character, reputation, financial responsibility, insurance experience, and
17 business qualifications of the officers and directors of the alien captive insurance company, the
18 licensing and maintenance of the branch operations will promote the general good of the State.
19 After the Commissioner issues a certificate of authorization, the alien captive insurance
20 company shall comply with all other applicable State statutes or common law.

21 **"§ 58-10-545. Filing of reports and statements.**

22 Prior to March 1 of each year, or with the approval of the Commissioner within 60 days
23 after its fiscal year-end, a branch captive insurance company shall file with the Commissioner a
24 copy of all reports and statements required to be filed under the laws of the jurisdiction in
25 which the alien captive insurance company is formed, verified by oath of two of its executive
26 officers. If the Commissioner is satisfied that the annual report filed by the alien captive
27 insurance company in its domiciliary jurisdiction provides adequate information concerning the
28 financial condition of the alien captive insurance company, the Commissioner may waive the
29 requirement for completion of the captive annual statement for business written in the alien
30 jurisdiction.

31 **"§ 58-10-550. Examination of a branch captive insurance company.**

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

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

42 "Subpart 4. Special Purpose Financial Captives.

43 **"§ 58-10-555. Creation of special purpose financial captives.**

44 Special purpose financial captives (SPFCs) are provided by this Subpart exclusively to
45 facilitate the securitization of one or more risks as a means of accessing alternative sources of
46 capital and achieving the benefits of securitization. SPFCs are created for the limited purpose
47 of entering into SPFC contracts and insurance securitization transactions and into related
48 agreements to facilitate the accomplishment and execution of those transactions. The creation
49 of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance
50 securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for
51 many insurers to insurance securitization and capital markets financing technology, and to

1 further the economic development and expand the interest of this State through its captive
2 insurance program.

3 **"§ 58-10-560. Controlling provisions when conflict exists; exemptions.**

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

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

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

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

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

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

18 (2) Obtain from the Commissioner a certificate of authority authorizing it to
19 conduct insurance or reinsurance business, or both, in this State.

20 (3) Hold at least one management meeting each year in this State. For the
21 purposes of this section, management is defined as the board of directors,
22 managing board, or other individual or individuals vested with overall
23 responsibility for the management of the affairs of the SPFC, including the
24 election and appointment of officers or other of those agents to act on behalf
25 of the SPFC.

26 (4) Maintain its principal place of business in this State.

27 (5) Appoint a resident registered agent to accept service of process and to
28 otherwise act on its behalf in this State. If the registered agent, with
29 reasonable diligence, is not found at the registered office of the SPFC, the
30 Commissioner shall be an agent of the SPFC upon whom any process,
31 notice, or demand may be served.

32 (6) Provide such documentation of the insurance securitization as requested by
33 the Commissioner immediately upon closing of the transaction, including:

34 a. An opinion of a duly licensed North Carolina legal counsel with
35 respect to compliance with this Part and any other applicable laws as
36 of the effective date of the transaction.

37 b. A statement under oath of its president and secretary demonstrating
38 its financial condition.

39 (7) Provide a complete set of the documentation of the insurance securitization
40 to the Commissioner immediately following closing of the transaction.

41 (c) A complete SPFC application shall include the following:

42 (1) A certified copy of the SPFC's organizational documents.

43 (2) Evidence of:

44 a. The amount and liquidity of its assets relative to the risks to be
45 assumed.

46 b. The adequacy of the expertise, experience, and character of the
47 person or persons who manage the SPFC.

48 c. The overall soundness of the SPFC's plan of operation.

49 d. Other factors considered relevant by the Commissioner in
50 ascertaining whether the proposed SPFC is able to meet its policy
51 obligations.

- 1 e. The applicant SPFC's financial condition, including the source and
2 form of the minimum capital to be contributed to the SPFC.
- 3 (3) A plan of operation consisting of a description of or statement of intent with
4 respect to the contemplated insurance securitization, the SPFC contract, and
5 related transactions, which shall include:
- 6 a. Draft documentation or, at the discretion of the Commissioner, a
7 written summary of all material agreements that are entered into to
8 effectuate the SPFC contract and, before the effectuation of the SPFC
9 contract, the insurance securitization, to include the names of the
10 counterparty, the nature of the risks being assumed, the proposed use
11 of protected cells, if any, and the maximum amounts, purpose, and
12 nature and the interrelationships of the various transactions required
13 to effectuate the insurance securitization.
- 14 b. The source and form of additional capital to be contributed to the
15 SPFC.
- 16 c. The proposed investment strategy of the SPFC.
- 17 d. A description of the underwriting, reporting, and claims payment
18 methods by which losses covered by the SPFC contract are reported,
19 accounted for, and settled.
- 20 e. A pro forma balance sheet and income statement illustrating various
21 stress case scenarios for the performance of the SPFC under the
22 SPFC contract.
- 23 (4) Biographical affidavits in NAIC format of all of the prospective SPFC's
24 officers and directors, providing the officers' and directors' legal names, any
25 names under which they have or are conducting their affairs, and any other
26 biographical information as the Commissioner may request.
- 27 (5) An affidavit from the applicant SPFC verifying:
- 28 a. The applicant SPFC complies with this Part.
- 29 b. The applicant SPFC operates only pursuant to this Part.
- 30 c. The applicant SPFC's investment strategy reflects and takes into
31 account the liquidity of assets and the reasonable preservation,
32 administration, and asset management of such assets relative to the
33 risks associated with the SPFC contract and the insurance
34 securitization transaction.
- 35 d. The securities proposed to be issued, if any, are valid legal
36 obligations that are either properly registered with the Commissioner
37 or constitute an exempt security or form part of an exempt
38 transaction.
- 39 (6) Any other statements or documents required by the Commissioner to
40 evaluate and complete the licensing of the SPFC.
- 41 (d) In addition to the information required by subsection (c) of this section and by
42 G.S. 58-10-585, when a protected cell is used, an applicant SPFC shall file with the
43 Commissioner:
- 44 (1) A business plan demonstrating how the applicant SPFC accounts for the loss
45 and expense experience of each protected cell at a level of detail found to be
46 sufficient by the Commissioner and how the applicant will report the
47 experience to the Commissioner.
- 48 (2) A statement acknowledging that all records of the SPFC, including records
49 pertaining to any protected cells, must be made available for inspection or
50 examination by the Commissioner.

- 1 (3) All contracts or sample contracts between the SPFC and any counterparty
2 related to each protected cell.
- 3 (4) A description of the expenses allocated to each protected cell.
- 4 (e) Information submitted pursuant to this section shall be and remain confidential, and
5 shall not be made public by the Commissioner or the Commissioner's designee unless
6 disclosure is ordered by a court of competent jurisdiction. In addition, the Commissioner shall
7 have the discretion to disclose such information to a public official having jurisdiction over the
8 regulation of insurance in another state, provided that:
- 9 (1) Such public official shall agree in writing to maintain the confidentiality of
10 such information.
- 11 (2) The laws of the state in which such public official serves require such
12 information to be and to remain confidential.
- 13 (f) G.S. 58-10-430 applies to SPFCs.
- 14 (g) SPFCs are subject to any rules or regulations promulgated pursuant to
15 G.S. 58-10-460.
- 16 (h) The Commissioner may retain legal, financial, and examination services from
17 outside the Department to examine and investigate the application, the cost of which may be
18 charged against the applicant. The Commissioner also may use internal resources to examine
19 and investigate the application based upon an hourly rate for the services performed or the
20 usual and customary fee charged by the financial services industry for similar work subject to a
21 minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is
22 payable upon filing of the application and the remainder upon licensure.
- 23 (i) An SPFC shall be subject to payment of premium taxes as required by
24 G.S. 58-10-455.
- 25 (j) The Commissioner shall grant a certificate of authority authorizing the SPFC to
26 transact insurance or reinsurance business as an SPFC in this State, upon a finding by the
27 Commissioner that:
- 28 (1) The SPFC's proposed plan of operation provides a reasonable and expected
29 successful operation.
- 30 (2) The terms of the SPFC contract and related transactions comply with this
31 Part.
- 32 (3) The proposed plan of operation is not hazardous to any counterparty.
- 33 (4) To the extent required by law or regulation, the Commissioner or an
34 equivalent regulatory authority of the state of domicile of each counterparty
35 has notified the Commissioner in writing or otherwise provided assurance
36 satisfactory to the Commissioner that it has approved or not disapproved the
37 transaction.
- 38 (5) The certificate of authority authorizing the SPFC to transact business is
39 limited only to the insurance or reinsurance activities that the SPFC is
40 authorized to conduct pursuant to this Part.
- 41 (k) In evaluating the expectation of a successful operation, factors the Commissioner
42 shall consider include whether the proposed SPFC and its management are of known good
43 character and reasonably believed not to be affiliated, directly or indirectly, through ownership,
44 control, management, reinsurance transactions, or other insurance or business relations, with a
45 person known to have been involved in the improper manipulation of assets, accounts, or
46 reinsurance.
- 47 (l) To ensure the proposed plan of operation is not hazardous to any counterparty, the
48 Commissioner may require reasonable safeguards in the SPFC's plan of operation where
49 applicable and appropriate in the circumstance, including, without limitation, that certain assets
50 of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an
51 SPFC contract.

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

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

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

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

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

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

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

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

26 **"§ 58-10-575. Minimum capital.**

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

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

35 **"§ 58-10-580. Authorized activities.**

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

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

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

44 (1) Entering into SPFC contracts.

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

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

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

49 (5) Complying with trust indenture, reinsurance, or retrocession, and agreements
50 necessary or incidental to effectuate an insurance securitization in

1 compliance with this Part or the plan of operation approved by the
2 Commissioner.

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

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

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

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

9 **"§ 58-10-585. Establishment of protected cell accounts.**

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

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

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

21 (2) Each protected cell shall be accounted for separately on the books and
22 records of the SPFC to reflect the financial condition and results of
23 operations of the protected cell, net income or loss, dividends, or other
24 distributions to the counterparty for the SPFC contract with each cell, and
25 other factors as may be provided in the SPFC contract, insurance
26 securitization transaction documents, plan of operation, or business plan, or
27 as required by the Commissioner.

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

32 (4) All attributions of assets and liabilities between a protected cell and the
33 general account shall be in accordance with the plan of operation approved
34 by the Commissioner, and no other attribution of assets or liabilities by an
35 SPFC between the SPFC's general account and its protected cell or cells is
36 permitted. The SPFC shall attribute all insurance obligations, assets, and
37 liabilities relating to an SPFC contract and the related insurance
38 securitization transaction, including any securities issued by the SPFC as
39 part of the insurance securitization, to a particular protected cell. The
40 insurance obligations, assets, and liabilities relating to the SPFC contract and
41 the insurance securitization transaction that are attributed to a particular
42 protected cell shall be consistent with:

43 a. The rights, benefits, obligations, and liabilities of any securities
44 attributable to that protected cell.

45 b. The performance under an SPFC contract and the related
46 securitization transaction and any tax benefits, losses, refunds, or
47 credits allocated, at any point in time pursuant to a tax allocation
48 agreement between the SPFC and the SPFC's counterparty, parent, or
49 company or group company, or any of them, in common control with
50 them, as the case may be, including any payments made by or due to
51 be made to the SPFC pursuant to the terms of the agreement.

- 1 (5) No assets of a protected cell shall be chargeable with liabilities arising out of
2 an SPFC contract related to or associated with another protected cell.
3 However, one or more SPFC contracts may be attributed to a protected cell
4 only if the SPFC contracts are intended to be and ultimately are part of a
5 single securitization transaction.
- 6 (6) No sale, exchange, or other transfer of assets shall be made by the SPFC
7 between or among any of the SPFC's protected cells without the consent of
8 the Commissioner, counterparty, and each protected cell.
- 9 (7) Except as otherwise contemplated in the SPFC contract or related insurance
10 securitization transaction documents, or both, no sale, exchange, transfer of
11 assets, dividend, or distribution shall be made from a protected cell to a
12 counterparty or parent without the Commissioner's approval and the sale,
13 exchange, transfer, dividend, or distribution shall not be approved if the sale,
14 exchange, transfer, dividend, or distribution would result in a protected cell's
15 insolvency or impairment.
- 16 (8) An SPFC may pay interest or repay principal, or both, and make
17 distributions or repayments with respect to any securities attributed to a
18 particular protected cell from assets or cash flows relating to or emerging
19 from the SPFC contract and the insurance securitization transactions that are
20 attributable to that particular protected cell in accordance with this Part, or as
21 otherwise approved by the Commissioner.

22 (c) No SPFC contract with or attributable to a protected cell shall take effect without
23 the Commissioner's prior written approval, and the addition of each new protected cell
24 constitutes a change in the business plan requiring the Commissioner's prior written approval.
25 The Commissioner may retain legal, financial, and examination services from outside the
26 Department to examine and investigate the application for a protected cell, the cost of which
27 may be charged against the applicant, or the Commissioner may use internal resources to
28 examine and investigate the application, the cost of which may be charged against the
29 applicant, or both.

30 (d) An SPFC utilizing protected cells shall possess and maintain minimum
31 capitalization separate and apart from the capitalization of its protected cell or cells in an
32 amount determined by the Commissioner after giving due consideration of the SPFC's business
33 plan, feasibility study, and pro formas, including the nature of the risks to be insured or
34 reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall
35 initially capitalize and maintain capitalization in each protected cell in the amount and manner
36 required for an SPFC in G.S. 58-10-575.

37 (e) The establishment of one or more protected cells alone shall not constitute and shall
38 not be deemed to be a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the
39 carrying out of business by the SPFC for any other fraudulent purpose.

40 **"§ 58-10-590. Protected cell accounts.**

41 (a) All of the following shall apply to a protected cell:

- 42 (1) The creation of a protected cell shall not create, with respect to that protected
43 cell, a legal person separate from the SPFC.
- 44 (2) Notwithstanding subdivision (a)(1) of this subsection, a protected cell shall
45 have its own distinct name or designation that includes the words "protected
46 cell." The SPFC shall transfer all assets attributable to the protected cell to
47 one or more separately established and identified protected cell accounts
48 bearing the name or designation of that protected cell.
- 49 (3) Although a protected cell is not a separate legal person, the property of an
50 SPFC in a protected cell is subject to orders of the court by name as the
51 property would have been if the protected cell were a separate legal person.

1 (4) The property of an SPFC in a protected cell shall be served with process in
2 its own name in all civil actions or proceedings involving or relating to the
3 activities of that protected cell or a breach by the SPFC of a duty to the
4 protected cell or to a counterparty to a transaction linked or attributed to it by
5 serving the SPFC.

6 (5) A protected cell exists only at the pleasure of the SPFC. At the cessation of
7 business of a protected cell in accordance with the plan approved by the
8 Commissioner, the SPFC shall close out the protected cell account.

9 (b) Nothing in this section shall be construed to prohibit an SPFC from contracting with
10 or arranging for an investment advisor, commodity trading advisor, or other third party to
11 manage the assets of a protected cell, if all remuneration, expenses, and other compensation of
12 the third-party advisor or manager are payable from the assets of that protected cell and not
13 from the assets of other protected cells or the assets of the SPFC's general account, unless
14 approved by the Commissioner.

15 (c) Creditors with respect to a protected cell are not entitled to have recourse against the
16 protected cell assets of other protected cells or the assets of the SPFC's general account. If an
17 obligation of an SPFC relates only to the general account, the obligation of the SPFC extends
18 only to that creditor with respect to that obligation, and the creditor is entitled to have recourse
19 only to the assets of the SPFC's general account.

20 (d) The assets of the protected cell shall not be used to pay expenses or claims other
21 than those attributable to the protected cell. Protected cell assets are available only to the SPFC
22 contract counterparty and other creditors of the SPFC that are creditors only with respect to that
23 protected cell and, accordingly, are entitled in conformity with this Part, to have recourse to the
24 protected cell assets attributable to that protected cell. The assets of the protected cell are
25 protected from the creditors of the SPFC that are not creditors with respect to that protected cell
26 and who, accordingly, are not entitled to have recourse to the protected cell assets attributable
27 to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an
28 SPFC contract or related insurance securitization transaction, or is otherwise incurred with
29 respect to a protected cell, then the obligation shall:

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

33 (2) Not extend to the protected cell assets of another protected cell or the assets
34 of the SPFC's general account, and the person or counterparty, with respect
35 to that obligation, is not entitled to have recourse to the protected cell assets
36 of another protected cell or the assets of the SPFC's general account. The
37 SPFC's capitalization held separate and apart from the capitalization of its
38 protected cell or cells must be available at all times to pay expenses of or
39 claims against the SPFC and may not be used to pay expenses or claims
40 attributable to any protected cell.

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

48 (f) An SPFC shall establish administrative and accounting procedures necessary to
49 properly identify the one or more protected cells of the SPFC and the protected cell assets and
50 protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and
51 protected cell liabilities:

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

3 (2) Attributable to one protected cell separate and separately identifiable from
4 protected cell assets and protected cell liabilities attributable to other
5 protected cells.

6 (g) All contracts or other documentation reflecting protected cell liabilities shall clearly
7 indicate that only the protected cell assets are available for the satisfaction of those protected
8 cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or
9 other documentation effecting the transaction shall contain provisions identifying the protected
10 cell to which the transaction is attributed. In addition, the contracts or other documentation
11 shall clearly disclose that the assets of that protected cell, and only those assets, are available to
12 pay the obligations of that protected cell. Notwithstanding this subsection, and subject to this
13 Part and other applicable laws or regulations, the failure to include this language in the
14 contracts or other documentation shall not be used as the sole basis by creditors, insureds or
15 reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this
16 section.

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

19 (1) Detail the financial experience of each protected cell and the SPFC
20 separately.

21 (2) Provide the combined financial experience of the SPFC and all protected
22 cells.

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

25 **"§ 58-10-595. Issuing securities.**

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

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

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

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

34 (2) Submit for prior approval of the Commissioner periodic written requests for
35 payments of interest on and repayments of principal of surplus notes. In lieu
36 of approval of periodic written requests for authorization to make payments
37 of interest on and repayments of principal of surplus notes and other debt
38 obligations issued by the SPFC, the Commissioner may approve a formula
39 or plan, which shall be included in the SPFC's plan of operation as amended
40 from time to time, for payment of interest, principal, or both, with respect to
41 such surplus notes and debt obligations.

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

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

49 **"§ 58-10-600. Asset management agreements.**

50 An SPFC may enter into swap agreements, or other forms of asset management agreements,
51 including guaranteed investment contracts, or other transactions that have the objective of

1 leveling timing differences in funding of up-front or ongoing transaction expenses, or
2 managing asset, credit, or interest rate risk of the investments to ensure that the investments are
3 sufficient to assure payment or repayment of the securities, and related interest or principal
4 payments, issued pursuant to an SPFC insurance securitization transaction, or the obligations of
5 the SPFC under the SPFC contract.

6 **"§ 58-10-605. Reinsurance.**

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

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

12 (1) Proceeds from an insurance securitization, letters of credit, or other assets
13 described in G.S. 58-10-340(22).

14 (2) Premium and other amounts payable by the ceding insurer to the SPFC
15 pursuant to the reinsurance contract.

16 (3) Any return on investment of the items described in subdivisions (1) and (2)
17 of this subsection.

18 (c) The reinsurance contract shall contain all provisions required or approved by the
19 Commissioner, which requirements shall take into account the laws applicable to the ceding
20 insurer regarding the ceding insurer taking credit for the reinsurance provided under such
21 reinsurance contract.

22 (d) An SPFC may cede risks assumed through a reinsurance contract to one or more
23 reinsurers through the purchase of reinsurance, subject to the prior approval of the
24 Commissioner.

25 (e) An SPFC may enter into contracts and conduct other commercial activities related
26 or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance
27 securitization, and this Part, provided such contracts and activities are included in the SPFC's
28 plan of operation or are otherwise approved in advance by the Commissioner. Such contracts
29 and activities may include the following:

30 (1) Entering into SPFC contracts.

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

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

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

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

39 (f) Unless otherwise approved in advance by the Commissioner, a reinsurance contract
40 shall not contain any provision for payment by the SPFC in discharge of its obligations under
41 the reinsurance contract to any person other than the ceding insurer or any receiver of the
42 ceding insurer.

43 (g) An SPFC shall notify the Commissioner immediately of any action by a ceding
44 insurer or any other person to foreclose on or otherwise take possession of collateral provided
45 by the SPFC to secure any obligation of the SPFC.

46 (h) In the SPFC insurance securitization, the contracts or other relating documentation
47 shall contain provisions identifying the SPFC.

48 (i) Unless otherwise approved by the Commissioner, no SPFC shall enter into an SPFC
49 contract with a person that is not licensed or otherwise authorized to transact the business of
50 insurance or reinsurance in at least its state or country of domicile.

51 (j) No SPFC shall:

- 1 (1) Have any direct obligation to the policyholders or reinsureds of the
2 counterparty.
- 3 (2) Perform any of the following activities with anyone convicted of a felony,
4 anyone who is untrustworthy or of known bad character, or anyone
5 convicted of a criminal offense involving the conversion or misappropriation
6 of fiduciary funds or insurance accounts, theft, deceit, fraud,
7 misrepresentation, or corruption:
- 8 a. Lend or otherwise invest assets.
- 9 b. Place any assets in custody, trust, or under management.
- 10 c. Borrow money or receive a loan or advance, other than by issuance
11 of the securities pursuant to an insurance securitization.

12 **"§ 58-10-610. No securities considered to be insurance or reinsurance contracts.**

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

22 **"§ 58-10-615. Disposition of assets; investment limitations.**

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

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

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

31 (1) The Commissioner may limit investments by an SPFC to those categories
32 and amounts of authorized investments delineated in G.S. 58-7-167,
33 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183,
34 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and
35 58-7-205, as applicable and as amended from time to time.

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

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

41 **"§ 58-10-620. Dividends.**

42 (a) No SPFC shall declare or pay dividends in any form to its owners other than in
43 accordance with the insurance securitization transaction agreements, and in no extent shall the
44 dividends decrease the capital of the SPFC below two hundred fifty thousand dollars
45 (\$250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in
46 trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the
47 Commissioner that the SPFC can meet its obligations. Approval by the Commissioner of an
48 ongoing plan for the payment of dividends or other distribution by an SPFC must be
49 conditioned upon the retention at the time of each payment of capital or surplus equal to or in
50 excess of amounts specified by or determined in accordance with formulas approved for the
51 SPFC by the Commissioner.

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

5 **"§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation;**
6 **examinations.**

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

10 (1) If initially approved in the plan of operation, securities subsequently issued
11 to continue the securitization activities of the SPFC either during or after
12 expiration, redemption, or satisfaction of all of these, of part or all of the
13 securities issued pursuant to initial insurance securitization transactions.

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

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

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

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

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

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

50 **"§ 58-10-630. Cessation of business.**

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

7 **"§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.**

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

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

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

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

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

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

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

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

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

50 (f) With respect to amounts recoverable under an SPFC contract, the amount
51 recoverable by the receiver must not be reduced or diminished as a result of the entry of an

1 order of rehabilitation or liquidation with respect to the counterparty, notwithstanding another
2 provision in the contracts or other documentation governing the SPFC insurance securitization.

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

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

10 (2) The commencement of a summary proceeding or other interim proceeding
11 commenced before a delinquency proceeding with respect to an SPFC, and
12 any order issued by the court does not prohibit the payment by an SPFC
13 made pursuant to an SPFC security, SPFC contract, or the SPFC from taking
14 any action required to make the payment.

15 (3) A receiver of a counterparty may not void a nonfraudulent transfer by a
16 counterparty to an SPFC of money or other property made pursuant to an
17 SPFC contract.

18 (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of
19 money or other property made to a counterparty pursuant to an SPFC
20 contract or made to or for the benefit of any holder of an SPFC security on
21 account of the SPFC security.

22 (5) The Commissioner may not seek to have an SPFC with protected cells
23 declared insolvent as long as at least one of the SPFC's protected cells
24 remains solvent, and in the case of such an insolvency, the receiver shall
25 handle the SPFC's assets in compliance with subsection (e) of this section
26 and other laws of this State.

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

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

42 "Subpart 5. Other Provisions.

43 **"§ 58-10-650. Other laws applicable to captive insurance companies.**

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

46 (1) G.S. 58-2-45. – Orders of Commissioner; when writing required.

47 (2) G.S. 58-2-160. – Reporting and investigation of insurance and reinsurance
48 fraud and the financial condition of licensees; immunity from liability.

49 (3) G.S. 58-2-162. – Embezzlement by insurance agents, brokers, or
50 administrators.

- 1 (4) G.S. 58-2-185. – Record of business kept by companies and agents;
2 Commissioner may inspect.
3 (5) G.S. 58-2-190. – Commissioner may require special reports.
4 (6) G.S. 58-2-195. – Commissioner may require records, reports, etc., for
5 agencies, agents, and others.
6 (7) G.S. 58-2-200. – Books and papers required to be exhibited.
7 (8) G.S. 58-5-1. – Deposits; use of master trust.
8 (9) G.S. 58-7-50. – Maintenance and removal of records and assets.
9 (10) G.S. 58-7-55. – Exceptions to requirements of G.S. 58-7-50."

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

11 "**§ 58-22-15. Risk retention groups chartered in this State.**

12 (a) ~~A risk retention group seeking to be chartered in this State must be chartered shall,~~
13 ~~pursuant to the provisions of Part 9 of Article 10 of this Chapter, be chartered and licensed as a~~
14 ~~to write only liability insurance company under Article 7 of this Chapter pursuant to this~~
15 ~~Article and, except as provided elsewhere in this Article, must comply with all of the laws and~~
16 ~~rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to~~
17 ~~the extent such requirements are not a limitation on laws, administrative rules, or requirements~~
18 ~~of this State. As a chartered and licensed liability insurance company, the group is subject to~~
19 ~~the taxes imposed in Article 8B of Chapter 105 of the General Statutes.~~

20 "

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

22 "**§ 58-28-5. Transacting business without a license prohibited; exceptions.**

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

27 ...

- 28 (10) An activity in this State by or on the sole behalf of a captive insurer licensed
29 and subject to regulation in another jurisdiction other than this State that
30 insures solely the risks of the company's parent and affiliated
31 ~~companies.~~ companies or the risks of a controlled unaffiliated business.

32 "

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

34 "**§ 58-47-95. Excess insurance and reinsurance.**

35 ...

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

- 39 (1) Provide for at least 30 days' written notice of cancellation by certified mail,
40 return receipt requested, to the group and to the 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 group
43 and to the Commissioner.

44 "

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

46 "**§ 97-190. Excess insurance.**

47 ...

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

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

7"

8 **SECTION 6.(a)** G.S. 105-228.3 reads as rewritten:

9 **"§ 105-228.3. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58
12 of the General Statutes, regulating hospital, medical, and dental service
13 corporations.
14 (1a) Captive insurance company. – Defined in G.S. 58-10-340.
15 (2) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who
16 have pooled their liabilities pursuant to G.S. 97-93 of the Workers'
17 Compensation Act.
18 (3) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93
19 of the Workers' Compensation Act."

20 **SECTION 6.(b)** Article 8B of Chapter 105 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 105-228.4A. Tax on captive insurance companies.**

23 (a) Tax Levied. – A tax is levied in this section on a captive insurance company doing
24 business in this State. In the case of a branch captive insurance company, the tax levied in this
25 section applies only to the branch business of the company. Two or more captive insurance
26 companies under common ownership and control are taxed under this section as a single
27 captive insurance company.

28 (b) Other Taxes. – A captive insurance company that is subject to the tax levied by this
29 section is not subject to any of the following:

- 30 (1) Franchise taxes imposed by Article 3 of this Chapter.
31 (2) Income taxes imposed by Article 4 of this Chapter.
32 (3) Local privilege taxes or local taxes computed on the basis of gross
33 premiums.
34 (4) The insurance regulatory charge imposed by G.S. 58-6-25.

35 (c) Administration. – The definitions in G.S. 58-10-340 apply in this section. A
36 company subject to this section must file with the Secretary a full and accurate report of the
37 premiums contracted for or collected on policies or contracts of insurance written by the
38 company during the preceding calendar year. In the case of a multiyear policy or contract, the
39 premiums must be prorated among the years covered by the policy or contract. The report is
40 due on or before March 1. The taxes imposed by this section are due to the Secretary with the
41 report.

42 (d) Tax on Assumed Reinsurance Premiums. – The tax to be applied to assumed
43 reinsurance premiums is computed at the percentages provided in the table below. The tax does
44 not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis
45 under subsection (e) of this section. The tax is not payable in connection with the receipt of
46 assets in exchange for the assumption of loss reserves and other liabilities of one insurer by
47 another insurer if the two insurers are under common control and the Commissioner of
48 Insurance verifies both of the following: (i) the transaction between the insurers is part of a plan
49 to discontinue the operations of one of the insurers, and (ii) the intent of the insurers is to renew
50 or maintain business with the captive insurance company.

51

	<u>Premiums Collected</u>	<u>Rate of Tax</u>
1		
2	Up to \$20,000,000	.225%
3	\$20,000,000 to \$40,000,000	.150%
4	\$40,000,000 to \$60,000,000	.050%
5	\$60,000,000 and over	.025%

6 (e) Tax on Direct Premiums. – The tax to be applied to direct premiums is computed at
7 the percentages provided in the table below. In determining the amount of premiums subject to
8 tax under this subsection, the taxpayer may deduct the amounts paid to policyholders as return
9 premiums. Return premiums include dividends on unabsorbed premiums or premium deposits
10 returned or credited to policyholders.

	<u>Premiums Collected</u>	<u>Rate of Tax</u>
11		
12	Up to \$20,000,000	0.4%
13	\$20,000,000 and more	0.3%

14 (f) Total Tax Liability. – The aggregate amount of tax payable under this section by a
15 protected cell captive insurance company with more than 10 cells may not be less than ten
16 thousand dollars (\$10,000) and may not exceed the lesser of (i) one hundred thousand dollars
17 (\$100,000) plus five thousand dollars (\$5,000) multiplied by the number of cells over 10 and
18 (ii) two hundred thousand dollars (\$200,000). The aggregate amount of tax payable under this
19 section for any other captive insurance company may not be less than five thousand dollars
20 (\$5,000) and may not exceed one hundred thousand dollars (\$100,000).

21 If a captive insurance company is a special purpose financial captive and if the special
22 purpose financial captive is under common ownership and control with one or more other
23 captive insurance companies, the following provisions apply to the consolidated group of
24 companies that are taxed as a single captive insurance company pursuant to subsection (a) of
25 this section:

- 26 (1) The amount of premium tax payable under this section is allocated to each
27 member of the consolidated group in the same proportion that the premium
28 allocable to the member bears to the total premium of all members.
- 29 (2) The aggregate amount of tax payable under this section by the consolidated
30 group is equal to the greater of the following:
 - 31 a. The sum of the premium tax allocated to the members.
 - 32 b. Five thousand dollars (\$5,000).
- 33 (3) If the total premium tax allocated to all members of a consolidated group
34 that are special purpose financial captives exceeds one hundred thousand
35 dollars (\$100,000), then the total premium tax allocated to those members is
36 one hundred thousand dollars (\$100,000).
- 37 (4) If the total premium tax allocated to all members of the consolidated group
38 that are not special purpose financial captives exceeds one hundred thousand
39 dollars (\$100,000), then the total premium tax allocated to those members is
40 one hundred thousand dollars (\$100,000)."

41 **SECTION 6.(c)** G.S. 105-228.5(g) reads as rewritten:

42 "(g) Exemptions. – This section does not apply to farmers' mutual assessment fire
43 insurance companies or to fraternal orders or societies that do not operate for a profit and do
44 not issue policies on any person except members. This section does not apply to a captive
45 insurance company taxed under G.S. 105-228.4A."

46 **SECTION 7.** G.S. 58-6-25 reads as rewritten:

47 "**§ 58-6-25. Insurance regulatory charge.**

48 (a) Charge Levied. – There is levied on each insurance ~~company~~ company, other than a
49 captive insurance company, an annual charge for the purposes stated in subsection (d) of this
50 section. The charge levied in this section is in addition to all other fees and taxes. The
51 percentage rate of the charge is established pursuant to subsection (b) of this section and is

1 applied to the company's premium tax liability for the taxable year. In determining an insurance
2 company's premium tax liability for a taxable year, the following shall be disregarded:

3 ...

4 (d) Use of Proceeds. – The Insurance Regulatory Fund is created in the State treasury,
5 under the control of the Office of State Budget and Management. The proceeds of the charge
6 levied in this section and all fees collected under Articles 69 through 71 of this Chapter and
7 under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund.
8 The Fund shall be placed in an interest-bearing account and any interest or other income
9 derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only
10 pursuant to appropriation by the General Assembly and in accordance with the line item budget
11 enacted by the General Assembly. The Fund is subject to the provisions of the Executive
12 Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund.
13 All money credited to the Fund shall be used to reimburse the General Fund for the following:

14 (1) Money appropriated to the Department of Insurance to pay its expenses
15 incurred in regulating the insurance ~~industry~~industry, including the captive
16 insurance industry, and other industries in this State.

17 ...

18 (10) Money appropriated to the Department of Insurance to pay its expenses
19 incurred in promoting North Carolina's captive insurance industry.

20 (e) Definitions. – The following definitions apply in this section:

21 (1) Repealed by Session Laws 2003-284, s. 43.2, effective for taxable years
22 beginning on or after January 1, 2004.

23 (1a) Captive insurance company. – Defined in G.S. 105-228.3.

24 (2) Insurance company. – A company that pays the gross premiums tax levied in
25 G.S. 105-228.5 and G.S. 105-228.8.

26 (3) Insurer. – Defined in G.S. 105-228.3."

27 **SECTION 8.** Nothing in this act shall be construed to obligate the General
28 Assembly to appropriate funds to implement the provisions of this act. This act becomes
29 effective July 1, 2013, if funds are appropriated for the 2013-2015 fiscal biennium to provide
30 the Department with regulatory staff and resources to license and regulate captive insurance
31 companies. If no funds are appropriated, then this act shall not become effective until July 1 of
32 a year in which the General Assembly appropriates funds to implement it.