

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 267
Committee Substitute Favorable 5/13/13
Committee Substitute #2 Favorable 5/16/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H267-PCS30797-MH-25

Short Title: Captive Insurance Amendments.

(Public)

Sponsors:

Referred to:

March 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND LAWS GOVERNING CAPTIVE INSURANCE COMPANIES AND
3 RISK RETENTION GROUPS, AS RECOMMENDED BY THE DEPARTMENT OF
4 INSURANCE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 58-10-340 reads as rewritten:

7 "§ 58-10-340. Definitions.

8 The following definitions apply in this Part:

9 ...

10 (9) Captive insurance company. – Any pure captive insurance company,
11 association captive insurance company, industrial insured captive insurance
12 company, risk retention group, protected cell captive insurance company,
13 incorporated cell captive insurance company, special purpose captive
14 insurance company, or special purpose financial captive insurance company
15 formed or licensed under this Part.

16 ...

17 (37) Risk retention group. – A captive insurance company organized under the
18 laws of this State pursuant to the Liability Risk Retention Act of 1986, 15
19 U.S.C. § 3901, et seq., as amended, as a stock or mutual corporation or as a
20 reciprocal or other limited liability entity. Risk retention groups formed
21 under this Part are subject to all applicable insurance laws including, but not
22 limited to, any applicable provisions in Articles 1, 2, 3, 7, 9, 10, 12, 19, 22,
23 33, and 34 of this Chapter.

24 (38) Securities. – Those different types of debt obligations, equity, surplus
25 certificates, surplus notes, funding agreements, derivatives, and other legal
26 forms of financial instruments.

27 (38a) Special purpose captive insurance company. – A captive insurance company
28 that is formed or licensed under this Part that does not meet the definition of
29 any other type of captive insurance company defined in this section and is
30 designated as a special purpose captive insurance company by the
31 Commissioner.

32"

33 SECTION 2. G.S. 58-10-345 reads as rewritten:

34 "§ 58-10-345. Licensing; authority; confidentiality.



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

- 4 (1) No pure captive insurance company shall insure any risks other than those of
5 its parent and affiliated companies or a controlled unaffiliated business or
6 businesses.
- 7 (2) No association captive insurance company shall insure any risks other than
8 those of its association, those of the member organizations of its association,
9 and those of a member organization's affiliated companies.
- 10 (3) No industrial insured captive insurance company shall insure any risks other
11 than those of the industrial insureds that comprise the industrial insured
12 group, those of their affiliated companies, and those of the controlled
13 unaffiliated business of an industrial insured or its affiliated companies.
- 14 (4) No risk retention group shall insure any risks other than those of its members
15 and owners.
- 16 (5) No captive insurance company shall provide personal motor vehicle or
17 homeowner's insurance coverage or any component thereof.
- 18 (6) No captive insurance company shall accept or cede reinsurance except as
19 provided in G.S. 58-10-445 and G.S. 58-10-605.
- 20 (7) No captive insurance company shall provide accident and health insurance
21 on a direct basis.
- 22 (8) No captive insurance company shall provide workers' compensation and
23 employer's liability insurance on a direct basis.
- 24 (9) No captive insurance company shall provide life insurance or annuities on a
25 direct basis.
- 26 (10) A special purpose captive insurance company may provide insurance or
27 reinsurance or both for risks as approved by the Commissioner.

28 ...
29 (c) In order to receive a license to issue policies of insurance as a captive insurance
30 company in this State, an applicant business entity shall meet all of the following requirements:

- 31 (1) The applicant business entity shall submit its organizational documents to
32 the Commissioner. If the Commissioner approves the organizational
33 documents, then the Commissioner shall issue a ~~letter~~ certificate to the
34 applicant business entity certifying the Commissioner's approval. The
35 applicant business entity shall submit the organizational documents, along
36 with a copy of the ~~approval letter~~ certificate of approval issued by the
37 Commissioner, and the required filing fees for organizational documents
38 prescribed by North Carolina law to the Secretary of State for filing. Upon
39 filing the organizational documents, the Secretary of State shall issue a
40 certificate of filing to the ~~applicant~~ applicant business entity. The applicant
41 business entity shall submit a copy of the certificate of filing relative to the
42 ~~applicant's~~ applicant business entity's organizational documents issued by
43 the Secretary of State to the Commissioner.

- 44 ...
45 (6) No less than the amount required by ~~G.S. 58-10-370~~ G.S. 58-10-370, in a
46 form acceptable to the Commissioner, shall be paid ~~in by~~ into the applicant
47 business entity and deposited with the Commissioner. ~~In the alternative, an~~
48 ~~irrevocable letter of credit in that amount and acceptable to the~~
49 ~~Commissioner shall be filed with the Commissioner~~ entity.

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

4 (d) Whenever a captive insurance company desires to amend the organizational
5 documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit
6 the amended organizational documents to the Commissioner. If the Commissioner approves the
7 amendment, then the Commissioner shall issue a ~~letter certificate~~ to the ~~applicant company~~
8 certifying the Commissioner's approval. The ~~applicant business entity company~~ shall submit the
9 organizational documents, along with a copy of the ~~approval letter certificate of approval~~ issued
10 by the Commissioner, and the required filing fees for organizational documents prescribed in
11 North Carolina law to the Secretary of State for filing. Upon filing the organizational
12 documents, the Secretary of State shall issue a certificate of filing to the ~~applicant company~~.
13 The ~~applicant company~~ shall submit a copy of the certificate of filing relative to the
14 ~~applicant's company's~~ organizational documents issued by the Secretary of State to the
15 Commissioner.

16 ...

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

20 (1) This ~~subdivision~~ subsection shall not apply to any risk retention group.

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

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

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

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

30"

31 **SECTION 3.** G.S. 58-10-360 reads as rewritten:

32 **"§ 58-10-360. Designation of captive manager.**

33 Before licensing, ~~captive insurance companies~~ the applicant business entity shall report in
34 writing to the Commissioner the name and address of the manager designated to manage the
35 captive insurance company. The Commissioner shall approve the captive manager and may
36 require the submission of additional information regarding the proposed captive manager in a
37 form and manner as the Commissioner may designate."

38 **SECTION 4.** G.S. 58-10-365 reads as rewritten:

39 **"§ 58-10-365. Names of companies.**

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

45 **SECTION 5.** G.S. 58-10-370 reads as rewritten:

46 **"§ 58-10-370. Capital and surplus requirements.**

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

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

- 1 (2) In the case of an association captive insurance company, not less than five
2 hundred thousand dollars (\$500,000).
3 (3) In the case of an industrial insured captive insurance company, not less than
4 five hundred thousand dollars (\$500,000).
5 (4) In the case of a risk retention group, not less than one million dollars
6 (\$1,000,000).
7 (5) In the case of a protected cell captive insurance company, not less than two
8 hundred fifty thousand dollars (\$250,000).
9 (6) In the case of a special purpose captive insurance company, not less than two
10 hundred fifty thousand dollars (\$250,000).

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

13 (c) Capital and surplus required by subsections (a) and (b) of this section shall be in the
14 form of ~~cash or an~~ cash, securities approved by the Commissioner, a clean irrevocable letter of
15 credit issued by a bank approved by the Commissioner, Commissioner, or other form approved
16 by the Commissioner."

17 **SECTION 6.** G.S. 58-10-395 reads as rewritten:

18 "**§ 58-10-395. Change of business.**

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

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

24 **SECTION 7.** G.S. 58-10-400 reads as rewritten:

25 "**§ 58-10-400. Insurance manager and intermediaries.**

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

30 **SECTION 8.** G.S. 58-10-405 reads as rewritten:

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~~company, a special purpose captive insurance
2 company, or an industrial insured captive insurance company may make written application to
3 the Commissioner for filing the required report on an alternative reporting date based on the
4 company's fiscal year-end. If an alternative reporting date is granted by the Commissioner,
5 ~~then:~~

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

7 (2) ~~In order to provide sufficient detail to support the premium tax return, the~~
8 ~~pure captive insurance company or industrial insured captive insurance~~
9 ~~company shall file, prior to March 15 of each year for each calendar~~
10 ~~year end, pages 1, 2, 3, and 5 of the "Captive Annual Statement; Pure or~~
11 ~~Industrial Insured," verified by oath of two of its executive officers.~~then the
12 annual report is due 75 days after the fiscal year-end."

13 **SECTION 9.** G.S. 58-10-415 reads as rewritten:

14 "**§ 58-10-415. Annual audit and actuarial certification.**

15 (a) All captive insurance companies with the exception of risk retention groups shall
16 have an annual audit by an independent certified public accountant and shall file such audited
17 financial report with the Commissioner on or before June 30 for the prior calendar year. Risk
18 retention groups shall comply with Parts 6 and 7 of Article 10 of this Chapter instead of this
19 section.

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

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

30 (c1) Extensions of the due dates for filings required by this section may be granted by
31 the Commissioner for 30-day periods upon a showing by the captive insurance company and its
32 independent certified public accountant of the reasons for requesting an extension and
33 determination by the Commissioner of good cause for the extension. The request for extension
34 must be received in writing not less than 10 days before the due date and in sufficient detail to
35 permit the Commissioner to make an informed decision with respect to the requested extension.

36 (c2) G.S. 58-10-345(f) shall apply to all information filed pursuant to this section.

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

40 (1) ~~Opinion of independent certified public accountant. — Financial statements~~
41 ~~furnished pursuant to this section shall be audited by independent certified~~
42 ~~public accountants in accordance with generally accepted auditing standards~~
43 ~~as determined by the American Institute of Certified Public Accountants or~~
44 ~~statutory accounting principles in accordance with the NAIC Accounting~~
45 ~~Practices and Procedures Manual in effect for the period covered by the~~
46 ~~report. The opinion of the independent certified public accountant shall~~
47 ~~cover all years presented. The opinion shall be addressed to the captive~~
48 ~~insurance company on stationery of the accountant showing the address of~~
49 ~~issuance and shall be signed and dated.~~

50 Annual audited financial report. —The annual audited financial report shall
51 include the following:

- 1 a. Financial statements. – Financial statements shall be prepared in
2 accordance with generally accepted accounting principles, unless the
3 Commissioner requires, approves, or accepts the use of statutory
4 accounting principles or other comprehensive basis of accounting,
5 with useful or necessary modifications or adaptations required,
6 approved or accepted by the Commissioner, and shall be audited by
7 an independent certified public accountant in accordance with
8 generally accepted auditing standards as determined by the American
9 Institute of Certified Public Accountants. The Commissioner may
10 require that the financial statement be supplemented by additional
11 information.
- 12 b. Notes to financial statements. – The notes to financial statements
13 shall be those required by generally accepted accounting principles,
14 or as otherwise approved by the Commissioner, and shall also
15 include a reconciliation of differences, if any, between the audited
16 financial report and the report of the captive insurance company's
17 financial condition filed with the Commissioner in accordance with
18 G.S. 58-10-405(b).
- 19 c. Related required auditor communications. – Copies of related
20 required auditor communications in accordance with generally
21 accepted auditing standards.
- 22 (2) ~~Report of evaluation of internal controls. — This report shall include an~~
23 ~~evaluation of the internal controls of the captive insurance company relating~~
24 ~~to the methods and procedures used in the securing of assets and the~~
25 ~~reliability of the financial records, including, but not limited to, such controls~~
26 ~~as the system of authorization and approval and the separation of duties. The~~
27 ~~review shall be conducted in accordance with generally accepted auditing~~
28 ~~standards or statutory accounting principles and the report filed with the~~
29 ~~Commissioner. An exemption from this evaluation may be granted on a~~
30 ~~case by case basis upon written request to the Commissioner.~~
31 Certified public accountant's affirmation. – The certified public accountant
32 shall furnish a written statement in the engagement letter or other document
33 submitted to the captive insurance company that the certified public
34 accountant is aware of and will comply with the responsibilities imposed by
35 G.S. 58-10-420(b) and G.S. 58-10-420(c).
- 36 (3) ~~Accountant's letter of qualifications. — The accountant shall furnish the~~
37 ~~captive insurance company, for inclusion in the filing of the audited annual~~
38 ~~report, a letter stating:~~
- 39 a. ~~That the accountant is independent with respect to the captive~~
40 ~~insurance company and conforms to the standards of the profession~~
41 ~~as contained in the Code of Professional Ethics, pronouncements of~~
42 ~~the American Institute of Certified Public Accountants, and~~
43 ~~pronouncements of the Financial Accounting Standards Board.~~
- 44 b. ~~The general background and experience of the staff engaged in the~~
45 ~~audit, including the experience in auditing captives or other insurance~~
46 ~~companies.~~
- 47 c. ~~That the accountant understands that the audited annual report and~~
48 ~~the accountant's opinions thereon will be filed in compliance with~~
49 ~~this section with the Commissioner.~~
- 50 d. ~~That the accountant consents to the requirements of~~
51 ~~G.S. 58-10-420(b) and (c) and that the accountant consents and~~

1 agrees to make available for review by the Commissioner, the
2 Commissioner's appointed agent, or other designee the work papers
3 as defined in G.S. 58-10-420(c).

4 e. That the accountant is properly licensed by an appropriate state
5 licensing authority and that he or she is a member in good standing
6 of the American Institute of Certified Public Accountants.

7 (4) Financial statements. — Statements required shall be as follows:

8 a. Balance sheets reporting assets, liabilities, capital, and surplus.

9 b. Statements of operations.

10 c. Statements of cash flow.

11 d. Statements of changes in capital and surplus.

12 e. Notes to financial statements. The notes to financial statements shall
13 be those required by generally accepted accounting principles, or as
14 required by any other comprehensive basis of accounting in use by
15 the captive insurance company and approved by the Commissioner,
16 and shall include:

17 1. A reconciliation of differences, if any, between the audited
18 financial report and the report of its financial condition filed
19 with the Commissioner in accordance with
20 G.S. 58-10-405(b).

21 2. A summary of ownership and relationship of the captive
22 insurance company and all affiliated corporations or
23 companies insured by the captive insurance company.

24 3. A narrative explanation of all material transactions and
25 balances with the captive insurance company.

26 (5) Certification of loss reserves and loss expense reserves. — The annual
27 ~~audit~~ audited financial report shall be filed with a Statement of Actuarial
28 Opinion evaluating the captive insurance company's loss reserves and loss
29 expense reserves. The individual who prepares the Statement of Actuarial
30 Opinion shall be a Fellow of the Casualty Actuarial Society, a member in
31 good standing of the American Academy of Actuaries, or an individual who
32 has demonstrated competence in loss reserve evaluation to the
33 Commissioner. Certification shall be in such form as the Commissioner
34 deems appropriate."

35 **SECTION 10.** G.S. 58-10-420 reads as rewritten:

36 "**§ 58-10-420. Independent certified public accountants.**

37 (a) A captive insurance company, after becoming subject to this Part, shall within 60
38 days report to the Commissioner in writing, the name and address of the independent certified
39 public accountant retained to conduct the annual audit set forth in G.S. 58-10-415.

40 (b) A captive insurance company shall require its independent certified public
41 accountant to immediately notify in writing an officer and all members of the board of directors
42 of the captive insurance company of any determination by the independent certified public
43 accountant that the captive insurance company has materially misstated its financial condition
44 in its report to the Commissioner as required in G.S. 58-10-405. ~~The independent certified~~
45 ~~public accountant shall furnish such notification to the Commissioner within five working days~~
46 ~~of notifying the captive insurance company.~~ A captive insurance company receiving a
47 notification pursuant to this subsection shall forward a copy of the notification to the
48 Commissioner within five business days after receipt of the notification and shall provide the
49 independent certified public accountant with proof that the notification was forwarded to the
50 Commissioner. If the independent certified public accountant fails to receive the proof within

1 the five-day period required by this subsection, the independent certified public accountant
2 shall within the next five business days submit a copy of the notification to the Commissioner.

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

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

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

30 (e) Risk retention groups shall comply with Part 7 of Article 10 of this Chapter instead
31 of this section."

32 **SECTION 11.** G.S. 58-10-425 reads as rewritten:

33 **"§ 58-10-425. Deposit requirement.**

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

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

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

47 **SECTION 12.** G.S. 58-10-430 reads as rewritten:

48 **"§ 58-10-430. Examinations.**

49 (a) Whenever the Commissioner determines it to be prudent, the Commissioner shall
50 visit a captive insurance company and inspect and examine its affairs to ascertain its financial

1 condition, its ability to fulfill its obligations, and whether it has complied with this Part. The
2 expenses and charges of the examination shall be paid by the captive insurance company.

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

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

16 (d) Risk retention groups are not subject to this section and shall instead be examined in
17 accordance with the Examination Law, G.S. 58-2-131 through G.S. 58-2-134."

18 **SECTION 13.** G.S. 58-10-440(b) reads as rewritten:

19 **"§ 58-10-440. Investment requirements.**

20 ...

21 (b) No pure captive insurance company, industrial insured captive insurance company,
22 protected cell captive insurance company, incorporated cell captive insurance company, ~~or~~
23 special purpose captive insurance company, or special purpose financial captive insurance
24 company shall be subject to any restrictions on allowable investments, provided that the
25 Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of
26 any such company."

27 **SECTION 14.** G.S. 58-10-445 reads as rewritten:

28 **"§ 58-10-445. Reinsurance.**

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

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

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

48"

49 **SECTION 15.** G.S. 58-10-465 reads as rewritten:

50 **"§ 58-10-465. Applicable provisions.**

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

5 (b) The Commissioner may exempt, by rule, regulation, or order, special purpose
6 captive insurance companies, on a case by case basis, from provisions of this Chapter and any
7 rules established under this Chapter that the Commissioner determines to be inappropriate
8 given the nature of the risks to be insured."

9 **SECTION 16.** G.S. 58-10-510(o) reads as rewritten:

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

- 12 (1) Fronted by an insurance company licensed under the laws of any state.
- 13 (2) Reinsured by a reinsurer authorized or approved by this State.
- 14 (3) Secured by a trust fund in the United States for the benefit of policyholders
15 and claimants, funded by an irrevocable letter of credit, or other arrangement
16 that is acceptable to the Commissioner. The amount of security provided
17 shall be no less than the reserves associated with those liabilities which are
18 neither fronted nor reinsured, including reserves for losses, allocated loss
19 adjustment expenses, incurred but not reported losses, and unearned
20 premiums for business written through the participant's protected cell. The
21 Commissioner may require the protected cell captive insurance company to
22 increase the funding of any security arrangement established under this
23 subdivision. If the form of security is a letter of credit, the letter of credit
24 shall be issued ~~or confirmed~~ by a bank approved by the Commissioner. A
25 trust maintained pursuant to this subdivision shall be established in a form
26 and upon such terms approved by the Commissioner."

27 **SECTION 17.** G.S. 58-10-520 reads as rewritten:

28 "**§ 58-10-520. Combining assets of protected cells.**

29 Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be
30 combined for purposes of investment and such combination shall not be construed as defeating
31 the segregation of such assets for accounting or other purposes. ~~Protected cell captive insurance~~
32 ~~companies shall comply with the investment requirements contained 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, 58-7-185, 58-7-187,~~
34 ~~58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable; provided that~~
35 ~~compliance with such investment requirements shall be waived for protected cell captive~~
36 ~~insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed~~
37 ~~pursuant to G.S. 58-10-445 or to the extent otherwise deemed reasonable and appropriate by~~
38 ~~the Commissioner. Notwithstanding any other provision of this Chapter, the Commissioner~~
39 ~~may approve the use of alternative reliable methods of valuation and rating."~~

40 **SECTION 18.** G.S. 58-10-565(c) reads as rewritten:

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

42 ...

- 43 (5) An affidavit from the applicant SPFC verifying:
 - 44 a. The applicant SPFC complies with this Part.
 - 45 b. The applicant SPFC operates only pursuant to this Part.
 - 46 c. The applicant SPFC's investment strategy reflects and takes into
47 account the liquidity of assets and the reasonable preservation,
48 administration, and asset management of such assets relative to the
49 risks associated with the SPFC contract and the insurance
50 securitization transaction.

1 d. The securities proposed to be issued, if any, are valid legal
2 obligations that are either properly registered with the Commissioner
3 or constitute an exempt security or form part of an exempt
4 transaction.

5 (6) Any other statements or documents required by the Commissioner to
6 evaluate and complete the licensing of the SPFC."

7 **SECTION 19.** G.S. 58-10-625 reads as rewritten:

8 "**§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation;
9 examinations.**

10 ...

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

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

29"

30 **SECTION 20.** G.S. 58-3-165 reads as rewritten:

31 "**§ 58-3-165. Business transacted with producer-controlled property or casualty insurers.**

32 (a) As used in this section:

33 (1) "Accredited state" means a state in which the insurance department or
34 regulatory agency has qualified as meeting the minimum financial regulatory
35 standards promulgated and established from time to time by the NAIC.

36 (2) "Captive insurer" means an insurance company that is owned by another
37 organization and whose exclusive purpose is to insure risks of the parent
38 organization and affiliated companies. In the case of groups and
39 associations, "captive insurer" means an insurance organization that is
40 owned by the insureds, and whose exclusive purpose is to insure risks of
41 member organizations or group members and their affiliates. "Captive
42 insurer" does not include a risk retention group licensed under Part 9 of
43 Article 10 of this Chapter.

44 (3) "Control" and its cognates mean the direct or indirect possession of the
45 power to direct or cause the direction of the management and policies of a
46 person, whether through the ownership of voting securities, by contract other
47 than a commercial contract for goods or nonmanagement services, or
48 otherwise, unless the power is the result of an official position with or
49 corporate office held by the person. Control is presumed to exist if any
50 person directly or indirectly owns, controls, holds with the power to vote, or

1 holds proxies representing ten percent (10%) or more of the voting securities
 2 of any other person.
 3 (4) "Controlled insurer" means an insurer that is controlled, directly or
 4 indirectly, by a producer.
 5 (5) "Controlling producer" means a producer who, directly or indirectly,
 6 controls an insurer.
 7 (6) "Insurer" means any person licensed to write property or casualty insurance
 8 in this State. "Insurer" ~~does not mean a risk retention group under Article 22~~
 9 ~~of this Chapter, includes a risk retention group licensed under Part 9 of~~
 10 Article 10 of this Chapter but excludes a residual market mechanism, a joint
 11 underwriting authority, ~~nor~~ and a captive insurer.
 12 (7) "Producer" means an insurance broker or brokers or any other person, when,
 13 for any compensation, commission, or other thing of value, that person acts
 14 or aids in any manner in soliciting, negotiating, or procuring the making of
 15 any insurance contract on behalf of an insured other than that person.
 16 "Producer" does not mean an exclusive agent or any independent agent
 17 acting on behalf of a controlled insurer, including any subagent or
 18 representative of the agent, who acts as such in the solicitation of,
 19 negotiation for, or procurement or making of an insurance contract, if the
 20 agent is not also acting in the capacity of an insurance broker in the
 21 transaction in question.

22"

23 **SECTION 21.** G.S. 58-12-2 reads as rewritten:

24 **"§ 58-12-2. Definitions.**

25 As used in this Article, the following terms have the following meanings:

- 26 (1) Adjusted risk-based capital report. – A risk-based capital report that has been
 27 adjusted by the Commissioner under G.S. 58-12-6.
- 28 (2) Corrective order. – An order issued by the Commissioner specifying
 29 corrective actions that the Commissioner has determined are required.
- 30 (3) Domestic insurer. – Any insurance company or health organization
 31 organized in this State under Article 7 of this Chapter as specified in
 32 subdivisions (4b) and (5a) of this section or under Article 15, 65, or 67 of
 33 ~~this Chapter~~ Chapter or any risk retention group organized in this State under
 34 Part 9 of Article 10 of this Chapter.

35"

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

37 **"§ 58-22-15. Risk retention groups chartered in this State.**

38 (a) A risk retention group shall, pursuant to the provisions of Part 9 of Article 10 of this
 39 Chapter, be chartered and licensed to write only liability insurance pursuant to this Article and,
 40 except as provided elsewhere in this Article, must comply with all of the laws and rules
 41 applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the
 42 extent such requirements are not a limitation on laws, administrative rules, or requirements of
 43 this State.

44 (b) Before it may offer insurance in any state, each risk retention group shall also
 45 submit for approval to the Commissioner of this State a plan of operation or feasibility study.
 46 The Commissioner may limit the net amount of risk retained by a risk retention group for any
 47 individual risk. The risk retention group shall submit an appropriate revision in the event of any
 48 subsequent material change in any item of the plan of operation or feasibility study, within 10
 49 days after any such change. The group shall not offer any additional kinds of liability
 50 insurance, in this State or in any other state, until a revision of such plan or study is approved
 51 by the Commissioner.

1 (c) At the time of filing its application for a charter, the risk retention group shall
2 provide to the Commissioner in summary form the following information: the identity of the
3 initial members of the group, the identity of those individuals who organized the group or who
4 will provide administrative services or otherwise influence or control the activities of the group,
5 the amount and nature of initial capitalization, the coverages to be afforded, and the states in
6 which the group intends to operate. Upon receipt of this information, the Commissioner shall
7 forward such information to the NAIC. Providing notification to the NAIC is in addition to and
8 shall not be sufficient to satisfy the requirements of G.S. 58-22-20 or any other sections of this
9 Article."

10 **SECTION 23.** This act becomes effective July 1, 2014.