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HOUSE DRH10073-MH-6B (10/23)

Short Title: Captive Insurance Amendments. (Public)

Sponsors: Representatives Johnson, Collins, and Tine (Primary Sponsors).

Referred to:

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

4 The General Assembly of North Carolina enacts:

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

7 "Part 9. Captive Insurance Companies.

8 "Subpart 1. General Provisions.

9 ...

10 "§ 58-10-340. Definitions.

11 The following definitions apply in this Part:

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

16 ...

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

23 ...

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

25 a. The person is ~~not in the corporate system of a parent and its affiliated~~  
26 ~~companies in the case of a pure captive insurance company or is not~~  
27 ~~in the corporate system of an industrial insured and its affiliated~~  
28 ~~companies in the case of an industrial insured captive insurance~~  
29 ~~company.~~ not an affiliate.

30 b. The person has an existing contractual relationship with ~~a parent or~~  
31 ~~one of its affiliated companies in the case of a pure captive insurance~~  
32 ~~company or with an industrial insured or one of its affiliated~~  
33 ~~companies in the case of an industrial insured captive insurance~~  
34 ~~company.~~ an affiliate.

35 c. The person's risks are managed by a ~~pure captive insurance company~~  
36 ~~or an industrial insured captive insurance company~~, as



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

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

36 **"§ 58-10-345. Licensing; authority; confidentiality.**

37 (a) Any business entity, when permitted by its organizational documents, may apply to

38 the Commissioner for a license to do any insurance comprised in G.S. 58-7-15; provided,

39 however, that:

- 40 ...
- 41 (5) No captive insurance company shall provide personal motor vehicle or
- 42 homeowner's insurance coverage or any component ~~thereof~~ of those
- 43 coverages on a direct basis.
- 44 (6) No captive insurance company shall accept or cede reinsurance except as
- 45 provided in G.S. 58-10-445 and G.S. 58-10-605.
- 46 (7) No captive insurance company shall provide accident and health insurance
- 47 on a direct basis.
- 48 (8) No captive insurance company shall provide workers' compensation and
- 49 employer's liability insurance on a direct basis.
- 50 (9) No captive insurance company shall provide life insurance or annuities on a
- 51 direct basis.

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

3 ...  
4 (h) If the Commissioner is satisfied that the documents and statements filed by an  
5 applicant ~~captive insurance company~~ business entity comply with this section, then the  
6 Commissioner shall grant a license authorizing it to do insurance business in this State.

7 ...  
8 **"§ 58-10-355. Organizational examination.**

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

15 **"§ 58-10-360. Designation of captive manager.**

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

21 ...  
22 **"§ 58-10-370. Capital and surplus requirements.**

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

25 ...  
26 (6) In the case of a special purpose captive insurance company, not less than two  
27 hundred fifty thousand dollars ~~(\$250,000)~~ (\$250,000) or such other amount  
28 determined by the Commissioner.

29 ...  
30 **"§ 58-10-380. Formation of captive insurance companies.**

31 ...  
32 (b1) A special purpose captive insurance company may be organized and operated in any  
33 form of business organization authorized by the Commissioner.

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

37 ...  
38 (m) With the Commissioner's prior written approval, a captive insurance company may  
39 establish one or more separate accounts and may allocate to them amounts to provide for the  
40 insurance of risks of certain of its parents, affiliates, controlled unaffiliated businesses, or  
41 members, as the case may be, subject to the following:

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

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

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

31   **"§ 58-10-385. Directors.**

32    ...

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

40    ...

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

42    ...

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

46    ...

47    **"§ 58-10-405. Annual reports.**

48    ...

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

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

16 ...  
17 (d) The Commissioner may require any captive insurance company to file a report on  
18 its financial condition semiannually, quarterly, monthly, or any other frequency determined by  
19 the Commissioner.

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

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

- 26 ...  
27 (d) The annual audit shall consist of the following:  
28 (1) Annual audited financial report. –The annual audited financial report shall  
29 include the following:  
30 a. Financial statements. – Financial statements shall be prepared in  
31 accordance with generally accepted accounting principles, unless the  
32 Commissioner requires, approves, or accepts the use of statutory  
33 accounting principles or other comprehensive basis of accounting,  
34 with useful or necessary modifications or adaptations required,  
35 ~~approved~~ approved, or accepted by the Commissioner, and shall be  
36 audited by an independent certified public accountant in accordance  
37 with generally accepted auditing standards as determined by the  
38 American Institute of Certified Public Accountants. The  
39 Commissioner may require that the financial ~~statement~~ statements be  
40 supplemented by additional information.  
41 b. Notes to financial statements. – The notes to financial statements  
42 shall be those required by generally accepted accounting principles,  
43 or as otherwise approved by the Commissioner, and shall also  
44 include a reconciliation of differences, if any, between the audited  
45 financial report and the report of the captive insurance company's  
46 financial condition filed with the Commissioner in accordance with  
47 G.S. 58-10-405(b).  
48 c. Related required auditor communications. – Copies of related  
49 required auditor communications in accordance with generally  
50 accepted auditing standards.

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

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

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

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

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

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

38 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

5 ...  
6 **"§ 58-10-490. Inactive captive insurance companies.**

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

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

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

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

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

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

22 ...  
23 "Subpart 2. Protected Cell Captive Insurance Companies.  
24 ...

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

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

- 29 ...
- 30 (3) All contracts or sample contracts between the applicant and any participants.
- 31 (4) ~~Evidence that~~ A statement describing how expenses shall be allocated to each  
32 protected cell in a fair and equitable manner.

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

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

- 37 ...
- 38 (5) ~~An incorporated protected cell may be organized and operated in any form~~  
39 ~~of business organization authorized by the Commissioner. Each incorporated~~  
40 ~~protected cell of a protected cell captive insurer shall be treated as a captive~~  
41 ~~insurer for purposes of this Part. Unless otherwise permitted by the~~  
42 ~~organizational documents of a protected cell captive insurer, each~~  
43 ~~incorporated protected cell of the protected cell captive insurer must have~~  
44 ~~the same directors, secretary, and registered office as the protected cell~~  
45 ~~captive insurer.~~
- 46 (6) All attributions of assets and liabilities between a protected cell and the  
47 general account shall be in accordance with the plan plans of operation and  
48 participant contracts approved by the Commissioner. ~~No other attribution of~~  
49 ~~assets or liabilities shall be made by a protected cell captive insurance~~  
50 ~~company between the protected cell captive insurance company's general~~  
51 ~~account and its protected cells. Any attribution of assets and liabilities~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

"Subpart 4. Special Purpose Financial Captives.

...

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

...

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

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

...

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

...

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

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

...

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

...

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

...."

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