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SENATE BILL DRS35220-MH-94 (03/17)

Short Title: Insurer Investment/Transaction Changes. (Public)

Sponsors: Senator Meredith (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE LAWS GOVERNING TRANSACTION REQUIREMENTS AND
3 PROHIBITED INVESTMENTS FOR INSURERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 58-7-185(a)(2) reads as rewritten:

6 "§ 58-7-185. Prohibited investments and investment underwriting.

7 (a) In addition to investments excluded under other provisions of this Chapter, except
8 with prior approval by the Commissioner, an insurer shall not directly or indirectly invest in or
9 lend its funds upon the security of:

10 ...
11 (2) Except with the Commissioner's consent, securities issued by any
12 corporation or enterprise, the controlling interest of which is or will after
13 acquisition by the insurer be held directly or indirectly by the insurer or any
14 combination of the insurer and the insurer's directors, officers, parent
15 corporation, subsidiaries, or controlling stockholders. This subdivision shall
16 not apply to any of the following:

- 17 a. Investments in subsidiaries under ~~G.S. 58-19-10~~ are not subject to
18 ~~this provision.~~ G.S. 58-19-10.
19 b. Transactions involving an insurer within an insurance holding
20 company system regulated under G.S. 58-19-30.
21 c. Transactions described by G.S. 58-7-200(e)."

22 SECTION 2. G.S. 58-7-200 reads as rewritten:

23 "§ 58-7-200. Investment transactions.

24 (a) The transactions specified in subsections (b) through (e) of this section are expressly
25 allowed or prohibited as provided in this section and to the extent they are not in conflict with
26 other provisions of this Chapter.

27 ...

28 (e) Nothing in this section ~~prohibits~~ prohibits any of the following:

- 29 (1) A director or officer of any insurer from receiving the usual salary,
30 compensation, or emoluments for services rendered in the ordinary course of
31 that person's duties as a director or officer, if the salary, compensation, or
32 emolument is authorized by vote of the board of directors of the
33 ~~insurer;~~ insurer.
34 (2) Any insurer in connection with the relocation of the place of employment of
35 an officer, including any relocation in connection with the initial
36 employment of the officer, from (i) making, or the officer from accepting



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1 therefrom, a mortgage loan to the officer on real property owned by the
 2 officer that is to serve as the officer's residence or (ii) acquiring, or the
 3 officer from selling thereto, at not more than its fair market value, the
 4 officer's prior ~~residence;~~ residence.

5 (3) The payment to a director or officer of any such insurer who is a licensed
 6 attorney-at-law of fees in connection with loans made by the insurer if and
 7 when the fees are paid by the borrower and do not constitute a charge against
 8 the ~~insurer;~~ insurer.

9 (4) An insurer from making a loan upon a policy held therein by the borrower
 10 not in excess of the policy's net ~~value;~~ or value.

11 (5) Subject to G.S. 58-19-30 and G.S. 58-7-163, an insurer from advancing
 12 funds to directors, officers, or controlling stockholders, for expenses
 13 reasonably expected to be incurred in the ordinary course of the insurer's
 14 business, as authorized or approved by the insurer's board of directors or by
 15 individuals authorized by the board and charged with the supervision or
 16 making of the advances.

17 (6) Subject to G.S. 58-19-30 and G.S. 58-7-170, an insurer from investing in, or
 18 lending its funds to, an affiliate.

19 (7) An insurer from directly or indirectly investing in, or lending its funds to a
 20 nonaffiliate in which an officer, director, or controlling stockholder directly
 21 or indirectly holds an interest, so long as the investment or loan transaction
 22 meets the standards set forth in G.S. 58-7-170 and G.S. 58-19-30(a)(1) and
 23 (2).

24 (8) Subject to G.S. 58-19-30 and G.S. 58-7-170, an insurer from directly or
 25 indirectly making or holding an investment described in G.S. 58-7-173(11).

26 (f) The prohibition in subsection (c) of this section shall not apply with respect to any
 27 investment by an insurer in an entity in which the officers, directors, and controlling
 28 shareholders hold no more than ten percent (10%) of the voting interests or which is otherwise
 29 not an affiliate of the insurer, or which is controlled by a trust established in accordance with
 30 the North Carolina Uniform Trust Code, so long as (i) the investment complies with the
 31 requirements of G.S. 58-19-30 and G.S. 58-7-170 and (ii) the trust is controlled by a trustee not
 32 affiliated with the insurer."

33 **SECTION 3.** G.S. 58-7-179(c) reads as rewritten:

34 "(c) No such mortgage loan or loans made or acquired by an insurer on any one property
 35 shall, at the time of investment by the insurer, exceed the larger of the following amounts, as
 36 applicable:

37 (1) ~~Ninety five percent (95%) of the value of the real property or leasehold~~
 38 ~~securing the real property in the case of a mortgage on a dwelling primarily~~
 39 ~~intended for occupancy by not more than four families if they insure down to~~
 40 ~~seventy five percent (75%) with a licensed mortgage insurance company, or~~
 41 ~~seventy five percent (75%) of the value in the case of other real estate~~
 42 ~~mortgages;~~

43 (2) ~~The amount of any insurance or guaranty of the loan by the United States or~~
 44 ~~by an agency or instrumentality thereof; or~~

45 (3) ~~The percentage of value limit on the amount of the loan applicable under~~
 46 ~~subdivision (1) of this subsection, plus the amount by which the excess of~~
 47 ~~the loan over the percentage of value limit is insured or guaranteed by the~~
 48 ~~United States or by any agency or instrumentality thereof.~~

49 (4) Ninety percent (90%) of the fair market value of the real estate, if the
 50 mortgage loan is secured by a purchase money mortgage or like security
 51 received by the insurer upon disposition of the real estate.

1 (5) Eighty percent (80%) of the fair market value of the real estate, if the
2 mortgage loan requires immediate scheduled payment in periodic
3 installments of principal and interest, has an amortization period of 30 years
4 or less, and requires periodic payments made no less frequently than
5 annually. Each periodic payment shall be sufficient to assure that at all times
6 the outstanding principal balance of the mortgage loan shall be not greater
7 than the outstanding principal balance that would be owed under a mortgage
8 loan with the same original principal balance, with the same interest rate,
9 and requiring equal payments of principal and interest with the same
10 frequency over the same amortization period. A mortgage providing for a
11 payment of the principal balance prior to the end of the period of
12 amortization of the loan shall be permitted under this subsection. With
13 respect to residential mortgage loans, the limitation under this section shall
14 be ninety-seven percent (97%) rather than eighty percent (80%) if the
15 borrower obtains private mortgage insurance that meets the usual and
16 customary standards for private mortgage insurance covering residential
17 mortgages.

18 (6) Seventy-five percent (75%) of the fair market value of the real estate for
19 mortgage loans that do not meet the requirements of subdivision (4) or (5) of
20 this subsection."

21 **SECTION 4.(a)** Article 7 of Chapter 58 of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 58-7-184. Securities lending, repurchase, reverse repurchase, and dollar roll**
24 **transactions.**

25 (a) Definitions. – The following definitions apply in this section:

26 (1) Dollar roll transaction. – A transaction that consists of a set of two
27 simultaneous transactions with different settlement dates no more than 96
28 days apart that meets the following requirements:

29 a. The transaction with the earlier settlement date is a sale by an insurer
30 to a business entity.

31 b. The transaction with the later settlement date is a sale in which the
32 insurer is obligateded to purchase from the same business entity
33 involved in the first transaction.

34 c. Both transactions consist of substantially similar securities that are
35 either (i) asset-backed securities issued, assumed, or guaranteed by
36 the Government National Mortgage Association, the Federal
37 National Mortgage Association, or the Federal Home Loan Mortgage
38 Corporation, or their respective successors; or (ii) other asset-backed
39 securities referred to in Section 106 of Title I of the Secondary
40 Mortgage Market Enhancement Act of 1984 (15 U.S.C. § 77r-1), as
41 amended.

42 (2) Repurchase transaction. – A transaction in which an insurer purchases
43 securities from a business entity that is obligated to repurchase the purchased
44 securities or equivalent securities from the insurer at a specified price, either
45 within a specified period of time or upon demand.

46 (3) Reverse repurchase transaction. – A transaction in which an insurer sells
47 securities to a business entity and is obligated to repurchase the sold
48 securities or equivalent securities from the business entity at a specified
49 price, either within a specified period of time or upon demand.

50 (4) Securities lending transaction. – A transaction in which securities are loaned
51 by an insurer to a business entity that is obligated to return the loaned

1 securities or equivalent securities to the insurer, either within a specified
2 period of time or upon demand.

3 (b) Requirements for Allowed Transactions. – An insurer may enter into securities
4 lending, repurchase, reverse repurchase, and dollar roll transactions with business entities,
5 subject to the following requirements:

6 (1) The insurer shall enter into a written agreement for all transactions
7 authorized in this section other than dollar roll transactions. The written
8 agreement shall require that each transaction terminate no more than one
9 year from its inception or upon the earlier demand of the insurer. The
10 agreement required by this subdivision shall be with the business entity
11 counterparty for all transactions authorized in this section other than
12 securities lending transactions. Agreements for securities lending
13 transactions may be with either the business entity or an agent acting on
14 behalf of the insurer, if the agent is a qualified business entity, and if the
15 agreement (i) requires the agent to enter into separate agreements with each
16 counterparty that are consistent with the requirements of this section and (ii)
17 prohibits securities lending transactions under the agreement with the agent
18 or its affiliates.

19 (2) Cash received in a transaction under this section shall be invested in
20 accordance with this Article and in a manner that recognizes the liquidity
21 needs of the transaction or used by the insurer for its general corporate
22 purposes. For so long as the transaction remains outstanding, the insurer, its
23 agent, or custodian shall maintain, as to acceptable collateral received in a
24 transaction under this section, either physically or through the book entry
25 systems of the Federal Reserve, Depository Trust Company, Participants
26 Trust Company, or other securities depositories approved by the
27 Commissioner, any of the following:

28 a. Possession of the acceptable collateral.

29 b. A perfected security interest in the acceptable collateral.

30 c. In the case of collateral located in a jurisdiction outside of the United
31 States, title to, or rights of a secured creditor to, the acceptable
32 collateral.

33 (3) The limitations of G.S. 58-7-170 and G.S. 58-7-178 shall not apply to the
34 business entity counterparty exposure created by transactions under this
35 section. For purposes of calculations made to determine compliance with the
36 requirements of this section, no effect will be given to the insurer's future
37 obligation to resell securities, in the case of a repurchase transaction, or to
38 repurchase securities, in the case of a reverse repurchase transaction. An
39 insurer shall not enter into a transaction under this section if, as a result of
40 and after giving effect to the transaction, the aggregate amount of all
41 securities then loaned, sold to, or purchased from all business entities under
42 this section would exceed forty percent (40%) of the insurer's admitted
43 assets.

44 (4) In a repurchase transaction, the insurer shall receive as acceptable collateral
45 transferred securities having a market value at least equal to one hundred
46 two percent (102%) of the purchase price paid by the insurer for the
47 securities. If at any time the market value of the acceptable collateral is less
48 than one hundred percent (100%) of the purchase price paid by the insurer,
49 the business entity counterparty shall be obligated to provide additional
50 acceptable collateral, the market value of which, together with the market
51 value of all acceptable collateral then held in connection with the

1 transaction, at least equals one hundred two percent (102%) of the purchase
 2 price. Securities acquired by an insurer in a repurchase transaction shall not
 3 be sold in a reverse repurchase transaction, loaned in a securities lending
 4 transaction, or otherwise pledged.

5 (5) In a reverse repurchase transaction that is not a dollar roll transaction, the
 6 insurer shall receive acceptable collateral having a market value as of the
 7 transaction date at least equal to ninety-five percent (95%) of the market
 8 value of the securities transferred by the insurer in the transaction as of that
 9 date. If at any time the market value of the acceptable collateral is less than
 10 ninety-five percent (95%) of the market value of the securities so transferred,
 11 the business entity counterparty shall be obligated to deliver additional
 12 acceptable collateral, the market value of which, together with the market
 13 value of all acceptable collateral then held in connection with the
 14 transaction, at least equals ninety-five percent (95%) of the market value of
 15 the transferred securities.

16 (6) In a securities lending transaction, the insurer shall receive acceptable
 17 collateral having a market value as of the transaction date at least equal to
 18 one hundred two percent (102%) of the market value of the securities loaned
 19 by the insurer in the transaction as of that date. If at any time the market
 20 value of the acceptable collateral is less than the market value of the loaned
 21 securities, the business entity counterparty shall be obligated to deliver
 22 additional acceptable collateral, the market value of which, together with the
 23 market value of all acceptable collateral then held in connection with the
 24 transaction, at least equals one hundred two percent (102%) of the market
 25 value of the loaned securities.

26 (7) In a dollar roll transaction, the insurer shall receive cash in an amount at
 27 least equal to the market value of the securities transferred by the insurer in
 28 the transaction as of the transaction date."

29 **SECTION 4.(b)** G.S. 58-7-26(a) reads as rewritten:

30 "(a) An asset or a reduction from liability for reinsurance ceded by a domestic insurer to
 31 an assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an
 32 amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the
 33 amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the
 34 ceding insurer, under a reinsurance contract with the assuming insurer as security for the
 35 payment of obligations thereunder, if the security is held in the United States subject to
 36 withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a
 37 trust, held in a qualified United States financial institution as defined in subsection (c) of this
 38 section. This security may be in ~~the form of:~~ any of the following forms:

- 39 (1) ~~Cash;~~ Cash.
 40 (2) Securities that are listed by the Securities Valuation Office of the NAIC and
 41 qualifying as admitted ~~assets;~~ assets.
 42 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a
 43 qualified United States financial institution, as defined in subsection (b) of
 44 this section, effective no later than December 31 of the year for which the
 45 filing is being made, and in the possession of, or in trust for, the ceding
 46 company on or before the filing date of its annual statement. Letters of credit
 47 meeting applicable standards of issuer acceptability as of the dates of their
 48 issuance (or confirmation) shall, notwithstanding the issuing (or confirming)
 49 institution's subsequent failure to meet applicable standards of issuer
 50 acceptability, continue to be acceptable as security until their expiration,

1 extension, renewal, modification or amendment, whichever occurs first;
2 ~~or first.~~

3 (3a) Repurchase and reverse repurchase transactions, as defined in
4 G.S. 58-7-184(a).

5 (4) Any other form of security acceptable to the Commissioner."

6 **SECTION 5.** G.S. 58-7-173(15) reads as rewritten:

7 "(15) Loans with a maturity not in excess of ~~12 years~~30 years from the date
8 thereof that are secured by the pledge of securities eligible for investment
9 under this Chapter or by the pledge or assignment of life insurance policies
10 issued by other insurers authorized to transact insurance in this State. On the
11 date made, no such loan shall exceed in amount seventy-five percent (75%)
12 of the market value of the collateral pledged, except that loans upon the
13 pledge of U.S. Government ~~bonds and bonds,~~ loans upon the pledge or
14 assignment of life insurance ~~policies-policies,~~ and loans upon the pledge of
15 securities designated a "1" in accordance with the Purposes and Procedures
16 Manual issued by the Securities Valuation Office of the NAIC shall not
17 exceed ~~ninety-five percent (95%)~~ of the market value of the bonds or the
18 cash surrender value of the policies pledged. The market value of the
19 collateral pledge shall at all times during the continuance of the loans meet
20 or exceed the minimum percentages herein. Loans made under this section
21 shall not be renewable beyond a period of ~~12 years~~30 years from the date of
22 the loan."

23 **SECTION 6.** Section 2 of this act is effective when it becomes law and applies
24 retroactively to any transaction entered into on or after July 1, 2015. The remainder of this act
25 is effective when it becomes law.